

ESSAY

CIVIC VIRTUE AT WORK: UNIONS AS SEEDBEDS OF THE CIVIC VIRTUES†

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The good citizen should know and have the capacity both to be ruled and to rule, and this very thing is the virtue of a citizen—knowledge of rule over free persons from both [points of view].¹

The three great relations in private life are, 1. That of master and servant; . . . 2. That of husband and wife; . . . 3. That of parent and child²

In democratic countries knowledge of how to combine is the mother of all other forms of knowledge; on its progress depends that of all the others.

Among laws controlling human societies there is one more precise and clearer, it seems to me, than all the others. If men are to remain civilized or to become civilized, the art of association must develop and improve among them at the same speed as equality of conditions spreads.³

I. INTRODUCTION

Home may be where the heart is. But, increasingly, Americans are likely to be found at work. For better or worse, men and women are

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¹ ARISTOTLE, *POLITICS*, bk. 3, ch. 4, 1277b–15 (C. Lord trans., Univ. of Chicago Press 1984).

² SIR WILLIAM BLACKSTONE, *COMMENTARIES ON THE LAWS OF ENGLAND* 422 (Garland 1978) (1783).

³ ALEXIS DE TUCQUEVILLE, *DEMOCRACY IN AMERICA* 517 (J.P. Mayer ed., George Lawrence trans., Anchor Books 1969) (13th ed. 1850).

tied to the market and the workplace in a way never before seen. The overall increase in labor force participation is one of the most striking social developments of the past forty years.

A few statistics help to tell the story. Presently, ninety-three percent of adult men are in the labor force—a figure that has remained roughly constant for many decades.⁴ Since 1950, however, women have increased their participation in the workforce by more than 200 percent.⁵ Today, seventy-four percent of women twenty-five to fifty-four years old are employed,⁶ the overwhelming proportion of them full-time.⁷ Likewise, the majority of mothers are in the workforce. Their participation rates extend from seventy-five percent for women whose youngest child is of school age, to fifty-two percent for those with children under two.⁸ In 1990, both spouses worked in nearly seven out of ten married-couple families.⁹ Working hours for women have been increasing steadily during the past twenty years.¹⁰ A recently published major study shows that after years of gradual decline, the normal American work week has increased to the point where the average employee now works the equivalent of an additional month more than was worked in 1970.¹¹

⁴ BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, BULLETIN 2385, WORKING WOMEN: A CHARTBOOK 48 (1991) [hereinafter WORKING WOMEN: A CHARTBOOK] (percentage reflects labor force participation for persons 25–54 years of age). Actual participation rates for men have declined slowly but steadily over the past three decades. *Id.* In 1962, 96.8% of adult men were in the workforce. *Id.* For a brief consideration of the decline among men in workforce participation, see Howard V. Hayghe & Steven H. Haugen, *A Profile of Husbands in Today's Labor Market*, 110 MONTHLY LAB. REV. 12 (Oct. 1987).

⁵ Dana Priest, *Major Changes Seen in Female Labor Force; in 1990, 60% of Mothers with Young Went to Work*, WASH. POST, Mar. 25, 1992, at A21; see also WORKING WOMEN: A CHARTBOOK, *supra* note 4, at 48, table A-16.

⁶ WORKING WOMEN: A CHARTBOOK, *supra* note 4, at 48. In 1990, of nine industrialized nations (the United States, Australia, Canada, France, Italy, Japan, The Netherlands, Sweden and the United Kingdom) only Sweden and Canada had greater female workforce participation than the United States. *Id.* at 9–10. Since 1970, the participation gap between Sweden and the United States narrowed, while the rate for Canadian women grew rapidly and now narrowly surpasses the U.S. rate. *Id.* Significant increases in workforce participation by women since 1970 also occurred in the United States, Australia and The Netherlands. *Id.* Italy's rate of 30% was the smallest proportion of the nations for which data was available. *Id.*

⁷ *Id.* at 13. The Bureau of Labor Statistics (BLS) figures show that 77% of employed adult women worked 35 or more hours weekly. *Id.* Among unemployed women, 80% were seeking full-time work. *Id.*; see also *id.* at 48, table A-16.

⁸ *Id.* at 35. For more statistics, see *id.* at 50, table A-18.

⁹ Priest, *supra* note 5, at A21 (reporting results from a Government Accounting Office study issued March 24, 1992). The BLS reports that since 1970, the proportion of children in two-parent families where both parents were in the labor force increased from 36% to 61%. WORKING WOMEN: A CHARTBOOK, *supra* note 4, at 33.

¹⁰ Between 1970 and 1989, the proportion of women working on a full-time, year round basis grew from 41% to 51%. WORKING WOMEN: A CHARTBOOK, *supra* note 4, at 13.

¹¹ JULIET B. SCHOR, THE OVERWORKED AMERICAN: THE UNEXPECTED DECLINE OF LEISURE 17–43 (1991).

These figures burst with implications. Among them is this: the job has become a central part of most people's lives, and work increasingly is the place that people spend the major share of their waking hours. People make themselves to be what they are through the activities in which they habitually engage. Consequently, anyone interested in the sources of character and citizenship in American society must pay attention to those institutions that can serve to inculcate, sustain and enhance the civic virtues in the workplace. Chief among such institutions are trade unions and the practice of collective bargaining.

This claim may jar some readers a bit, or strike them as being at best naive. (Indeed, some of the less charitably inclined may see it as being the equivalent of nominating Boss Pendergast as citizen of the year.) In one respect, such reactions are not surprising. Once the subject of fervent controversy, unions represent one of the few things about which liberals and conservatives generally agree. And, as the new consensus has it, unions are relics of the past, inappropriate to an era of global economic competition and irrelevant if not downright detrimental to promoting the common good. An interest in unions tends to be treated as a species of antiquarianism even among academic employment law specialists,¹² who increasingly have come to regard proposals for rethinking and reviving unions as being no less quixotic than a movement to bring back manned lighthouses.

As conservatives typically understand them, unions are purely economic institutions. They represent no more than self-interested affiliations among otherwise unrelated economic actors, whose principal purpose is to extract higher wages for less work than a freely functioning market would otherwise permit. Unions achieve their goals by acting (or attempting to act) as monopolies. Through exerting control over employment terms—and in some industries (particularly the crafts) by their ability to limit the supply of labor—unions distort the outcomes of the market process in favor of their members. By trumping the market, many conservatives argue, unions decrease overall social welfare by imposing costs that everyone else must bear.

These costs take a number of forms. As their critics point out, unions are more prevalent in those sectors of the economy where income and productivity are naturally high. The impact of unions on the wage structure of industries in these sectors causes firms to limit their demand for workers. This results in unnaturally high numbers of people being employed in the lower-paid sectors of the economy where less-skilled service occupations tend to predominate. Consequently, the

¹² Who were called "labor lawyers" until sometime in the early 1980s.

gains enjoyed by the "barons of labor" (who were relatively well-off to start with) come at the expense of the non-unionized, whose upward mobility is retarded by the presence in the market of organized workers. Thus, their critics frequently assert, unions create inequities in the distribution of income. Furthermore, union work rules and other restrictions of management discretion also lower the productivity of labor and capital. In short, as many conservatives portray it, unions leave everyone but their members worse-off by obstructing the efficient allocation and use of resources.

