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## Pope John Paul II on Immigration and the Right to Stay

By John P. Hittinger

Discourse concerning immigration in the United States is degraded by slogans and frayed from extreme partisanship. The partisan speeches usually just pass each other by – with one side talking about securing the borders and building a wall and the other side about having a welcoming attitude and providing amnesty for a small group of immigrants brought to the United States as children. There is very little conversation about the 11 million or more immigrants who have not entered legally but many of whom now live, work, worship and raise families in the country. One side just calls them criminals and wishes them deported. The other side seeks to abolish the U.S. Immigration Customs and Enforcement team. The debate about borders stir up deeper issues about national security and national identity, but the fate of the 11 million evokes a strange silence – and yet it is perhaps more solvable and there may in fact be more consensus available. Public opinion seems to be a duality – on the one hand a large number of Americans do react negatively concerning the term amnesty if it means a blanket granting of legal recognition with no screening or no demands for efforts to become assimilated. On the other hand large number of Americans are honestly aware that there are many illegal immigrants who have settled in the United States, and that they are hard-working and would be fine citizens<sup>1</sup>. So there is a political challenge for citizens to break out from extreme party positions to find a reasonable solution. In light of some philosophical arguments concerning the unauthorized immigrants, I wish to turn to the writings and speeches of Pope John Paul II to discover some greater light and assistance for this difficult issue.

### I. *Status questionis*:

#### Do Unauthorized Immigrants Have a Right to Stay?

The fact of many millions of unauthorized immigrants living and working in the United States poses many challenges to policy makers, law enforcers, courts, employers, and to practically every citizen who may benefit, or be harmed, by their presence. The ethical issues surrounding the status of immigrants extend into debates about political issues concerning the status of the nation state, the nature of its identity

<sup>1</sup> I have benefitted from conversations with fellow citizens who have served in governmental posts including an immigration judge and former Congressional staff members, among them a Senate Judiciary Committee staff member.

and the scope of its sovereignty<sup>2</sup>. Many of the arguments begin with pragmatic and utilitarian concerns about the consequences of various responses to the presence of unauthorized immigrants but such arguments eventually point to issues concerning purported rights and duties of the immigrant and/or the nation-state. The utility debate considers the consequences of granting amnesty, or ignoring the problem, or making some effort to enforce and deport. Granting amnesty or ignoring the problem both could easily encourage more unauthorized immigration and raise fears of job displacement for citizens and the increased financial burdens of social benefits; a stricter policy may lessen these outcomes. Positively, amnesty could lead to more engagement in society, legal clarification, and increased tax revenue. But the present “do next-to-nothing” policy allows employers access to cheap labor and allows the unauthorized immigrant to earn income to send back to family members in their country of origin and to make their hard-scrabble way through a life in the shadows. On the other hand, a fully mobilized policy of enforcement with the goal of deportation of all unauthorized immigrants would be exceedingly costly. It would be disruptive across many sectors of American life, not the least of which would be the effects on the many millions of families and communities torn asunder by the massive police raids and detentions. Most Americans would not wish to see such a spectacle, reminiscent of the police states that we have confronted or fought over the last century. Hence, there is duality in American public opinion – neither blanket amnesty nor mass deportation are acceptable solutions.

We must turn to the principles underlying these dual concerns. What are the rights and obligations on the side of the immigrant and on the side of the host society? How do we sort out the conflicting claims of rights and duties, rights and wrongs? Adam Hosein provides a useful taxonomy of six argument types: the humanitarian, the contractual, from a contribution to society, the prevention of a two caste society, the bond arising from affiliation with others, and rights derived from the autonomy of the person<sup>3</sup>. For this paper, I will focus on a very clear and effective amalgam of these arguments to establish “the right to stay” by Joseph Carens<sup>4</sup>.

Carens’ short but powerful piece should awaken people from their dogmatic slumber favoring the “do next to nothing policy”. Given these many unauthorized immigrants with no feasible path to regularize their status and who are vulnerable to deportation, do we expel them or accept them? That is the only honest question. Carens proposes argues a clear answer: at a certain point in time they should be given an

<sup>2</sup> A good sampling of arguments may be found in these books: *Joseph Carens*, *The Ethics of Immigration*, Oxford 2013; *Hiroshi Motomura*, *Immigration Outside the Law*, Oxford 2014; *Alex Sager*, *The Ethics and Politics of Immigration: Core Issues and Emerging Trends*, New York 2016. See also *Mark R. Amstutz*, *Just Immigration: American Policy in Christian Perspective*, Grand Rapids MI 2017, and *José H. Gomez*, *Immigration and the Next America: Renewing the Soul of Our Nation*, Huntington Indiana 2013.

<sup>3</sup> *Adam Hosein*, *Arguments for Regularization*, in: Sager (Fn. 2), pp. 159–179.

