

The Future of EU Labour Law: Insights from Christian Ethics

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‘The dignity of work is sacred.’

*Ursula Von der Leyen, incoming President of the European Commission*¹

Introduction

This article focuses upon the discrete question of what role, if any, there might be for Christian ethics in shaping the future direction of EU labour law. Christian ethics, applied to the social sphere, seek ‘to describe the conditions that societies and their institutions need to possess in order to help individuals to live fruitful and effective lives.’² Christian social ethics thus start from the identification of fundamental moral principles and then apply these to the analysis of social challenges, such as the future of work. In exploring a possible relationship between Christian social ethics and EU labour law, this article examines three issues. First, it sets the scene by identifying current trajectories in EU labour law. Secondly, it considers whether, as a matter of principle, religiously-inspired thinking can be a legitimate point of reference for the EU. Thirdly, it focuses upon what insights might be yielded if a Christian social ethics perspective on EU labour law is taken into consideration.

1. EU Labour Law: A Post-Austerity Revival?

Throughout the history of the EU, there has been debate on the extent to which the process of economic integration needed to be accompanied by a social dimension. During the 1990s, the creation of the EU single market led to a significant expansion of EU labour law. This sought to ensure that, to some extent, there were minimum standards of worker protection across the Union. The appetite of the Member States for EU labour legislation subsequently waned and it was severely tested during the economic crisis. While there was no reversal of existing legislation, the EU became a key actor in promoting the deregulation of labour markets, especially in those states that received financial interventions, such as Ireland. The conditions for such support often entailed making changes to domestic labour law and reducing social spending.³ During the same period, concern also grew about prominent decisions of the Court of Justice that appeared to give more priority to securing business freedom within the single market rather than protecting workers’ rights, including the right to engage in industrial action.⁴ Such cases illustrated that EU law could, at times, impact negatively on workers’ rights, even if there are also many examples of Court decisions upholding the protection of workers (e.g. on the right to paid annual leave). In 2011, the European Trade Union Confederation stated its view that ‘far from the promised social progress, workers everywhere in Europe are now paying the price of the single market’.⁵ Claire Kilpatrick vividly captured this period by describing it as the ‘displacement of Social Europe’.⁶

It is against this backdrop that the idea for a ‘European Pillar of Social Rights’ emerged. In 2014, the incoming President of the European Commission acknowledged that, during the economic crisis, ‘there was a lack of social fairness’ and that ‘trust in the European project is at a historic low’.⁷ One part of the response to this legacy of the crisis was the proclamation of the Pillar by the European Parliament, the Council and the Commission on 17 November 2017.⁸ It is composed of 20 ‘principles’ spread across three chapters: (1) equal opportunities and access to the labour market; (2) fair working conditions; and (3) adequate and sustainable social protection. Fundamentally, it is a political initiative; it is not a legally-

binding text, nor does it extend any of the existing powers of the EU. Although the language of ‘rights’ is found in the text, it does not confer any directly enforceable entitlements upon individuals. The Commission has described the Pillar as ‘a compass’ to guide the improvement of working and living conditions.⁹ Understandably, this left doubt as to its practical impact. It did, however, symbolise a reawakening of the political appetite for EU labour law and this has now delivered tangible reforms. In 2019, new legislation was adopted addressing work-life balance; predictable working conditions (especially for those without guaranteed working hours); and the creation of a European Labour Authority.

It seems, therefore, that EU labour law is cautiously emerging into the light after the darkness of the austerity years. It does so against the backdrop of deep-seated debate on its future direction. In 2017, the Commission launched a ‘Reflection Paper on the Social Dimension of Europe.’¹⁰ This mapped out three alternative pathways for Social Europe: scaling back the social dimension; moving forward on the basis of enhanced cooperation (i.e. not all Member States participating); or deepening the social dimension amongst all 27 Member States (post-Brexit). This discussion goes hand-in-hand with the broader debate in labour law about how to respond effectively to the changing world of work, such as the expansion of the gig economy. The next part of this article considers whether religion has a role to play in contributing to such debates.