The degree to which this picture of the economic impact of unions is accurate remains a matter of debate among professional economists. Recent empirical work has called much of it into question. Several studies, for instance, demonstrate that unionized workers generally are more productive than their unorganized counterparts.¹³ Recent evidence also indicates that, on balance, unions have the effect of decreasing the dispersion of labor earnings between highly and lesser-compensated workers. Similarly, the data show that unions have improved the economic status of black males relative to white males.¹⁴ Despite this, the disapprobation of unions is hardly confined to conservatives and free-market advocates. Liberals themselves increasingly regard unions as the detritus of a bygone age whose value (to the extent it existed) long since has disappeared.

The standard liberal critique of unions proceeds not in economic terms, but in the language of individual rights. It rests on the view that majorities cannot be trusted because they pose an ever-present threat to personal liberties and to the unfettered exercise of individual choice. As a result, many liberals regard unions with the same profound suspicion they exhibit toward legislatures and other institutions of majority will. From this perspective, individuals are freest and most secure when protected from the biases that almost invariably drive decision-making in majoritarian institutions. Consequently, as many liberals see it, functions typically performed by unions can be discharged more reliably and equitably by some arm of the state.

For instance, disputes over employee dismissals—which in the unionized setting typically are adjusted through a private grievance-arbitration process that the employer and union jointly administer—are

¹³ See RONALD G. EHRENBERG & ROBERT S. SMITH, *MODERN LABOR ECONOMICS: THEORY AND PUBLIC POLICY* 360–62 (1982); RICHARD B. FREEMAN & JAMES L. MEDOFF, *WHAT DO UNIONS DO?* 162–81 (1984).

¹⁴ See EHRENBERG & SMITH, *supra* note 13, at 356–58; FREEMAN & MEDOFF, *supra* note 13, at 78–93.

seen by many liberals as matters better adjudicated before a court or a state administrative body. Likewise, liberals generally regard other aspects of the employment relationship as being more equitably, efficiently and effectively established through uniform statutory standards rather than by the terms of a privately-negotiated collective bargaining agreement. In this view, fairness is a function of procedure, the regularity and formality of which the state can best guarantee. Thus, universal prescriptions are preferable to particular solutions developed at the local level by those directly affected. In fact, as many liberals see it, the union movement represents something like an historical stage in the evolution of the sovereign individual self whose progressive absolutization has occurred through the state's growing recognition of an ever-more comprehensive body of personal liberties that majorities may not qualify or infringe.

The thoroughgoing distrust of majority rule that underlies many liberals' misgivings about unions also marks the point at which the views of the left and the right frequently converge. Many conservatives, especially those with a libertarian bent, also distrust majorities. The jointly-held suspicion about majoritarian institutions often leads liberals and conservatives alike to the same conclusion. Consequently, left and right condemn unions on the same basis that they often employ to argue that the judiciary's power to overturn legislation is necessary if individual rights are to be secure. Ordering carried out through non-representative institutions, they agree, is more efficient and stable than reliance upon majority rule. What chiefly separates the two schools, of course, are the sorts of policies they think these non-representative institutions should implement, and what the character of these non-representative institutions should be. An unrelieved skepticism about the ability of the average person to act intelligently, reasonably and with self-restraint compels many on the right and left to the view that democracy is at best a utopian ideal. The state or the market are the alternatives they offer. But, in either case, the "iron cage" of technocratic orders and bureaucratic rationality are the results they ultimately suggest.

Unbeloved by elites, unions do not seem to fare well in the popular mind either. Not infrequently, the idea of unionism seems to be associated with Archie Bunker-like characters, cartoon versions of autocratic and possibly corrupt "boss" leadership, featherbedding work rules, and unnecessary contentiousness. Indeed, the less direct knowledge that individuals have of the collective bargaining process, the harsher their attitudes toward unions seem to be. Reporting on data collected by the National Longitudinal Survey, a recent study found

that current involvement in a union constituted by far the most significant factor in differentiating supporters from opponents of unions among members of the labor force.¹⁵ Opportunities for familiarization, however, fast are decreasing. Presently, only 11.9 percent of the private-sector workforce is organized.¹⁶ In 1930, with the depression in full-swing and passage of the Wagner Act still five years away, the rate stood at 10.2 percent.¹⁷ Some forecast that if current trends continue, unions will represent only about seven percent of the private sector workforce by the end of the decade.¹⁸

Our currently prevailing views about unions, along with the apparent demise of collective bargaining in the United States, come at a strange time. During the past twenty-five years, the overall distribution of wages and earnings in the United States has become increasingly unequal, and there has been a pronounced erosion in the size of the nation's middle-class.¹⁹ Migration out of the middle-class has occurred in both directions, and there has been growth in both the upper and lower classes. After 1980, however, the chances for movement out of the lower economic class lessened, with only the college-educated demonstrating a higher than average probability of moving into the middle income group. During the same period, a smaller share of adults fell out of the upper-class, but the chances of descending from the middle to the lower-class significantly increased. A shift in the sources of total household income has also occurred. The portion derived from earnings fell while that attributable to capital investments

¹⁵ Stephen M. Hills, *The Attitudes of Union and Nonunion Male Workers Toward Union Representation*, 38 INDUS. & LAB. REL. REV. 179, 190 (1985); see also Seymour Martin Lipset, *Labor Unions in the Public Mind*, in UNIONS IN TRANSITION: ENTERING THE SECOND CENTURY 287-321 (Seymour Martin Lipset ed., 1986).

¹⁶ *Union Membership Unchanged at 16.1 Percent of Employment in 1991*, DAILY LAB. REP. (BNA), Feb. 11, 1992, at A-A. Union density steadily has been declining in the private sector in the United States since the mid 1950s. In 1958, 34% of private sector employees were unionized. By 1980, just 24% were—a decline unprecedented in American history. The free-fall in density continued throughout the 1980s. See Michael A. Curme et al., *Union Membership and Contract Coverage in the United States, 1983-1988*, 44 INDUS. & LAB. REL. REV. 5 (1990).

¹⁷ IRVING BERNSTEIN, *THE NEW-DEAL COLLECTIVE BARGAINING POLICY* 2 (1950).

¹⁸ Leo Troy, *Convergence in International Unionism, etc.: The Case of Canada and the USA*, 30 BRIT. J. INDUS. REL. 1, 38 (1992).