<sup>4</sup> *Joseph Carens*, *Immigrants and the Right to Stay*, Cambridge Massachusetts 2010. In this book Carens writes *The Case for Amnesty*, pp. 5–51 and six responses follow.

opportunity to apply for residency. He proposes five to seven years as the appropriate amount of time to open such an avenue for regularizing the status of an unauthorized immigrant. At first, one may respond as did Jean Elshtain, that the sheer passage of time seems to be not sufficient. To which Carens answers that time is the most important consideration because so much occurs in the span of a concrete human life within five to seven years. In this designated length of time, many unauthorized immigrants did not engage in criminal activities but rather worked hard, lived an honest life, perhaps married a citizen and became a parent – surely those features are more relevant than their status of “illegality”. Carens remarks, “at some point the threshold is crossed and they acquire a moral claim to have their actual social membership legally recognized”. The crux of the argument is that social membership does not depend upon official permission. I would call this the anti-totalitarian principle. The human person does not depend upon the government for his right to life, liberty and the pursuit of happiness. As Carens puts it: “people who live and work and raise their families in a society become members whatever the legal status.” T. Alexander Aleinikoff reminds the reader that most countries have some avenue for permitting unauthorized migrants to remain when the harm to them, their family and community outweigh the harm of the illegal entry. The United States has such an avenue through the so-called cancellation of removal option by which immigration judges exercise their discretion to cancel deportation orders of those who have lived in the United States for 10 years or more. Aleinikoff rolls this principle into a very nice statement of overall utility and proportionality. He says that although general legalization may be costly in terms of incentives of illegal entry and increasing social cost, “on balance the costs are likely to be outweighed by the benefits of protecting against exploitation and promoting integration into American society”<sup>5</sup>.

Pope John Paul II makes a case for the right to stay in way very similar to Carens and Aleinikoff, and he couches the arguments in terms of the dignity of the person and fundamental rights pertaining to work and family.

## II. Pope John Paul II on Immigration

As a man from a distant country, Poland, Karol Wojtyła knew first-hand the plight of the immigrant. During the 120 years of the political partition of Poland, many Poles went into exile and sought new places to live so that they could freely work, raise their families and practice their religion. In 1855 Father Leopold Moczygemba led a group from upper Silesia to Texas. They landed on Galveston Island and proceeded to a spot on the San Antonio River in Karnes County where they founded Panna Maria<sup>6</sup>. Thousands and thousands of Polish people emigrated to the United States in the next century. Cardinal Archbishop Wojtyła made a number of pastoral

<sup>5</sup> *T. Alexander Aleinikoff*, *Response to Carens*, in: Carens (Fn. 4), p. 10.

<sup>6</sup> *T. Lindsay Baker*, *The First Polish Americans: Silesian Settlements in Texas*, College Station Texas 1979.

trips to the United States to visit these communities. Once he became Pope, John Paul II made 104 international trips, visiting 129 countries and 876 cities. He met many people who were displaced by strife, war and economic failures. He was aware of the great and urgent problems surrounding refugees and immigration. He was a great advocate for immigrant populations and he was always a champion of human rights.

John Paul II often spoke and wrote explicitly on the problem of immigration – to commemorate world immigration day, to address diplomats and representatives of various world organizations such as the United Nations, and as a part of his social encyclicals and apostolic exhortations<sup>7</sup>. Throughout these writings he deploys his core philosophy and theology concerning the dignity of the person and the rights that flow from that dignity; he discusses the complex meaning of work, the vital role of the family in society, the primacy of culture, and the role of the legal and political order in recognizing and protecting the rights of the human person. In these writings he seeks to overcome negligence and to form and rouse conscience: “An expert in humanity, the Church fulfills her task by enlightening consciences with her teaching and witness, and by encouraging appropriate initiatives to ensure that immigrants find the right place within individual societies.”<sup>8</sup>

On the special challenge of undocumented or unauthorized immigrants he said:

“Migration is assuming the features of a social emergency, above all because of the increase in *illegal migrants* which, despite the current restrictions, it seems impossible to halt. Illegal immigration has always existed: it has frequently been tolerated because it promotes a reserve of personnel to draw on as legal migrants gradually move up the social ladder and find stable employment. Today the phenomenon of illegal migrants has assumed considerable proportions, both because the supply of foreign labor is becoming excessive in comparison to the needs of the economy, which already has difficulty in absorbing its domestic workers, and because of the spread of forced migration.”<sup>9</sup>

But this social emergency contains within it a great opportunity both for social development and mutual enrichment.