2. Can Christian Ethics Make a Contribution to EU Labour Law?

For some, it might appear incongruous to turn towards religiously-inspired perspectives when thinking about the future of EU law. The Union is a supranational organisation and it does not have a tradition of ‘Church-State’ relations akin to those frequently found at national level. From a contemporary perspective, it could seem like EU law is the archetype of a secular framework where religion exercises limited influence. This is not, though, a full reflection of the EU’s founding Treaties. After much debate, in 2009, the Treaty on European Union included in its Preamble reference to the ‘cultural, religious and humanist inheritance of Europe’. This was accompanied by Article 17 of the Treaty on the Functioning of the European Union (TFEU), which formalised a framework for relations with religious, philosophical and non-confessional organisations:

Recognising their identity and their specific contribution, the Union shall maintain an open, transparent and regular dialogue with these churches and organisations.

This provision has been given practical expression in the creation of structured, regular discussions between the EU institutions and organisations reflecting a range of faiths. Ronan McCrea has observed that:

by recognizing Europe’s religious and cultural ‘inheritance’ as part of European public morality, the Treaty does, in fact, recognize that Christian perspectives partly constitute the Union’s constitutional ethics, albeit that such recognition is implicit and balanced by the simultaneous recognition of humanist influences.¹¹

These Treaty provisions also reflect the subtle historical role played by Christianity in shaping European integration. Catholicism, in particular, has been generally supportive of European integration with its ethos of reconciliation amongst nations and forging a path to the common good that transcends an inward focus on the national interest.¹² Catholic Social Teaching has also been linked to the emergence of a social dimension to European integration and its premise that the Union had to be more than a market.¹³

Turning more specifically to EU labour law, the idea that Christian ethics could or should influence this field may encounter resistance. In some quarters, there is a tendency to

view the modern workplace as an inappropriate site for expression of religious values and to consign religion to a private sphere of life. This standpoint is, to some extent, reflected in the approach of the Court of Justice. When considering the situation of a Muslim woman dismissed for wearing the headscarf, it held that, in principle, it was legitimate for an employer to prohibit the wearing of visible signs of religious belief in the workplace in order to maintain a policy of ‘religious neutrality’.¹⁴ The sense that organised religion can find itself in tension with EU labour law is also an undercurrent in other recent cases. For example, in *Achatzi*, the Court held that an Austrian law providing for paid annual leave on Good Friday for members of specific Christian denominations unlawfully discriminated against those not belonging to those churches.¹⁵

As a counterweight to these trends, it remains the case that religion is a key part of the identity of many workers in Europe and one that informs their perspective on ethical conduct in the workplace.¹⁶ This may be the interior experience of individuals in shaping their personal interactions at work, but it is also manifested in the collective organisation of workers. Trade unions with a Catholic dimension remain prominent in certain Member States (e.g. CISL in Italy) and there are also Christian social movements for worker justice (e.g. World Movement of Christian Workers). Trying to confine religion to the private sphere runs into conflict with a reality of religious belief that is lived out through social practice.

To be clear, there is no suggestion that EU labour law should be guided by one particular interpretation of religious ethics. This would contradict the pluralistic society found within the Union and it is not the vision reflected in the Treaties. The latter provide a framework that permits an engagement between political institutions and religious organisations without any pre-imposed hierarchy. It is far removed from any sense of EU institutions ‘taking instruction’ from particular churches. Sharing the perspectives of diverse religious traditions permits communication, but also critique. Given that no single church is privileged within the EU’s dialogue, space exists here to recognise alternative voices. When considering Christian social ethics, it is necessary to be mindful of ongoing debates on how to apply Christian beliefs to current social questions, for example, in relation to gender equality.¹⁷ In short, Christian social ethics is not being put forward as providing ‘the answer’ for the future of EU labour law. Instead, it is suggested that Christian ethics can make a constructive contribution to these debates and that its omission (or exclusion) would deprive the public square of valuable insights.

3. Insights from Christian Social Ethics on the Future of EU Labour Law

The third section of this article seeks to illustrate how the perspective of Christian social ethics might add value. Of course, this short discussion will only scratch the surface of a rich theological tradition that warrants more extensive interrogation. By providing some examples of how Christian ethics might constructively interact with EU labour law, we can begin to see the justification for a deeper engagement. Within the broad landscape of Christian ethics, Catholic Social Teaching has provided the most sustained and explicit vision of how Christian principles should shape the contents of labour law.¹⁸ This is conventionally traced from Pope Leo XIII’s 1891 encyclical *Rerum Novarum*, which responded to the effects of industrialisation on society and workers. The rights of workers have since been addressed with growing frequency in ‘social’ encyclicals, but Pope John Paul II’s 1981 *Laborem Excercens* stands out for its focused attention to this issue. Drawing upon biblical texts, he identified a calling to engage in work as a central feature of human existence. Flowing from the moral value of work is its relationship to human dignity. The purpose of ‘work’, in its broadest sense, is to allow each person to fulfil a calling in life in a process of ‘self-realization’: ‘human work has an ethical value of its own’.¹⁹ John Paul II recognised,