¹⁹ See BUREAU OF THE CENSUS, ECON. AND STATS. ADMIN., U.S. DEP'T OF COMMERCE, *CURRENT POPULATION REPORTS, SERIES P-60, NO. 177, TRENDS IN RELATIVE INCOME: 1964-1989*, at 1-4 and accompanying tables (1991); Greg Duncan et al., *The Incredible Shrinking Middle Class*, AMERICAN DEMOGRAPHICS, May 1992, at 34-38 (summary of study conducted by Univ. of Mich. Survey Research Center); W. Norton Grubb & Robert H. Wilson, *Trends in Wage and Salary Inequality, 1967-88*, MONTHLY LAB. REV., June 1992, at 23; Paul Ryscavage & Peter Henle, *Earnings Inequality Accelerates in the 1980's*, MONTHLY LAB. REV., Dec. 1990, at 3. The difficulties in tracing these trends are well described in the Grubb & Wilson study.

increased. Likewise, growth occurred in the upper-end, while lower-income households experienced a stagnation in real earnings. In fact, one recent study shows that average hourly wages have been declining for well over a decade, and are fourteen percent lower than they were in 1979.²⁰

Along with these developments has come a significant loosening of the employment bond. So-called contingent employment arrangements—part-time, temporary and contract arrangements—are on the rise, and many analysts expect the number of part-time employees to double in the next few years.²¹ These “just-in-time” employees typically have at best highly restricted claims to pension, health and other benefits incident to employment. In testimony before Congress, one well-known observer of labor market trends characterized contingent employment arrangements as representing “the utmost in fluidity and flexibility.”²² Such arrangements, she testified, increase productivity by permitting employers to expand or contract work-hours at-will. Moreover, an employer “incurs no legal or moral obligation” to offer contingent workers “severance pay or layoff benefits, or rights to re-employment.”²³ Similarly, employers “have no implied commitment to provide promotion opportunities, or to offer training and/or development” to members of the contingent workforce.²⁴ Use of contingent workers, she stated, also enables employers to enhance the employment security of “core employees.”²⁵ As American industry seeks to become more competitive, she predicted “all employment relationships are going to become more fluid.”²⁶

Domestic trends aside, the collapse of collective bargaining in the United States also seems odd in light of comparative developments. In anticipation of its planned economic and monetary union, the European Economic Community adopted its Charter on the Fundamental

²⁰ See Lawrence Mishel & Jared Bernstein, *THE STATE OF WORKING AMERICA* (1993); David R. Francis, *U.S. Workers on Job Longer for Less Pay*, *CHRISTIAN SCI. MONITOR*, May 15, 1992, at 8.

²¹ John F. Stenson, Jr., *Multiple Jobholding up Sharply in the 1980's*, *MONTHLY LAB. REV.*, July 1990, at 3. Statistics also show a sharp increase in the number of people holding multiple jobs—an increase of 52% between 1985 and 1989. *Id.* Women accounted for two-thirds of this increase. As of 1990, 72 million Americans held two or more jobs. *Id.*

²² *Rising Use of Part-Time and Temporary Workers: Who Benefits and Who Loses? Hearing Before the Subcommittee on Employment and Housing*, 100th Cong., 2d Sess. 36 (May 19, 1988) (statement of Audrey Freedman, Executive Director, Human Resources Program Group, The Conference Board).

²³ *Id.* at 38.

²⁴ *Id.*

²⁵ *Id.* at 38–39.

²⁶ *Id.* at 36.

Social Rights of Workers (the "Social Charter" or "Charter") in December, 1989.²⁷ The Charter provides a comprehensive stipulation of twelve basic rights and policies that address the "social dimension" of the Community's internal market plan.²⁸ These principles constitute an integral and organic part of the single market scheme of European unity. Consequently, the Charter's preamble declares "solemnly that the implementation of the single European Act must take full account of the social dimension of the Community."²⁹ It further states that "the same importance must be attached to the social aspects as the economic aspects" in establishing the single market, and it requires that these two dimensions "must be developed in a balanced manner."³⁰

Perhaps the most surprising thing about the Social Charter from an American perspective is the way its principles were developed and the means suggested for their implementation. The principles set forth in the Social Charter grew directly out of an informal "social dialogue" between European-level trade unions and employers' associations. The discussions between these "social partners" subsequently were supplemented and formalized by the European Commission and resulted in the promulgation of the present Charter.

Given its source, the fact that the Social Charter guarantees the right of employers and workers to organize trade organizations to defend their economic and social interests hardly is startling. Much more remarkable, to an American at least, are the Charter's strong affirmation of collective bargaining as a social institution and the breadth with which it conceives of the process. Thus, the Charter sees collective bargaining as more than a means to adjust the economic aspects of the employment relationship. The Charter also provides for—and specifically encourages the use of—collective bargaining as a method for making Community law. Moreover, the Social Charter regards collective bargaining as having a central role in the implementation and further elaboration of the fundamental rights and policies stated in the Charter. Indeed, the Social Charter's "Action Plan" specifically recognizes that implementation of the Charter's policies through the collective bargaining process makes "it possible to adapt to particular situations and enable[s] the two sides of industry to be actively involved."³¹

²⁷ For a further discussion of these points, see Thomas C. Kohler, *Lessons from the Social Charter: State, Corporation and the Meaning of Subsidiarity*, 43 U. TORONTO L.J. 607 (1993).

²⁸ *Id.* at 613.

²⁹ *Id.* (citing Social Charter Preamble, ¶ 14).

³⁰ *Id.* (citing Social Charter Preamble, ¶ 2).

³¹ *Id.* at 622 (citing Action Program Comm. (89) 568 Part I, 4).

The very terminology used in the Social Charter to describe collective bargaining demonstrates the markedly different attitude the European Community takes toward this social institution. Thus, unions and employers consistently are referred to as the "social partners" and collective bargaining is called "social dialogue." The Community's broad willingness, as reflected in the Charter's provisions, to rely on the "social dialogue" as a vital means for making law similarly stands in sharp contrast to the desiccated and over-juridified shell of what collective bargaining has become in the United States. Instead of normative "dialogue" between "social partners" it is much more typical in the United States to understand collective bargaining as a give-no-quarter adversarial contest between wholly self-interested parties which government seeks to contain and limit through complex and highly technical legal doctrines.

European politicians and scholars alike long have expressed a substantial interest in the U.S. version of "free" collective bargaining—a system characterized by a lack of state intervention in the substantive results of the bargaining process. It is one of history's strange little ironies that the United States seems intent on abandoning this home-grown institution at a time when Europe has begun to experiment with many of its central features. Scholars who engage in the comparative study of legal orders refer to the tendency of various systems of law to take on similar characteristics and to develop common approaches to solving problems as "convergence." When it comes to collective bargaining, something along the lines of a "transference" rather than a "convergence" seems at least potentially to be underway. Thus, the employment relationship in the United States is ever-increasingly being subjected to extensive (if piecemeal) state regulation while the stated desire of the Social Charter is to nudge the European Community states in the opposite direction. The movement to "deregulate" the employment relationship swept the world during the past several years. Only in the United States, it seems, did that movement take the perverse form of intruding government more deeply into one of the most significant relationships of private life.

Our contemporary attitudes toward unions also seem odd in light of the absolutely unprecedented international developments of the past few years. Although a tendency now exists to overlook this fact, the remarkable transformation of what used to be called the Eastern-bloc was spearheaded by an independent trade-union movement, which improbably survived despite the forces arrayed against it. Nor were the Poles left to go it alone. At a time when our own government took a wait-and-see attitude, the AFL-CIO and other unaffiliated American

unions supported Solidarity from the first with funds, equipment and expertise. American unions also lobbied Western governments on Solidarity's behalf, and worked to keep the Polish situation before the public's eye. This was hardly an unaccustomed role for American unions, who have a long record of supporting free trade unions and human rights movements around the world. (It is no coincidence that the suppression of independent unions is one of the first steps taken by totalitarian governments of the right or the left.) In recognition of this record, the conservative publication, *Policy Review*, recently named the late George Meany, who served as president of the AFL-CIO from 1952 to 1979, as one of the "Cold War's Magnificent Seven."³² (Others so honored included Winston Churchill, Konrad Adenauer and Pope John Paul II.) The American union movement's resolute determination to remain truly autonomous, and to set its own course, accounts for much of the enmity it has received from intellectuals, particularly those with a leftist orientation.