<sup>7</sup> Key passages may be found in collections made by the Catholic Legal Immigration Network, Inc. such as *Modern Catholic Social Teaching on Immigration: Notable Quotes and Papal Messages for the World Day of Migrants and Refugees*, <https://cliniclegal.org/category/issues/catholic-social-teaching>. See also *John Paul II/André Dupuy*, Pope John Paul II and the challenges of papal diplomacy: anthology 1978–2003, Vatican City 2004, pp. 351–358. Also useful is *James Parry Eyster*, Pope John Paul II and Immigration Law and Policy, *Ave Maria Law Review* 2017, pp. 85–105 and *Michael A. Scaperlanda*, Immigration law: a Catholic Christian perspective on immigration justice, in: Id. (ed.), *Recovering self-evident truths: Catholic perspectives on American law*, Washington, DC 2007.

<sup>8</sup> *John Paul II*, Message for 1998 World Day of Migrants and Refugees, November 9 1997, in: *Modern Catholic Social Teaching on Immigration* (Fn. 7), pp. 56–58.

<sup>9</sup> *John Paul II*, The Church and Undocumented Workers: Message for 1996 World Day of Immigration, July 25, 1995, §§ 1–2, in: *Modern Catholic Social Teaching on Immigration* (Fn. 7), p. 62. See also *John Paul II*, Address to Governor General of Canada, September 19, 1984, in: *John Paul II/Dupuy* (Fn. 7), p. 351.

### III. Basic Principles of John Paul II's Argument

#### 1. The Primacy of the Person

“It is necessary to restate that, for migrants or refugees as for all other human beings, rights are not based primarily on juridical membership in a determined community, but, prior to that, on the dignity of the person.”<sup>10</sup> This guiding truth must be restated and always appropriated because the problem of immigration is easily reducible to crowd control, political power, and economics alone without a due consideration for the dignity of the person. In his first encyclical, *Redeemer of Man*, Pope John Paul II proclaimed, “man is the way of the Church”. The dignity of the person shines through the created nature of the human person as a knowing and willing being; this dignity is restored and enhanced through redemption of Jesus Christ. John Paul II set forth a series of three important axioms: (i) the priority of ethics over technology, (ii) the primacy of the person over things, and (iii) the superiority of spirit over matter.<sup>11</sup> The second axiom, the priority of the person over things is the center point of his personalist philosophy.

In “The Person: Subject and Community,” written in 1976, Cardinal Wojtyła explained his distinctive approach to philosophy: “the subjectivity of the human person is a problem of paramount philosophical importance today”. It is connected to the appreciation of human dignity.

“The problem of the subjectivity of the person – particularly in relation to human community – imposes itself today as one of the central ideological issues that lie at the very basis of human praxis, morality (and thus also ethics), culture, civilization, and politics. Philosophy comes into play here in its essential function: philosophy as an expression of basic understandings and ultimate justifications. The need for such understandings and justifications always accompanies humankind in its sojourn on earth, but this need becomes especially intense in certain moments of history, namely, in moments of great crisis and confrontation.”<sup>12</sup>

Cardinal Wojtyła spoke about the crisis in terms of the confrontation with a materialistic interpretation of life, having at its disposal such powerful means of indoctrination and social and cultural control. His turn to phenomenology was motivated by his desire to enrich the truth of Thomistic philosophy so as to offer the best defense of the “irreducible” in man and to highlight the dignity of the person<sup>13</sup>. It would make

<sup>10</sup> *John Paul II*, Speech to the International Catholic Migration Commission, July 5, 1990, in: *Modern Catholic Social Teaching on Immigration* (Fn. 7), p. 14. “The function of law is to give each person his due, what is owed to him in justice. ... international law is founded on values. The dignity of the person, or guaranteeing the rights of nations, for example, are moral principles before they are juridical norms.” Address to the Diplomatic Corps, January 13, 1997 in: *John Paul II/Dupuy* (Fn. 7), p. 358.

<sup>11</sup> *John P. Hittinger*, Ethos, Person and Spirit: Principles of Social and Cultural Renewal, in: *Człowiek w Kulturze: Pismo Poświęcone Filozofii i Kulturze* 26 (2016), pp. 161–172.

<sup>12</sup> *Karol Wojtyła*, *Person and Community*, New York 1993, p. 220.

<sup>13</sup> *Ibid.*, pp. 210–213.

sense, then, that the plight of the immigrant would draw his special concern. Thus he explained to the Ambassador of Australia that, “no individual should be seen merely as the object of assistance. Every human being is the subject of real rights and duties.”<sup>14</sup>