however, that the conditions under which work is performed are critical to whether work contributes to, or degrades, human dignity. He argued that this must be reflected in the bedrocks of the economic system, which should be premised upon ‘the definite conviction of the primacy of the person over things, and of human labour over capital’.²⁰ The absence of an ethical understanding of the value of human work posed a risk for how technology was deployed:

... in some instances, technology can cease to be man’s ally and become almost his enemy, as when the mechanization of work “supplants” him, taking away all personal satisfaction and the incentive to creativity and responsibility, when it deprives many workers of their previous employment, or when, through exalting the machine, it reduces man to the status of its slave.²¹

The dignity of human work is not viewed through a prism of individualism. Instead, it is intertwined with the principle of solidarity. The dignity of all persons can only be secured ‘as a community, by the whole of humanity’.²² As such, a collective approach to the protection of workers is woven into the fabric of Catholic Social Teaching. Trade unions are a valued way of uniting people and pursuing ‘the good of social justice’.²³

Catholic Social Teaching maintains that it is not the role of the Church to take the place of government and to prescribe, in detail, specific laws or policies. Yet it goes beyond the identification of broad principles to guide conduct (such as dignity or solidarity) and it identifies the consequent rights that must be secured for the realisation of those principles. Amongst the measures specified are the right to receive a ‘just wage’; a right to rest (both on a weekly basis, and also in the form of annual holidays); a right of association to form trade unions and the right to strike to pursue the ‘just rights’ of workers (albeit that this must not be abused).²⁴ Workers should also be able to participate in decision-making within businesses.²⁵

How might this ethical framework cast new light on the future of EU labour law? We can begin by identifying the congruence of the core values found in Catholic Social Teaching (CST) and EU labour law. Article 1 of the EU Charter of Fundamental Rights provides that ‘human dignity is inviolable’. This is then applied to working life in Article 31(1), which states that ‘every worker has the right to working conditions which respect his or her health, safety and dignity’. Article 31(1) is found within the chapter of the Charter on ‘Solidarity’, suggesting that dignity and solidarity are linked; this perspective is also a foundation of CST. There is a debate to be had on whether, in practice, the actions of the EU are fully consistent with dignity and solidarity, but – at the level of principles – there is scope for meaningful dialogue between CST and EU labour law given their shared points of departure. In a similar vein, the principle of subsidiarity is a key component of both CST and EU law: higher level authorities should only intervene when it is necessary to support the actions of lower level entities.

When thinking further about the role that CST might play, two possibilities can be suggested. First, it has the capacity to *illuminate neglected aspects* of EU labour law. Secondly, its historical roots assist when *applying old principles to new contexts*. Each of these demands further exploration, but several examples will serve as illustrations.

The first argument is that looking at EU labour law through the lens of CST can expose issues that the Union has neglected over time. For example, the right to a just wage is a cornerstone of CST. Yet the Member States have been resistant to the idea of permitting the Union to have a role in the regulation of wages. Indeed, ‘pay’ is excluded from the EU’s legislative powers in the social sphere.²⁶ This did not, however, inhibit the Union from putting pressure on states receiving ‘bail-outs’ during the economic crisis to reduce minimum wage rates and to weaken domestic collective bargaining arrangements on pay. If nothing else, this exposed an imbalance in the current EU legal framework. CST draws attention to

the incompleteness of a system of labour law that fails to address the right to a just wage. There are tentative signs of change. Principle 6 of the European Pillar of Social Rights recognises the ‘right to fair wages that provide for a decent standard of living’. Incoming Commission President, Ursula Von der Leyen, has promised to propose a ‘legal instrument’ to guarantee a ‘fair minimum wage’ for all workers in the EU.²⁷ CST supports the idea that this evolution is ethically necessary for the future of EU labour law.