There is also a pronounced tendency today to overlook, or to be absolutely unaware of, the domestic contributions made by the union movement. The support of unions, for example, was crucial to the passage of the Civil Rights Act of 1964.³³ Unions also have been in the forefront of efforts to improve workplace safety and public health and to ensure pay equality for the sexes. Their interest in these matters is long-standing. Equal pay for equal work was one of the stated goals of the Knights of Labor in its 1878 constitution.³⁴ Similarly, the Knights by 1886 had 60,000 African-American members and when black delegates were refused accommodations during a convention, white delegates walked out of the offending hotel.³⁵ None of this is to suggest that the American union movement has anything like an unspotted history concerning racial or sexual prejudice. It is merely to point out that its record is hardly as one-sided as some unthinkingly presume. In fact, blacks are more likely than whites to be union members and blacks are much more likely to support unionization than are whites.³⁶

³² Arnold Beichman, *George Meany: Worker of the World*, 59 POL'Y REV. 49 (Winter 1992). Meany, a highly controversial figure within and without organized labor, was President of the AFL from 1952 until its 1955 merger with the CIO, at which time he assumed the Presidency of the combined Federation.

³³ On these points see Milton Derber, *The American Idea of Industrial Democracy, 1865-1965*, at 95 (1970).

³⁴ *Id.*

³⁵ *Id.*

³⁶ Hills, *supra* note 15; James L. Medoff, *Study for the AFL-CIO on Public's Image of Unions*, DAILY LAB REP. (BNA), Dec. 24, 1984, at D-2.

Moreover, as a group, women when surveyed are much more likely than men to express support for unions.³⁷

So, if unions are so wonderful, why aren't people flocking to join them? Accounting for the decline in union membership has become something of a cottage-industry among academics. Theories abound: prominent among them are structural changes in the economy;³⁸ peculiar characteristics of American labor law, combined with its weak or unsympathetic enforcement; and stiff but sophisticated employer opposition to employee self-organization.³⁹ Certainly, there is something to all these explanations. The appreciation in the exchange rate of the U.S. dollar, deregulation of key industries like trucking, and a contraction of the domestic industrial base all have had a strong impact on sectors of the economy where unionization historically was strong. Likewise, since the beginning of this century, there have been a number of organized anti-union propagandizing efforts like the "open-shop" and "American Plan" drives led by organizations like the National Association of Manufacturers.⁴⁰ Their present-day descendants include the National Right to Work Committee (whose efforts are couched in the language of individual rights) and the loosely structured campaign for a "union-free environment." American labor law also has features that are found nowhere else in the industrialized world: an employer's unqualified right to "permanently replace" striking workers stands as a notable example.

Additionally, the undoubted fact exists that the American union movement has done much to hurt itself. Incidents of corruption, mob influence and wrongdoing by union officials, for example, have had a marked impact on our attitudes towards unions. The "McClellan Committee Hearings in the Spring of 1957," observes James Medoff, the author of the most extensive study yet conducted on the public's image of unions, "seem to have had an immediate and, it appears, lasting effect on the public's view of organized labor and its leaders."⁴¹ Union members are nearly as likely as those without union ties to hold a negative view of labor leaders. Nor have unions done a good job of explaining—or, perhaps, of thinking about—the role they play in so-

³⁷ Medoff, *supra* note 36.

³⁸ E.g., Troy, *supra* note 18, at 34.

³⁹ See, e.g., Paul Weiler, *Promises to Keep: Securing Workers' Rights to Self-Organization under the NLRA*, 96 HARV. L. REV. 1769, 1778 (1983); see also Henry J. Farber, *The Decline of Unionization in the United States: What Can Be Learned from Recent Experience*, J. LAB. ECON. S-75 (1990).

⁴⁰ On the rise of these campaigns, see REINHARD BENDIX, *WORK AND AUTHORITY IN INDUSTRY*, 254-74 (U. Cal. ed. 1974) (1956).

⁴¹ Medoff, *supra* note 36, at D-1.

ciety and the contributions they can make to the common good. As Medoff concludes, the "public is aware of some of the good for all workers derived by trade unions." Nonetheless, "it still believes that unions primarily act as a special interest group concerned only with defending their higher rates of pay."⁴²

All of the reasons offered to explain union decline have some force. Yet none of them, either singly or in combination, fully account for the long but steady fall in union membership that has occurred in the United States since the late 1950s. The real reasons for this decline lie further back, and are part of a more complex and deeply imbedded set of issues that ever-increasingly bedevil our society. Americans are not anti-union. Rather, they might more accurately be characterized as being ambivalent about unions. The overall approval rating of unions has declined substantially over the past twenty-five years.⁴³ Indeed, the public has become more skeptical of nearly all social institutions during that period. Nevertheless, as Seymour Martin Lipset points out, extensive survey data repeatedly demonstrate that "the majority of Americans believe that unions are essential and do more good than harm, that without unions employers would maltreat workers."⁴⁴ A majority of Americans, six in ten in the most recent poll,⁴⁵ also indicate that they "approve" of labor unions, and an overwhelming proportion, eighty-one percent, of the population believes that "workers should have the right to join unions."⁴⁶ However, as Lipset further observes, "Majority approval of the functions of unions . . . does not translate into willingness on the part of employed persons to vote for them."⁴⁷ In fact, when questioned, only about three in ten workforce participants indicated that they would join a union if one existed at their workplace.⁴⁸ In short, we think that unions are generally a fine idea—but for somebody else.

Rather than being an isolated phenomenon, many of the reasons underlying our ambivalence toward unions are identical to our ambivalence toward associations and intermediate groups of all descriptions. In short, the declines in families, church and religious organizations,

⁴² *Id.* at D-8.

⁴³ See Hills, *supra* note 15. In 1936, the first time the Gallup Organization surveyed Americans on this matter, 72% answered "approve" to the question, "In general, do you approve or disapprove of labor unions?" For a table tracking rates, see Lipset, *supra* note 15, at 301.

⁴⁴ Lipset, *supra* note 15, at 299.

⁴⁵ Gallup Organization, Aug. 3, 1991, (telephone poll conducted July 18–21, 1991, of 1002 respondents) (30% of those questioned disapproved of unions).

⁴⁶ Medoff, *supra* note 36, at D-D.

⁴⁷ Lipset, *supra* note 15, at 302.

⁴⁸ Medoff, *supra* note 36, at D-2.

unions and voluntary associations of various types are tied. The forces and habits of mind that erode one act to erode them all. Before discussing how unions and collective bargaining can act to enhance the civic virtues, it may be helpful briefly to outline the sources of destructive pressure that the various seedbeds commonly face.