## 2. On Inalienable Rights as Prior to State Power and Judicial Claim

Fundamental human rights flow from the dignity of the person; they are inalienable; they exist prior to state power and judicial recognition. “Human rights are inscribed in the very nature of the person and reflect the objective and inviolable demands of universal moral law. They are not conferred by society or the state. They precede laws and agreements, while determining their value and correctness.”<sup>15</sup> This aspect of rights as prior to state power, as not conferred by the state, we can more easily see in the courageous stand against tyranny and unjust laws, especially in the case of totalitarian oppression of the human person under nazism and communism. For some reason, it is harder to recognize fundamental rights in the case of the immigrants in western liberal society. Outside the confines of the juridical order of the state, the person is often lost in the shuffle through neglect or deliberate exclusion. Fittingly, John Paul II said that human rights are an “interest” which transcends<sup>16</sup>. Therefore the nation-state, by simply ignoring those seeking to immigrate or those who have immigrated and possess no documents, does not strip the immigrant of human rights. The undocumented immigrant is not simply some object to be discarded like waste, nor an invisible energy or entity, but a concrete person to be reckoned with in honest fairness. As mentioned above with respect to Carens’ argument for a “right to stay”, the crux of the matter rests upon the dignity of the person as antecedent to “official permission” or legal recognition. It is a totalitarian temptation to act as if the state or a majority body actually confers basic human rights upon the individual. Such a notion is contrary to the principles of the Declaration of Independence<sup>17</sup>. John Paul II was keenly aware of the tragedy and outrage of the oppression of the human person under totalitarian rule, but also very much attuned to the human dignity of the migrant and others often unwanted or neglected by the citizens of western liberal democracies.

John Paul II combined this notion of the centrality of the dignity of the person with the dynamic reality of human rights that flow forth from that dignity. The various

<sup>14</sup> *John Paul II*, Address to the Ambassador of Australia, January 1, 1994, in: *John Paul II/Dupuy* (Fn. 7), p. 351.

<sup>15</sup> *John Paul II*, Address to the Ambassador of Nepal, May 18, 2001, in: *John Paul II/Dupuy* (Fn. 7), p. 117.

<sup>16</sup> *John Paul II*, Address to the Diplomatic Corps, January 16, 1993, in: *John Paul II/Dupuy* (Fn. 7), p. 108.

<sup>17</sup> *Thomas G. West*, *The Political Thought of the American Founding: Natural Rights, Public Policy, and the Moral Conditions of Freedom*, Cambridge 2017, pp. 19–42.

aspects of human nature and the complexity of the conditions for fulfilling one’s nature requires that the one principle of dignity be appreciated across many dimensions:

“we desire never to lose sight of the fact that what is at stake is man in the fullness of his vocation. It is always a question of enabling the human person to expand and develop everything that counts for him: his very life respected and protected; his health; his capacity to earn his bread through labor, while at the same time finding fulfillment in family life; the preservation of this cultural heritage and the possibility to develop his knowledge and communicate with other groups; the absence of obstacles set to his free movement toward travel; his freedom of conscience; his freedom to adhere to a faith conviction and to practice his religion and community. These comments will suffice to situate my position: man is one; there is no such thing as the decision in seemingly specialized technical domains which would not have its effect on citizens, workers, families, or the youth or the elderly, the sick or the handicapped, in short on man in the concrete who has the right to see his dignity safeguarded in all circumstances.”<sup>18</sup>

Here we can refer to Cardinal Ratzinger’s appreciation for John Paul II’s style of thinking: it is

“a way of thinking in dialogue with the concrete, founded on the great tradition, but always in search of confirmation in present reality. It is a form of thought that springs from an artist’s gaze and, at the same time, it is guided by a pastor’s care. ... This comprehension of man beginning not from abstractions and theoretical principles, but seeking to grasp his reality with love, was – and remains – decisive for the Pope’s thought.”<sup>19</sup>

John Paul II’s thought may assist us to come to a clearer recognition of such rights so that we may find a balanced and equitable response to the problem of immigration.

## IV. Why There Is a Right to Emigrate

According to John Paul II, the right to emigrate emerges from four fundamental human rights: 1. the right to Life; 2. the right to Work; 3. the right to establish, support and raise a Family; and 4. the right to freedom of Religion and conscience. The subjective motivation of the immigrant may vary from person to person with an emphasis upon one or the other of these rights; but in the light of integral humanism all of these rights mutually support one another.

1. **Life and Safety.** Life or safety is the motive that drives many of those who are forced to migrate because of war, violence and abuse. To seek a place of safety where their life and the lives of their family are protected is indeed part of human nature and a fundamental right that must be respected.

2. **Work.** This is perhaps the most relevant aspect in voluntary migration – people seek to work to earn a livelihood for themselves and their families. They seek to im-

<sup>18</sup> *John Paul II*, Address to the International Diplomatic Academy, November 3, 1989, in: *John Paul II/Dupuy* (Fn. 7), p. 108.

<sup>19</sup> *Josef Ratzinger*, *John Paul II: My Beloved Predecessor*, Boston 2007, pp. 8–9.

prove their lot because of the fundamental imbalance and inequality in development of the world economy. Work is especially a point for special consideration of human dignity. The dignity of work derives from man's call to cultivate the earth and it is a positive human good despite the toil and sweat.