In a similar vein, the centrality of the right of association to form trade unions within CST exposes another neglected dimension of EU labour law. As with wages, this is excluded from the legislative competence of the Union. The European Pillar of Social Rights encourages the negotiation of collective agreements, as well as acknowledging the right of workers and their representatives to be informed and consulted ‘on matters relevant to them’.²⁸ It is, however, silent on the pre-condition for collective representation, which is the right to join a trade union. This is particularly salient in the light of the changing structure of the labour market. Self-employed workers often encounter barriers to participating in trade union activity, such as the risk that collective bargaining on their behalf conflicts with EU competition law. With the rise in the gig economy and those allocated work via digital platforms (e.g. delivering food, providing taxi services), there is an increasing group of workers who may find themselves categorised as self-employed even though their relationship is characterised by economic dependence on the provider of work. CST recognises that social justice and solidarity require workers to be able to participate in trade unions. This would suggest that the EU needs to be concerned with ensuring that workers can continue to enjoy this right and that it is not undermined by new ways of organising work. It is true that, in keeping with subsidiarity, regulation at EU level is not the answer for every labour market issue. Yet EU competition law is one of the barriers to collective bargaining for self-employed workers, so the Union is already part of this regulatory landscape.

A second function of CST could be to assist the process of adapting timeless principles to changing circumstances. As described above, the core tenets of CST were set out as early as 1891 in *Rerum Novarum*. In 2009, Pope Benedict XVI reflected on the internal dynamic within CST: ‘there is a single teaching, consistent and at the same time ever new. ... The Church’s social doctrine illuminates with an unchanging light the new problems that are constantly emerging.’²⁹ To take a practical example, *Rerum Novarum* recognised the need of workers for rest and leisure: ‘it is neither just nor human so to grind men down with excessive labor as to stupefy their minds and wear out their bodies’.³⁰ In general, EU labour law concords with this outlook, treating the right to rest as a fundamental right of workers.³¹ Yet existing regulation of working time is confronted by the impact of technology on when and where work is performed. In *Laudato Si’*, Pope Francis observed that technology is producing ‘a more intensified pace of life and work which might be called “rapidification”’.³² He argued that this is not conducive to the common good of humanity and sustainable development. Upon this foundation, the Commission of Catholic Bishops’ Conferences (COMECE) has called upon the European Commission to initiate measures to ‘curb the tendency towards permanent availability’.³³ Yet the right to rest is not mentioned in the European Pillar of Social Rights, albeit that there is a general reference to the right to a healthy work environment. The omission of the right to rest leaves an impression that the Union treats this as a topic where existing measures are already sufficient. CST prompts the need to reconsider whether the law is truly adequate for current and future forms of work.

4. Conclusion

In the midst of soul-searching debate on the future of work, there is an evident need for ethical foundations to guide states on how they navigate the challenges arising. The

Commission's description of the European Pillar of Social Rights as a 'compass' reveals this sense of a need for a way to chart the course ahead. In a pluralistic supranational organisation, the perspective of Christian ethics will never be the sole or predominant point of reference. Arguably, it should be part of the conversation; the reservoir of ideas and thinking found in Christian ethics can play a role in the formation of future EU labour law. Chaplin has argued that 'Christian political theology might contribute a critical, constructive voice to the common discourse of the EU'.³⁴ Engagement is not a one-way street. Pope Benedict XVI recognised that such dialogue is valuable also for understanding what faith demands: 'religion always needs to be purified by reason in order to show its authentically human face'.³⁵ EU labour law is characterised by its strong commitment to non-discrimination in the workplace, including gender equality. This is an area where CST continues to evolve. On the one hand, Pope Francis has called for action to address those on the 'existential peripheries' of the labour market, such as migrants, as well as the need to confront discrimination against women.³⁶ On the other, Catholic Social Teaching remains open to critique for its outlook on gender; Christine Firer Hinze has observed that 'papal discourse on "feminine genius", with its implied asymmetry between male and female talents and obligations for home and care work, continues'.³⁷ This is one example of an area where fruitful engagement with EU labour law, and its long-standing efforts to advance gender equality, might have the reflexive effect of enriching Catholic Social Teaching.

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¹ 'A Union that Strives for More. My Agenda for Europe' (2019): https://ec.europa.eu/commission/sites/beta-political/files/political-guidelines-next-commission_en.pdf

² M. Lower, 'John Paul II and Employee Participation in Corporate Governance' (2007) 21 *Notre Dame Journal of Law, Ethics and Public Policy* 111, 117.