II. SOURCES OF DECLINE: WHY WE ARE INCREASINGLY AMBIVALENT ABOUT ASSOCIATIONS

Americans love to refer to Tocqueville's characterization of the United States as a nation of joiners. It fits with our image of ourselves as a self-reliant, can-do people to whom the world turns for lessons about democratic self-rule. This characterization also seems consistent with our political institutions and our social practices. After all, the First Amendment guarantees the freedom to associate, and few nations have higher rates of membership in voluntary associations than do Americans.⁴⁹

Nevertheless, plenty of evidence suggests that the deeply ambivalent attitudes we hold toward unions apply generally to our attitudes about communities and associations of whatever description. Recent survey data suggest that Americans remain eager participants in the activities of voluntary associations. Yet, the same data indicate that during the past thirty years, much of that participation has been limited to clipping a coupon in a magazine and returning it with a small financial contribution to an association like the Sierra Club, Common Cause, or the American Association of Retired Persons.⁵⁰

The smaller, local bodies that concretely and directly mediate the relation between individuals and the large institutions of public life—and which consequently involve people in the often messy business of actually associating with one another—are faring less well. Statistics concerning the divorce rate and the number of children living in single-parent households speak for themselves. Other primary groups that tie people together through shared meanings are similarly frail. Neighborhoods, town or ward meetings, grass roots political clubs, and like institutions that characterized and grounded American democracy largely have disappeared. Service and fraternal organizations also have

⁴⁹ James Curtis, *Voluntary Association Joining: A Cross-National Comparative Note*, 36 AM. SOC. REV. 872 (1971); David Horton Smith, *Voluntary Action and Voluntary Groups*, 1 ANN. REV. OF SOC. 247 (1975).

⁵⁰ Frank R. Baumgartner & Jack L. Walker, *Survey Research and Membership in Voluntary Associations*, 32 AM. J. POL. SCI. 908 (1988). The American Association of Retired Persons is now the largest voluntary association in the United States.

experienced steep drops in membership and their futures appear bleak: for example, the average age of a Lions Club member is fifty-seven, and two-thirds of this service group's membership is over fifty.⁵¹ Similarly, most mainline religious denominations have experienced a steady and significant decline in membership during the past thirty years.⁵²

Scholars and commentators seem invariably to overlook the point. But the plain fact of the matter is that unions went into decline at roughly the same time that all other sorts of mediating institutions in our society began to unravel, and for strikingly similar reasons. We are deeply and increasingly ambivalent about association in almost any form. The decline of unions is but part of a much larger story.

The steady withering of the mainline religious denominations provides a good illustration of the point. Americans are hardly an irreligious people. Well-over nine in ten Americans believe in the existence of God,⁵³ and a huge proportion state that religion is "very important" (54 percent) or "fairly important" (31 percent) in their lives.⁵⁴ Likewise, about six in ten Americans "believe that religion can answer all or most of today's problems."⁵⁵ Nevertheless, as George Gallup, Jr. and Jim Castelli report, "while Americans attach great importance to religion, they do not equate religion with church membership or attendance."⁵⁶ They also found that a vast majority of Americans believe that one can be a good Christian or Jew without being part of a religious congregation.⁵⁷

A recently released major survey seems to support these observations.⁵⁸ It shows that only just over half (55.1 percent) of Americans are affiliated with Jewish or Christian religious congregations.⁵⁹ It also reports that the unaffiliated account for more than half the population in much of the West (excluding Utah and much of New Mexico) and

⁵¹ Flynn McRoberts, *Moose, Elk, Joining the Endangered*, CHI. TRIB., Feb. 19, 1991, Du Page Section, at 1.

⁵² For figures and discussions, see GEORGE GALLUP, JR. & JIM CASTELLI, *THE PEOPLE'S RELIGION: AMERICAN FAITH IN THE '90'S* (1989); ANDREW M. GREELEY, *RELIGIOUS CHANGE IN AMERICA* (1989).

⁵³ GREELEY, *supra* note 52, at 13-14.

⁵⁴ GALLUP & CASTELLI, *supra* note 52, at 37.

⁵⁵ *Id.* at 39.

⁵⁶ *Id.* at 45.

⁵⁷ *Id.*

⁵⁸ ASS'N OF STATISTICIANS OF AM. REL. BODIES, CHURCHES AND CHURCH MEMBERSHIP IN THE U.S. (1992).

⁵⁹ *Id.*

in substantial sections of Florida, Michigan, Ohio, Kentucky, West Virginia, Delaware, Maryland, Maine, New Hampshire and Vermont.⁶⁰

A study of baby boomers who left mainline Protestantism⁶¹ similarly reflects a strong view that one can be a good Christian without traditional church involvement.⁶² This study concludes that those who left the churches in the 1970s and 1980s will not return. The study, however, does not show "the rejection of religion or even of the major Christian creeds, but a pulling away from the institutional church."⁶³ For many baby boomers, the study reports, religious beliefs are purely a matter of individual choice. The value placed on the exercise of personal choice trumps denominational commitment. Nevertheless, those who left continue to believe that the church has an important function to perform in promoting a "moral code" for society. Moreover, nearly all who left the church want their children to receive some form of religious education. (Just how it is that the understandings of earlier generations can be preserved, enhanced, practiced and passed on in the absence of institutions, however, was left unidentified.)

The notions of self-sovereignty, and misgivings about reliance on a mediator of whatever character are pervasive. For example, ninety-four percent of Americans say that they pray.⁶⁴ Yet, Americans also state that they rely on themselves "rather than an outside power such as God, to resolve life's problems."⁶⁵ Similarly, although a substantial majority of Americans approve of the functions unions perform in society, and think that unions are necessary to give employees a voice in the workplace, nearly the same number believe that they do not need a union to get fair treatment.⁶⁶ In short, we think that unions, churches, and the other institutions that compose civil society are great. But, whether it's the last things, the first things, or the mundane things of day-to-day living, we can make our own way, thanks. Perhaps it is not surprising that Gallup and Castelli report that "Americans are

⁶⁰ 55.1% of Americans Linked to Religious Groups, *Survey Shows*, L.A. TIMES, July 11, 1992, at B-4. The study also shows that the unaffiliated outnumber the affiliated by a 3 to 1 margin in large sections of Colorado, California, Oregon, Washington, Nevada, Montana, Michigan, central Maine and eastern Kentucky. *Id.*

⁶¹ DEAN R. HOGE ET AL., VANISHING BOUNDARIES: THE RELIGION OF MAINLINE PROTESTANT BABY-BOOMERS 13 (1994).

⁶² *Protestant Baby-Boomers Not Returning to Church*, N.Y. TIMES, June 7, 1992, at 28 (expressing findings of Professor Donald Luidens).

⁶³ *Id.* (quoting Professor Donald Luidens).

⁶⁴ GALLUP & CASTELLI, *supra* note 52, at 45.

⁶⁵ *Id.* at 70-71.

⁶⁶ Lipset, *supra* note 15, at 302.

the loneliest people in the world" and that one of the things Americans most want of their churches is a "sense of community."⁶⁷

Some of the reasons behind the decline in mediating groups lie fairly near the surface. With a greater proportion of the population actively participating in the workplace, there is simply less time to devote to non-work activities, however important or meritorious they may be. Television, which drew people off their front stoops and away from communal entertainment and activities, the exodus from neighborhoods to the suburbs, etc., all have had their impact. As Michael Waltzer so nicely summarizes it, "four mobilities" characterize modern life.⁶⁸ These mobilities—geographic, social, political and marital—provide an unstable and constantly shifting social foundation that undermines communal institutions of every description.⁶⁹

There are deeper sources of erosion as well. For the foreseeable future, we can expect a continued decline in mediating groups generally. This is so for at least two reasons. As a nation, we fast are losing the habit of participating in organizations that require more than dropping a check in the mail. Moreover, we increasingly no longer see the need for or the significance of these mediating bodies. They simply have lost their meaning for us. We will not make a commitment to things we do not begin to understand. And increasingly, we do not begin to understand what churches, Shriner's Clubs, unions, the Lower West Side Democratic Club or even families have to do with anything.