"It is not only good in the sense that it is useful or something to enjoy; it is also good as being something worthy as corresponding to man's dignity, that expresses this dignity and increases it. Work is a good thing for man – a good thing for his humanity – because through work man not only transforms nature, adapting it to his own needs, but he also achieves fulfillment as a human being and indeed, in a sense, becomes 'more a human being'."<sup>20</sup>

Near the conclusion of the encyclical on work Pope John Paul II speaks about "work and the emigration question". He says, "Man has the right to leave his native land for various motives – and also the right to return – in order to seek better conditions of life in another country."<sup>21</sup> He acknowledges that this is a loss for the country and people whom he leaves behind and he will also note that the loss of cultural and historical identity is a result of emigration. It may be a necessary evil. The important moral challenge concerns the dignity of the worker. "The most important thing is that the person working away from his native land, whether as a permanent emigrant or as a seasonal worker, should not be placed at a disadvantage in comparison with the other workers in that society in the matter of working rights. Emigration in search of work must in no way become an opportunity for financial or social exploitation."

3. Family. The right to maintain a family is closely connected with work.

"Work constitutes a foundation for the formation of family life, which is a natural right and something that man is called to. These two spheres of values – one linked to work and the other consequent on the family nature of human life – must be properly united and must properly permeate each other. In a way, work is a condition for making it possible to found a family, since the family requires the means of subsistence which man normally gains through work."<sup>22</sup>

Following the right to life and the right to work, the right to establish and support a family makes the right to immigrate very concrete and substantial. In his Apostolic Letter, *The Church in America*, he called upon the Church to be vigilant in fighting unjust restrictions on the natural right of individual persons to move freely, and also to defend the rights of immigrants and their families<sup>23</sup>.

4. Religion and conscience. This right is paramount.

"The apex is the exercise of the right and duty to seek God, to know him and to live in accordance with that knowledge. ... total recognition must be given to *the rights of the human*

<sup>20</sup> *John Paul II*, Encyclical *Laborem exercens*, 14 September 1981, n° 9.

<sup>21</sup> *Ibid.*, n° 23.

<sup>22</sup> *Ibid.*, n° 10.

<sup>23</sup> *John Paul II*, Apostolic Exhortation *Ecclesia in America*, 22 January 1999, n° 65.

*conscience*, which is bound only to the truth, both natural and revealed. The recognition of these rights represents the primary foundation of every authentically free political order."<sup>24</sup>

The threat to this fundamental and central right of the human person continues to stimulate emigration. John Paul II was concerned with the continual influence of totalitarian ideology as well as with the new forms of religious fundamentalism which

"covertly, or even openly, deny to citizens of faiths other than that of the majority the full exercise of their civil and religious rights, preventing them from taking part in the cultural process, and restricting both the Church's right to preach the Gospel and the rights of those who hear this preaching to accept it and to be converted to Christ."<sup>25</sup>

Many immigrants flee oppression looking for freedom to worship and to escape coercion of conscience. John Paul II pointed out for the Church in America that many of those from Latin American countries who move to northern America often "bring with them a cultural and religious heritage which is rich in Christian elements"<sup>26</sup>.

These are four weighty reasons for acknowledging, respecting and promoting the right to emigrate. The right to emigrate requires that each country acknowledge the concrete person and be cognizant of their dignity and dynamic rights, and set their policies in a reasonable and orderly way. It does not entail open borders nor the denial of national integrity and sovereignty. But it does weigh more heavily, if not decisively, in the case of the undocumented immigrant who has over time has lived, worked, and established a family in the midst of the uncertainty of his or her status as unauthorized. We now must consider the balancing rights and obligations in the emigration-immigration equation.

## V. On Reciprocal Obligations

The first obligation of the host country is to listen to the narratives and stories of those seeking to immigrate<sup>27</sup>. Considerations of their plight and their reasons for their journey are a way to acknowledge the personhood of the other. The fundamental attitudes toward the immigrant and those seeking entry to a host country are easily distorted and manipulated. John Paul II warns against the poisons of racism, xenopho-

<sup>24</sup> *John Paul II*, Encyclical *Centesimus annus*, 1<sup>st</sup> May 1991, n° 29.

<sup>25</sup> *Ibid.*

<sup>26</sup> *John Paul II* (Fn. 23), n° 65. – *John P. Hittinger*, "On the Right of Conscience" in *Art and Reality*, in: Andrzej Maryniarczyk et al (eds.), *Polskie Towarzystwo Tomasza z Akwinu*, Lublin 2014, pp. 423–434.