³ E. Achtsioglou and M. Doherty, 'There Must Be Some Way Out of Here: The Crisis, Labour Rights and Member States in the Eye of the Storm' (2014) 20 *European Law Journal* 219.

⁴ *Ibid* 238.

⁵ ETUC, 'Resolution on achieving social progress in the single market: proposals for protection of fundamental social rights and posting of workers' (2011): <https://www.etuc.org/en/posting-workers>

⁶ C Kilpatrick, 'The Displacement of Social Europe: A Productive Lens of Inquiry' (2018) 14 *European Constitutional Law Review* 62.

⁷ https://ec.europa.eu/commission/sites/beta-political/files/juncker-political-guidelines-speech_en.pdf

⁸ [2017] OJ C428/10.

⁹ Commission, 'Monitoring the Implementation of the European Pillar of Social Rights' COM (2018) 130, 2.

¹⁰ https://ec.europa.eu/commission/sites/beta-political/files/reflection-paper-social-dimension-europe_en.pdf

¹¹ R. McCrea, *Religion and the Public Order of the European Union* (Oxford University Press, 2010) 60.

¹² J. Loughlin, 'European Integration – a Catholic Perspective' in J. Chaplin and G. Wilton (eds), *God and the EU – Faith in the European Project* (Routledge, 2017) 33.

¹³ D. Begg, 'A Shared Humanism Based on Solidarity: Principles for Reflection, Criteria for Judgement and Guidelines for Action' in E. Cassidy (ed), *The Common Good in an Unequal World – Reflections on the Compendium of the Social Doctrine of the Church* (Veritas, 2007) 129, 138.

¹⁴ Para. 37, Case C-157/15, *Achbita*, EU:C:2017:203.

¹⁵ Case C-193/17, *Cresco Investigation GmbH v Achatzi* EU:C:2019:43.

¹⁶ K. Alidadi, *Religion, Equality and Employment in Europe – the Case for Reasonable Accommodation* (Hart Publishing, 2017) 21.

¹⁷ C. Firer Hinze, 'Catholic Social Thought and Work Justice' (2016) 77 *Theological Studies* 197, 213; M. Riley, 'Feminist Analysis: a Missing Perspective' in C. Carrant and R. McCormick (eds), *John Paul II and Moral Theology* (Paulist Press, 1998) 276.

¹⁸ E. Reed, *Good Work – Christian Ethics in the Workplace* (Baylor University Press, 2010) 26.

¹⁹ Para. 6, Pope John Paul II, *Laborem Exercens – on Human Work* (1981).

²⁰ Para. 13, *ibid*.

²¹ Para. 5, *ibid*.

²² Para. 145, Pontifical Council for Justice and Peace, *Compendium of the Social Doctrine of the Church* (Veritas, 2005).

²³ *Laborem Exercens*, para. 20.

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- ²⁴ Paras 19-20, *ibid*.
- ²⁵ Lower, n 2 above, 140.
- ²⁶ Article 153(5) TFEU.
- ²⁷ Von der Leyen, n 1 above, 9.
- ²⁸ Principle 8.
- ²⁹ Para. 12, Pope Benedict XVI, *Caritas in Veritate – on Integral Human Development in Charity and Truth* (2009).
- ³⁰ Para. 42, Pope Leo XIII, *Rerum Novarum – on Capital and Labor* (1891).
- ³¹ Art 31(2) EU Charter of Fundamental Rights.
- ³² Para. 18, Pope Francis, *Laudato Si’ – on Care for our Common Home* (2015).
- ³³ COMECE, ‘Shaping the Future of Work – a Reflection of the COMECE Social Affairs Commission’ (2018) 22.
- ³⁴ J. Chaplin, ‘Conclusion: Christianity and the ‘souls’ of Europe’ in J. Chaplin and G. Wilton (eds), *God and the EU – Faith in the European Project* (Routledge, 2017) 268.
- ³⁵ Para. 56, Pope Benedict XVI, n 29 above.
- ³⁶ Pope Francis, ‘Address of His Holiness Pope Francis to delegates from the Italian Confederation of Workers’ Unions (CISL)’ (2017): http://w2.vatican.va/content/francesco/en/speeches/2017/june/documents/papa-francesco_20170628_delegati-cisl.html
- ³⁷ C. Firer Hinze, *Glass Ceilings and Dirt Floors – Women, Work and the Global Economy* (Paulist Press, 2015) 100.