What we characteristically do and the sorts of things we are open to understanding, indeed, the very sort of questions that will occur to us, go hand-in-hand. Our habits and our knowings exist in a mutually conditioning relationship. As we have become less inclined to participate in mediating groups, we strongly have tended to think and speak about association in increasingly restricted ways. These in turn embody stilted and deeply impoverished notions about human character and the meaning of our personhood.

Briefly stated, we suffer from an odd sort of blindness: we can only see individuals. It is as if we claimed to know all about the various sorts of individual trees, but were completely unaware of the forest whose interdependent series of ecosystems permit those trees to exist and flourish. We unthinkingly presume that what Walt Whitman celebrated as the "single, sole self" constitutes the absolute foundation of social

⁶⁷ GALLUP & CASTELLI, *supra* note 52, at 253 (polls show that 4 in 10 Americans "admit to frequent or occasional feelings of intense loneliness").

⁶⁸ Michael Waltzer, *The Communitarian Critique of Liberalism*, 18 POL. THEORY 6, 11-12 (1990).

⁶⁹ *Id.*

reality and that every other institution of civil life is merely a derivative. We thus assume that families, churches, unions and the like constitute no more than an aggregation of individual, monadic selves. We thereby implicitly adopt a sort of mechanical reductionism. We regard a machine as the sum of its parts, but overlook the fact that human community is far more. Humans are conditioned beings by virtue of the fact that we live and act only in communities. These communities give us our orientation and identity. They tell us what we are as humans, and what the purpose and significance of our lives is. Although we often pretend otherwise, we do not know ourselves—or nearly anything else—immediately. Instead, what we come to know we learn only through the mediation of the communities and associations that ground us as people. Consequently, communities have a normative function, and well-functioning communities represent an irreducible human good. In this perspective, communities and associations exist *only* for the individual. Yet, the social good is prior to—stands at a higher level than—the individual good, because without it, the good for discrete individual persons could not exist. In short, perspective requires binocular vision.

As moderns, we are much more likely to be adherents of what Charles Taylor describes as the “clean slate” theory of life. For us, the past is never prologue, and association is primarily a function of individual consent. We assume that we can make and remake ourselves at will, regardless of the social setting or how we have constituted ourselves through our previous judgments and acts. With atomism ascendant, the link between act and consequence becomes increasingly opaque. We typically presume that individuals are sovereign beings invested with rights that exist independently and regardless of any societal arrangements. The notion of sovereignty suggests that people are self-enlightening, self-perfecting and morally complete beings who can recognize truth—if any is to be found—without the help or mediation of others.

This perspective teaches us that we are selves apart from and prior to any relation with others. Consequently, human association of any description tends to be understood as artificial and instrumental alliances that are formed for the limited purpose of satisfying the self-directed wants of their otherwise unrelated members. These desires commonly are reduced to two categories: the desire for companionship (to enable self-fulfillment and self-expression) and the desire for economic or political power.

Since all forms of association with others are understood as being motivated essentially by some sort of self-seeking, our generalized distrust of groups is hardly surprising. The very way we speak about

association instills an understandable ambivalence. The growing emphasis in our public discourse on absolute personal autonomy and the unrestricted freedom of individual choice exacerbates this ambivalence. This language suggests that subjective standards provide the only legitimate grounds for judging the content of our actions. Consequently, this language implies that individuals properly are unencumbered by any obligations unless they choose to accept them. This approach kills off the ideas of civic duty, public responsibilities and political life altogether. Moreover, since everything is defined through its relation to the self, this framework suggests that meaningful association with others requires similarity in experience, taste, behavior or physical appearance. In short, it implies that association represents an inward turning that rests on identity:⁷⁰ the self and the group simply mirror and affirm one another. This understanding of association represents a peculiar variant of individualism, one which, to adapt a characterization made by Wilson Carey McWilliams, is "so sensitive that it cannot tolerate rule by others."⁷¹ At its limits, it implies that any sort of community among persons of different ages, sexes, races or religions is not possible.

These notions profitably can be compared with the sort of ideas reflected in the writings of Edmund Burke. As he describes it, society and the "little platoons" or intermediate associations in which society exists, constitute

a partnership in all science; a partnership in all art; a partnership in every virtue and in all perfection. As the ends of such a partnership cannot be obtained in many generations, it becomes a partnership not only between those who are living, but between those who are living, those who are dead, and those who are to be born.⁷²

In short, much of our ambivalence toward associations stems from the slim resources we typically have for understanding and describing their functions and potential. These limitations have helped both to undermine the sorts of habits that support self-rule and to denude us of the institutions that nurture the full development of human personality. The mutually conditioning relationship between weakening hab-

⁷⁰ On this point, see WILSON CAREY MCWILLIAMS, *THE IDEA OF FRATERNITY IN AMERICA* 40 (1973) (discussing identity in customary society and the erotic notion of the self that grounds the notion of the *gemeinschaft*).

⁷¹ See *id.*

⁷² EDMUND BURKE, *REFLECTIONS ON THE REVOLUTION IN FRANCE* 110 (Thomas Mahoney ed., Library of Liberal Arts, Bobbs-Merrill 1955) (1790).

its of association and narrowing ideas about human character combine to produce a cycle of decline that affects every aspect of civil life and threatens the existence of polity generally. Before turning to sources that may give us some aid in breaking this cycle, it is appropriate to discuss how unions can act as and support the existence of other seedbeds of civic virtues.

III. UNIONS AS SEEDBEDS OF THE CIVIC VIRTUES

A word about the meaning of the term "civic virtues" seems in order before describing how unions and the institution of collective bargaining can act to promote them. Briefly stated, a virtue is a habit. It constitutes a consistent way of deliberating, choosing and acting that is productive of an authentically flourishing human life. Thus, the essence of virtue is that it represents an operative habit. Acquiring the virtues results in a consistent disposition to perform well, particularly in one's relations with others. (Hence, our word ethics derives from the Greek word for habit-ethos).

Its emphasis on operation and activity raises a point central to the virtues. This is the recognition that the most authentically and specifically human of activities typically involve actions in which the good intended inheres in the activity. In other words, the activity represents an irreducible good, an end in itself. Consequently, the whole point is to become engaged in the activity. In the classical viewpoint, for example, politics represents the fullest and most complete form of such an activity: participation in political activity actuates and enhances the sorts of intellectual and moral habits that citizens must acquire and continually practice if the common good is to be promoted, and authentic self-rule to be achieved.⁷³ The good imminent in such activities, however, is not strictly confined to those directly involved in their practice. Rather, the existence of that good through its practice acts to set the concrete conditions for its ongoing recurrence. Briefly stated, politics represents a common effort to answer the question of how we are to live together. To the extent that it is so, a good community in its very performance devises institutional orders that recognize that the human good is at once both individual and social. Consequently, every virtue is in a sense a "civic" virtue. Their practice sets the conditions for the willing cooperation that sustains and promotes civic life, while

⁷³ On this sort of activity (or *praxis*) see RICHARD BERNSTEIN, *PRAXIS AND ACTION: CONTEMPORARY PHILOSOPHIES OF HUMAN ACTIVITY* (1971); Matthew Lamb, *Praxis*, in *THE NEW DICTIONARY OF THEOLOGY* 784-87 (Joseph A. Komonchak et al. eds., 1987).

their lack leads to distrust, withdrawal and eventual social breakdown.⁷⁴ Unions and the practice of collective bargaining can serve as institutions that link authentic self-rule with the good of order necessary to sustain it. To understand how this is so, it is necessary to understand something about collective bargaining.