<sup>27</sup> *John Paul II*, Intercultural Integration: Message for 2005 World Day of Migrants and Refugees, 24 November 2004, in: *Modern Catholic Social Teaching on Immigration* (Fn. 7), pp. 34–35; and Message for 1998 World Day of Migrants and Refugees, 9 November 1997, in: *Id.*, pp. 56–58.

bia, and exaggerated nationalism<sup>28</sup>. He sought to enlighten public opinion about the tragedy and poverty surrounding the people who seek to immigrate and to prevent the rise of racism and xenophobia<sup>29</sup>. Listening to the other should contribute to the deepening of the virtue of solidarity. “Often, solidarity does not come easily. It requires training and a turning away from attitudes of closure, which in many societies today have become more subtle and penetrating.”<sup>30</sup> As he reminded us in *Sollicitudo rei socialis*, solidarity is not “a feeling of vague compassion or shallow distress at the misfortunes of so many people, both near and far”<sup>31</sup>. The moral awareness of interdependence and mutual responsibility must become a moral and social attitude. Solidarity is a virtue, “a firm and persevering determination to commit oneself to the common good; that is to say to the good of all and of each individual, because we are all really responsible for all”. Józef Tischner remarked that the founding of Solidarność in Poland was a “huge forest planted by awakened consciences”<sup>32</sup>. This fundamental attitude leading to the virtue of solidarity requires conversion and on-going conversion. “Being ever more deeply rooted in Christ, Christians must struggle to overcome any tendency to turn in on themselves, and learn to discern in people of other cultures the handiwork of God”. John Paul II may be right to suggest “only genuine evangelical love will be strong enough to help communities pass from mere tolerance of others to real respect for their differences. Only Christ’s redeeming grace can make us victorious in the daily challenge of turning from egoism to altruism, from fear to openness, from rejection to solidarity”<sup>33</sup>.

The host country is not obligated to receive every request for immigration nor to maintain an open border. John Paul II respects not only the rule of law, but also the significance of culture and the maintenance of an orderly life within each nation. Not every immigrant is ready or willing to begin a process of assimilation. Not every immigrant is seeking the positive motivations mentioned above such as life and safety, work, and freedom of religion. But there must be a constant effort to care for those who are seeking admission or who are in the country, and to respect fundamental rights such as subsistence, health, and family integrity. Certainly the exploitation of their labor or any abuse of their condition is prohibited by a respect for basic human rights. John Paul II argues that if a bid to enter is denied, then the host country should provide assistance to people to return to their country of origin, or provide assistance with their continuing search for new country. If accepted, a path for assimilation must be set out. John Paul II does not explicitly mention citizenship as the goal

<sup>28</sup> John Paul II, For a Commitment to Overcome All Racism, Xenophobia, and Exaggerated Nationalism: Message for 2003 World Day of Migrants and Refugees, 24 October 2002, in: *Modern Catholic Social Teaching on Immigration* (Fn. 7), pp. 38–39.

<sup>29</sup> John Paul II, in: *Modern Catholic Social Teaching on Immigration* (Fn. 7), passim.

<sup>30</sup> John Paul II (Fn. 28), pp. 38–39.

<sup>31</sup> John Paul II, Encyclical *Sollicitudo rei socialis*, 30 December 1987, n° 38.

<sup>32</sup> John P. Hittinger, The Revolution of Conscience in Centesimus Annus, in: *Philosophy and Canon Law 3* (2017), pp. 49–67.

<sup>33</sup> John Paul II (Fn. 28), pp. 38–39.

of such a path, but political participation is one of the rights of the human person. But more certainly the acquisition of language comes first and appreciation of the laws and culture of the host country. It is interesting to note that John Paul II expresses concern for the loss of cultural roots among immigrants. There are two extremes to be avoided: complete uniform assimilation with the loss of cultural identity, and the marginalization of the immigrant into their own insular community.

The corresponding duties or obligations of the immigrant are clear and straightforward, however demanding. John Paul II explains that solidarity is a virtue of reciprocity that must be at work in all sectors of society.

“The exercise of solidarity within each society is valid when its members recognize one another as persons. Those who are more influential, because they have a greater share of goods and common services, should feel responsible for the weaker and be ready to share with them all they possess. Those who are weaker, for their part, in the same spirit of solidarity, should not adopt a purely passive attitude or one that is destructive of the social fabric, but, while claiming their legitimate rights, should do what they can for the good of all.”<sup>34</sup>

In such a spirit of solidarity the immigrant must learn the culture and laws of the host country. They must actively respect the culture and be law-abiding. But at the same time John Paul II encourages them to preserve their own cultural treasures and retain their cultural roots to the degree they can in a new society and in a new setting. Obviously it cannot be like it was in the old country, which many immigrant groups have tried to re-create at different times. Adaption is the only realistic path to take if one is to avoid a ghetto mentality and isolation from the mainstream of the host country. John Paul II assigns the task of dialogue to the immigrant. By their willingness to enter into cultural exchange and dialogue about culture and religion much is done to serve a positive reciprocity in the cause of peace. Dialogue requires that one understands better one’s own heritage and presents its positive features.