There is a tendency to regard bargaining as an institution narrowly concerned with wage rates and benefits. While these matters are an important aspect of collective bargaining, they hardly constitute its essence. Collective bargaining can be best and most thoroughly understood as a private law-making system. According to the United States Supreme Court, the collective bargaining agreement is more than a contract; it is a generalized code that represents "an effort to erect a system of industrial self-government" through which the entire employment relationship can be "governed by an agreed-upon rule of law."⁷⁵

The promulgation and administration of this law is the responsibility of the affected parties alone. Consequently, collective bargaining agreements typically erect a private adjudication system—the grievance-arbitration process—that the union and employer jointly administer. These systems normally have jurisdiction over nearly every type of dispute that might arise concerning the employment relationship. The presence of an arbitration system generally precludes courts or other arms of the state from resolving matters that come within the parties' dispute adjustment scheme. Briefly put, collective bargaining requires the parties to work out and maintain the order of their relationship themselves.

Whether and how people participate in decisions about the criteria for promotions, job training, health benefits, the discipline of a fellow employee or the best way to handle a novel or difficult employment-relations question may seem trivial. But, it is a tremendous error to regard such matters as unworthy of serious attention. Individuals and societies alike become and remain self-governing only by repeatedly and regularly engaging in acts of self-government. It is the habit that sustains the condition. Consequently, a democracy encounters its greatest danger of becoming perverted when its people no longer have direct responsibility for making the day-to-day decisions about the order of their lives. This point represents an important aspect of the significance of collective bargaining as a social institution. For it is through their involvement in the collective bargaining process that average citizens can take part in deciding the law that most directly

⁷⁴ On these points, see BERNARD J.F. LONERGAN, *METHOD IN THEOLOGY* 48 (Toronto: Univ. of Toronto Press, 1992).

⁷⁵ *United Steelworkers of Am. v. American Mfg. Co.*, 363 U.S. 564, 580 (1960).

determines the details of their daily lives. Thus, unions and the practice of bargaining can serve as "schools for democracy" where the habits of self-governance and direct responsibility are instilled.

At its best, collective bargaining is a conversational activity. This fact constitutes its fullest significance and most characterizes its potential contributions. If they are to succeed, the actions a union undertakes must reflect the consensus of its members. Similarly, a collective bargaining agreement represents the achievement of a consensus between employer and employed about the order of their relationship. Consensus exists as the product of a discussion about what ought to be valued and why. This sort of discussion, in turn, is the most distinctively human of activities.

People are by nature social beings. This is borne out by the fact that most of our operating takes the form of cooperating with others.⁷⁶ Our innate sociality, however, is not unqualified. We are also intelligent beings. As such, we demand reasons for what we do. We will not undertake any activity or agree to any scheme until we have at least implicitly decided that it is in some way reasonable. Hence, whether and the degree to which we will subordinate ourselves and our personal desires to the rules of any sort of social order depends upon our judgment that the order makes sense. Machiavelli notwithstanding, force and fraud are never enough to sustain authentic authority.

Our capacity for speech grounds the specifically human characteristics of our natural sociality. As Aristotle observes in the *Politics*, unlike other animals whose utterances are limited to expressing pain and pleasure, the human voice manifests an apprehension of the desirable and the harmful, the just and the wrongful.⁷⁷ Human community constitutes itself by and exists through a consensus over these issues. However obscurely, people appeal to notions about fairness and desirability whenever they attempt to achieve agreement by explaining and justifying to one another their conclusions and proposals. Since speech is the vehicle by which we reveal and test our understandings and judgments, speech is a normative activity, a good in itself. Our involvement in what the ancients referred to as the *civilis conversatio* literally actuates our capacity for self-rule. This fact enables Aristotle to observe that "in the case of human beings, what seems to count as living together is this sharing of conversation and thought, not sharing the same pasture, as in the case of grazing animals."⁷⁸

⁷⁶ See Lonergan, *supra* note 74, at 27–55.

⁷⁷ See ARISTOTLE, *supra* note 1.

⁷⁸ ARISTOTLE, NICHOMACHEAN ETHICS 1170b–10–15 (Terence Irwin trans., Hackett Pub. Co. 1985)

Community and the willing cooperation it engenders represents a commonality of understandings, judgments and sentiments. Losing touch with one another puts that commonality in jeopardy, and ultimately calls the legitimacy of authority into question. By sustaining the relationship among people, webs of conversation maintain and revivify the commonality and consensus that cooperation requires.

Conversations do not occur in a vacuum. Given the current situation, the workplace is a natural place for the "civil conversation" to occur, and the conditions of the employment relationship constitute a crucial topic for discussion. As Émile Durkheim so presciently understood, in contemporary society the workplace has become a (and for many perhaps the) primary source of common life for most adults. Work creates a moral environment, and its influence extends to nearly every sphere of one's life. Likewise, work is the chief (and again for many, the only) place outside the family where people directly are involved in a common undertaking.

These points not only call attention to the relationship between the day-to-day routines of the workplace and the civic virtues, but also highlight a key feature of unions and collective bargaining. Unions are autonomous bodies. They stand independently of the state and the organizations that employ their members. They come into being as a result of employee self-organization, and their health and continuing existence depends upon the ability of the members to maintain solidarity. Winner-take-all attitudes don't produce enduring relationships or democracies. Unions can provide a forum where people can learn to prevail on a point without triumphalism, to lose an argument without resentment, and most importantly of all, to practice the art of reasonable and responsible compromise. In short, unions and the institution of collective bargaining can act to reduce the sort of unreflective and ultimately enervating dependence on the state and the other large institutions of contemporary life that Tocqueville warned would erode the habits a democracy requires. By providing a forum for serious deliberation and self-directed action, collective bargaining can also reduce the fragmentation and isolation that dissolves community and undermines the possibility of authentic self-rule.

The potential impact of collective bargaining on personal habits reveals itself in the workplace. For example, recent studies show that unionized workplaces are more productive than others. Recent research also suggests that employee involvement programs and other workplace innovations perform best, and have the best chance for survival, where they are jointly administered with a union. Labor turnover is also lower among unionized workforces. But the potential

effects of bargaining on personal habits radiates well-beyond the office, shopfloor, or the laboratory.

No single mediating body in society, whether in the form of families, religious congregations, political, civic or service organizations, or unions, is likely to survive in the absence of the others. All of these "seedbeds" require and can instill the same sorts of habits: decision, commitment, tolerance, mutual respect and direct responsibility. No single institution alone can inculcate these habits. Consequently, the existence and decline of all of these bodies is mutually conditioning. The collapse or deformation of any of them threatens the rest. Because of the close to universal participation in the workforce, however, unions have a crucial role to play in supporting and sustaining the health of these other seedbeds. Habits left untended and unpracticed in one of life's central arenas will not magically re-appear outside of it.

Collective bargaining provides the only alternative to the pervasive state regulation of one of life's primary relationships—employment. Indeed, it is no coincidence that piecemeal regulation of employment through legislatures and common-law courts markedly has increased as the practice of collective bargaining has declined. In a society dominated by large organizations, unions can also make an important contribution to the democratic process by giving an ordered and coherent voice to those who would otherwise be without it. The importance of such regularized and responsive channels of communication cannot be overlooked. Their absence not only leads to fragmentation and withdrawal, but also leaves employers and society alike vulnerable to spontaneous outbursts of discontent delivered through improvised bodies whose representative status is but self-proclaimed.

Unions can make other contributions to social and political stability as well. Democratic regimes, as Aristotle, Montesquieu and Tocqueville all point out, require some rough sort of material and economic equality among their citizens if they are to survive as democracies. By moderating the dispersion of earnings and affecting the distribution of incomes, unions can assist in maintaining the sorts of material conditions necessary to democratic regimes. In periods of rapid technological change and structural shifts in the economic order, unions can also moderate the sorts of instrumental rationality that ultimately pits the market against the local and particular institutions that ground a democratic regime.

Reviving and reimagining the practice of collective bargaining presents no easy task. It requires rethinking what unions are and have the potential to be. It also compels a thoroughgoing reassessment of the patterns by which we presently constitute our institutional orders.

Fortunately, we are not without sources for guiding our thinking on these matters, and it is to them that we now turn.

IV. SOURCES OF RESTORATION: THE SUBSIDIARITY PRINCIPLE AND THE GOOD OF ORDER

The trouble with discussing any of the particular seedbeds is that at some point one has to consider them all. Each has a special set of functions to perform. Yet, those discrete sets of institutional operations are interrelated and ultimately only become intelligible in light of the whole. The real worth of unions, for example, lies in the contributions they can make in assisting the full development of human personality, the proper unfolding of which can only be determined through a set of values that are truly intelligible. To consider how we are to live together forces us to ask what it means to be a person.

Consequently, any attempt to rethink, reorient and revivify the various seedbeds must proceed along a broad front. And, if we are to get beyond the iron cage that results from seeing the market or the state as the sole available choices, our efforts and the thought that guides them must be comprehensive. Because the human good is both individual and social, we need a standard for organizing our institutions that can take advantage of our natural sociality in a way that is consistent with our character as reasonable beings.⁷⁹ The subsidiarity principle supplies such guidance.

Simply stated, subsidiarity is an organizational norm. It teaches that social institutions of every description should be ordered so that decisionmaking and the responsibility for acting remain at the lowest capable level. The principle insists that the state and all other forms of society exist exclusively for the individual. Consequently, social bodies should not assume what individuals can do, nor should larger groups take-up what smaller associations can accomplish. Conversely, the state and other large institutions have the duty to undertake those functions that neither individuals nor smaller associations can perform. From this perspective, communities and social institutions exist to supply help (*subsidium*) to individuals in assuming self-responsibility. The subsidiary function of community thus rests not in displacing but in establishing the conditions for authentic self-determination.

The insights embodied in the subsidiarity principle stem from its practical yet nuanced understanding of human character. The principle emphasizes the primacy of humans as intelligent, reasonable and

⁷⁹ On these points, see Kohler, *supra* note 27, and sources cited therein.

responsible beings. It thus reflects the realization that deliberating, judging and choosing are the most characteristically human activities, and that the desire to live reasonably is basic to humans.

The second aspect of the anthropology that informs the subsidiarity principle consists in its understanding of humans as situated beings. Subsidiarity recognizes that individuals, social institutions of every sort and culture stand in a normative and mutually conditioning relationship. Consequently, over time, all rise and decline in concert, each influencing the other. Subsidiarity seeks to promote the full unfolding of human personality by giving individuals the fullest possible opportunity to reflect, choose and act for themselves, and to take responsibility for the outcomes. The principle is in the best sense democratic. It opens the choices and rationale of institutions and individuals alike to the broadest possible examination and discussion. In so doing, the principle relies upon the normativity of speech as it engages people in a concrete exchange about what ought to be done here and now. This understanding of humans as conversational beings is the third element of the anthropology of the subsidiarity principle. Through its insistence on vesting authority at the lowest capable level and its emphasis on mediating bodies, subsidiarity seeks to engage both our natural sociality as well as our desire to live reasonably. Subsidiarity supplies guidance for devising well-constituted institutional orders of every type. The principle, however, is formal rather than substantive. Consistent with the view of the person that grounds it, subsidiarity depends on common sense and dialogue for its application. It is an heuristic device that guides deliberation, but does not attempt to dictate the content of the outcomes. The principle is flexible, not dogmatic, and stresses practical insight over structural certainty and uniformity.

One journalist recently described subsidiarity as "an arcane theological principle." In reality, it is neither, although the principle does find its roots in Catholic social thought. Social Catholicism arose in Germany in the mid-nineteenth century as a response to two developments: the severe social dislocations and urban poverty that accompanied the rise of industrialism, and the challenges posed by critical social philosophy, particularly that of Marx. Catholic social thought might be described as meliorist in that it early on accepted markets and institutions like private property as being indispensable to an industrialized society. The teachings, however, go on to qualify modern liberal theory by characterizing the sorts of responsibilities that attach to the ownership of property and capital. From the first, the social teachings have been concerned with establishing the conditions requisite to authentic self-rule. As a result, the teachings consistently have

called for self-help through labor unions, producer's cooperatives and other self-organized associations, supported by a limited program of social legislation. Subsidiarity was integral to the first papal social encyclical, *Rerum Novarum*, which was issued in 1891. It was not until the 1931 encyclical, *Quadragesimo Anno*, that the principle received either its name or a comprehensive formulation. The principle since has been invoked in the social encyclicals of every pope.

Despite its provenance, however, subsidiarity properly has been characterized as "neither a theological nor even really a philosophical principle, but a piece of congealed historical wisdom."⁸⁰ Even the man who coined the term, Oswald von Nell-Breuning, called it an "ancient" principle. Its themes are consistent with the insights of Tocqueville and John Dewey, among others, concerning the types of social arrangements that enhance responsible self-rule and ongoing cooperation.

The subsidiarity principle lies at the core of the European Community's Social Charter, some of whose provisions were mentioned earlier. Indeed, the principle illuminates much of the Charter's meaning, and it stands as a maxim for arranging the order of all types of social institutions within the Community. The principle has much to tell us as well. Sustaining the conditions for authentic self-rule is an ongoing project that requires comprehensive ways of acting and thinking. Subsidiarity supplies us with a method for proceeding in this work—one that is consistent with what we as humans are and have the potential to become.

⁸⁰ John S. Coleman, S.J., *Development of Church Social Teaching*, in READINGS IN MORAL THEOLOGY No. 5: OFFICIAL CATHOLIC SOCIAL TEACHING 169, 183 (Charles Curran & Richard A. McCormick, S.J., eds., 1986).