The virtue of industriousness is important in the context of work, which is very often the reason for emigration. In *Laborem exercens* John Paul II connects the worth of arduous work in its subjective dimension of fulfilling personal dignity to industriousness:

“without this consideration it is impossible to understand the meaning of the virtue of industriousness, and more particularly it is impossible to understand why industriousness should be a virtue: for virtue, as a moral habit, is something whereby man becomes good as man. ... All this pleads in favor of the moral obligation to link industriousness as a virtue with the social order of work, which will enable man to become, in work, ‘more a human being’ and not be degraded by it not only because of the wearing out of his physical strength but especially through damage to the dignity and subjectivity that are proper to him.”<sup>35</sup>

The virtue of industriousness extends through the education provided by the family. The family after all lives by the principle of free giving.

<sup>34</sup> John Paul II (Fn. 31), n°. 39.

<sup>35</sup> John Paul II (Fn. 20), n°. 9.

"Work and industriousness also influence the whole process of education in the family, for the very reason that everyone 'becomes a human being' through, among other things, work, and becoming a human being is precisely the main purpose of the whole process of education. ... the family is simultaneously a community made possible by work and the first school of work, within the home, for every person."<sup>36</sup>

Through work and the industriousness of the immigrant, a ready connection is made to the society and nation – the third sphere of values that emerges from a consideration of the subject of work. The society and nation

"is not only the great 'educator' of every man, even though an indirect one (because each individual absorbs within the family the contents and values that go to make up the culture of a given nation); it is also a great historical and social incarnation of the work of all generations. All of this brings it about that man combines his deepest human identity with membership of a nation, and intends his work also to increase the common good developed together with his compatriots."<sup>37</sup>

The reciprocal obligations in solidarity of immigrant and host country turn on work and family; but since the immigrant is the weaker party and the more vulnerable one, the call to exercise mercy falls most directly upon the people of host country. The distinctive role of Christian community in immigration and the call for international cooperation for peace and economic development, both favorite themes of John Paul II in his writing on immigration, are topics that requires greater explication and lie beyond the scope of this paper.

## VI. On the Right to Stay of the Undocumented Immigrant

Many undocumented immigrants are adrift in a new world without legal status and with nowhere to turn for help, even though they have in many cases become integrated into the community, learning the language, exercising industriousness at work, and even raising families. So John Paul II states that it is important "to help illegal migrants to complete the necessary administrative papers to obtain a residence permit. *This kind of effort should be made especially on behalf of those who, after a long stay, are so deeply rooted in the local society* that returning to their country of origin would be tantamount to a form of reverse emigration, with serious consequences particularly for the children."<sup>38</sup> The undocumented are often trapped between families of origin and their new family in the host country, or sometimes even separated from their new family. This situation cuts deeply at the heart of human dignity and Christian vocation. The undocumented workers are easily and quite often exploited at the workplace, paid sub-par wages, with no security or health care. In his encyclical on work John Paul II explicitly comments on the immigrant in the work place:

<sup>36</sup> *John Paul II* (Fn. 20), n°. 10.

<sup>37</sup> *Ibid.*

<sup>38</sup> *John Paul II*, *The Church and Undocumented Workers* (Fn. 9), pp. 62–64.

"the most important thing is that the person working away from his native land, whether as a permanent emigrant or as a seasonal worker, should not be placed at a disadvantage in comparison with the other workers in that society in the matter of working rights. Emigration in search of work must in no way become an opportunity for financial or social exploitation. As regards the work relationship, the same criteria should be applied to immigrant workers as to all other workers in the society concerned. The value of work should be measured by the same standard and not according to the difference in nationality, religion or race. For even greater reason the situation of constraint in which the emigrant may find himself should not be exploited."<sup>39</sup>

The undocumented worker is most disadvantaged in work. Solidarity and justice would lead a nation to place top priority in consideration of the situation of the undocumented worker. Obviously the longer time one works in the host society, the opportunities for greater involvement and connection are actualized. Similar to Joseph Carens, John Paul II thinks that at some point in time the undocumented immigrant should be given recognition.

The families of the undocumented are also precarious. If the chief breadwinner or primary care giver may be exploited or deported, there is an insecurity and fear that pervades the entire family. The society has benefited from the exploited work of the undocumented worker. Many sectors of work in western societies are highly dependent upon undocumented workers (construction, farming, restaurants), and benefit from them. Surely not every citizen has directly entered into a contract with or knowingly benefited from their exploited work, but it would very implausible to claim that the majority of Americans do not know how widespread is the use of undocumented workers in the sectors mentioned. If one participates in the benefits and if one does not speak up about the abuse, then the members of the host society have given a form of tacit consent to undocumented immigrants who have lived and worked in a given society for a certain length of time. These undocumented workers should be given legal recognition and protection under certain conditions for a constructive and orderly assimilation to be specified by the law.

I think his focus on the importance of work in the life and existence of the human person, in the framework of the fundamental rights derived from equal human dignity, has provided John Paul II with a way to strengthen the argument for the right to stay. Carens has made the argument that over time – five to seven years – undocumented immigrants can establish their membership in the society through work and marriage. The reality of this social fact and its moral weight is not created by the state nor does it depend upon state recognition to exist. Its moral weight clearly outweighs the illegality of entry and even the potential incentive of others to enter illegally. Some may dispute whether the weight of social membership does outweigh the potential increase in unauthorized entry, because the real or imagined relaxation of immigration restrictions in the United States is usually followed by a surge of il-

<sup>39</sup> *John Paul II* (Fn. 20), n°. 23.



legal migration<sup>40</sup>. The argument made by Pope John Paul II rests squarely upon the dignity and rights of the human person, and a prima facie case at the very least for the right to stay follows from it. Nevertheless, I think that by bringing into view the added feature of the inevitable exploitation of the undocumented worker, his account forces the question of whether to deport the unauthorized or whether to let him or her stay. The policy of “do next-to-nothing” conveniently allows exploitation to continue. To knowingly tolerate the exploitation of others, and to cynically ignore the aspirations for freedom of many millions of people within our own towns and cities, contradicts our appeal to the aspirations for freedom and self-improvement in our defense of democracy around the world. This condition of exploitation is inconsistent with the character of our country and its respect for free labor and equal regard.

Pope John Paul II recommends that society help in completing the process for these undocumented migrants, who have over time become members of our society, to obtain official recognition. The cost, paperwork and legal hurdles are formidable. He recommends that a great effort be made to assist these migrants to complete the necessary administrative papers to obtain a residence permit. Surprisingly, the United States does not need to develop a new lengthy and complex set of legislative measures to accomplish this recommended goal. This recommendation can be implemented by improving and expanding that which our country has already established for just such a purpose. Congress could address the situation of the illegal immigrant population through the modification and expansion of the “Cancellation of Removal” (CoR) provisions in the Immigration and Nationality Act<sup>41</sup>. CoR, which has existed in immigration law since 1940, allows immigration judges to exercise their discretion to cancel removal orders against illegal immigrants who: have resided in the United States for ten years or more, are of good moral character, have not been convicted of a serious crime and do not present a security risk. It is now made more complicated than necessary by the addition in 1996 of the provision that the unauthorized immigrant must prove that his or her removal would cause exceptional and extremely unusual hardship to a spouse, parent, or child who is a U.S. citizen or lawful permanent resident. Those who are granted CoR may obtain lawful permanent resident status and are eligible for citizenship within five years. Currently, fewer than 6,000 people each year can receive CoR relief. A simple set of reforms with a serious commitment of resources and personnel could unjam the backups and move our country to a greater regard for the humanity of those immigrants who live and work with us. These reforms include encouraging illegal immigrants to affirmatively apply for CoR (meaning, they can apply for it even if they are not presently in removal proceedings); increasing the number who can obtain it; and eliminating the absurd “exceptional and

<sup>40</sup> *Amanda Sakuma*, Ronald Reagan amnesty haunts immigration action, MSNBC, August 3 2014, [www.msnbc.com/msnbc/reagan-amnesty-haunts-immigration-action](http://www.msnbc.com/msnbc/reagan-amnesty-haunts-immigration-action) (consulted: 2 January 2020).

<sup>41</sup> Immigration and Nationality Act, § 240(A)(b)(1), 8 U.S.C. § 1229b(b)(1). I wish to thank a congressional staff member and an immigration judge for explaining this system to me.

extremely unusual hardship” requirement, which miserably fails to recognize the evident value of spouses and parents; require seven years of continuous residence instead of ten. Such an expansion of the process would also require a large expansion of the number of immigration judges at the Department of Justice (DOJ) to hear CoR cases, but DOJ already needs many more adjudicators, given the huge backlogs that exist in our immigration courts. The large body of administrative case law interpreting CoR and its predecessors would assist immigration judges in addressing modifications to CoR.

In my estimation, the case made by Pope John Paul II for a fair treatment of the undocumented immigrant could provide some much needed lift to our weary and fruitless debates about immigration, and wise guidance for our broken system.

### Zusammenfassung

Der Beitrag untersucht die Grundsätze, die Papst Johannes Paul II. in seiner Sorge um die Anerkennung der Menschenwürde fruchtbar macht, wenn es um die Bewältigung der großen Probleme der Ein- und Auswanderung geht. Zu den wichtigsten dieser Prinzipien gehören der Primat der Person, die unveräußerlichen Menschenrechte, das Recht auf Auswanderung aus Gründen der persönlichen Sicherheit, der Arbeit, der Familienzusammenführung sowie der Religionsfreiheit, aber auch das Bedürfnis, die gesellschaftliche Zugehörigkeit gegenüber dem Phänomen der unregelmäßigen Einwanderung zu regulieren. Die Position von Johannes Paul II. vermag praktischen Nutzen zu stiften, indem sie unseren lust- und fruchtlosen Diskussionen über Einwanderung den dringend nötigen Auftrieb verleiht und unserem gescheiterten System Handlungsmaximen der Klugheit vermittelt.



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