

# UK Labour Law

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## Fratelli Tutti: Pope Francis' Encyclical and Implications for Labour Law – by Mark Bell



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On 3 October 2020, Pope Francis signed his encyclical, *Fratelli Tutti* – on fraternity and social friendship. This sets forth his vision of what is needed to inspire a ‘rebirth’ of ‘fraternity between all men and women’ (8). While its sweeping scope extends well beyond the labour market, work is identified as a key domain for the re-establishment of fraternity. As such, it contributes to ethical debate about the future of work with implications for the orientation of labour law.

**Catholic Social Teaching and Labour Law**

Before delving into the contents of *Fratelli Tutti*, it is helpful to give a brief explanation of the relationship that already exists between Catholic Social Teaching and labour law. Catholic Social Teaching is commonly traced back to Pope Leo XIII's 1891 encyclical *Rerum Novarum* – on Capital and Labour. This document responded to the profound social changes arising from industrialisation. It provided a vision of how society should address pressing social questions, such as the treatment of workers, in the light of Catholic doctrine. Over time, subsequent Popes expanded upon this teaching through issuing further 'social encyclicals'. Together with other influential sources, an elaborate body of Catholic Social Teaching evolved; this was synthesized in the 2004 Compendium of the Social Doctrine of the Church.

There are several fundamental principles that underpin Catholic Social Teaching. These include respect for human dignity, pursuit of the common good, and the principles of solidarity and subsidiarity (on labour law and subsidiarity, see Bogg). These principles have been applied to a broad range of social issues, such as the environment or international relations, but 'human work' has been a central concern of Catholic Social Teaching. Here, the Church has identified specific rights that it believes should be legally recognised, thereby engaging directly with the content of labour law. These include the right to a just wage and the right to rest. Trade unions are recognised as playing a 'fundamental role' in defending the 'vital interests of workers'. Consequently, Catholic Social Teaching is characterised by a belief in the right of association and freedom to take part in unions without reprisal (*Gaudium et Spes*, 68). It acknowledges the legitimacy of strikes, where other methods for resolving disputes have not been effective. It has also supported the active participation of workers in the life of the enterprise (*Mater et Magistra*, 91). As Kohler explains, Catholic Social Teaching has undoubtedly played a historic role in shaping industrial relations and labour law, albeit one that varies across jurisdictions.

## **From *Laudato Si'* to *Fratelli Tutti***

In keeping with this tradition of social teaching, Pope Francis has spoken and written often about problems facing workers. Costa and Foglizzo identify his concern for those who find themselves on the peripheries of the labour market, especially migrant workers. Francis has described precarious work as 'an open wound' for those who live with the fear and anguish of whether their job will continue or disappear. Although work has been a prominent theme, his contribution to Catholic Social Teaching is most frequently identified with the environment. This was at the heart of his encyclical, *Laudato Si'* – on care for our common home. *Laudato Si'* emphasized that ecology is not merely about sustainable use of natural resources and protection of biodiversity. The Pope drew attention to the need for an 'integral ecology' (124) that addresses the social and human

dimensions to the current environmental crisis. He argued that there was a need to cultivate forms of employment that permit 'a dignified life through work' (128).

This aspect of *Laudato Si'* resurfaces in *Fratelli Tutti*. The Pope argues that the 'throwaway' culture is not merely found in the unsustainable consumption of products; it includes 'discarding others', 'such as an obsession with reducing labour costs with no concern for its grave consequences' (20). Amongst the social fault lines that Francis observes are global economic inequalities and the cultivation of fear of the 'other' (27). The Pope is forthright in his view that a combination of populism and neoliberalism is hindering pursuit of the common good: 'The fragility of world systems in the face of the pandemic has demonstrated that not everything can be resolved by market freedom' (168). Notably, the Pope identifies employment as 'the biggest issue' in responding to populism (162).

In searching for a path of hope, he turns to the Good Samaritan. In this parable, a Judean man, lying injured on the roadside, is ignored by religious clerics who pass by from his own community. Instead, help comes from a Samaritan; a community that was 'looked down upon, considered impure' (80). For Francis, this text 'challenges us to expand our frontiers. It gives a universal dimension to our call to love, one that transcends all prejudices, all historical and cultural barriers, all petty interests' (83). In the Pope's exegesis, the values underpinning the actions of the Samaritan are fraternity and social friendship: reaching out to provide care for those in need and showing solidarity with those who are vulnerable, especially where this entails crossing the boundaries of human identity.

Expanding out, the Pope argues that the neglect of fraternity has engendered an individualistic understanding of freedom and equality. In the absence of a sense of fraternity, these values are reduced to 'market freedom and efficiency' (109), with the consequent marginalisation of those who are not perceived to be sufficiently productive. In contrast, Francis calls for freedom and equality to be infused with a commitment to solidarity, which means 'combatting the structural causes of poverty, inequality, the lack of work, land and housing, the denial of social and labour rights' (116). This focus on tackling poverty and inequality has been a consistent theme from the outset of his papacy. In 2013, in *Evangelii Gaudium*, he asserted that 'inequality is the root of social ills' and called on all communities to seek 'the liberation and promotion of the poor' (187). Theologically, this reflects the idea of the 'preferential option for the poor'. This perspective, originating in Latin American Liberation Theology, views economy and society through the lens of poverty, in all its dimensions.

## Implications for Labour Law

*Fratelli Tutti* has a wide horizon with an ambitious agenda of renewed ethical foundations for our economies and societies when we emerge from the pandemic. As such, the purpose of the encyclical is not to specify detailed legal and political reforms; indeed, this is not the function of

Catholic Social Teaching (*Sollicitudo Rei Socialis*, 41). That said, *Fratelli Tutti* addresses the labour market and it is possible to draw guidance for labour law from the orientations that it recommends. To use a hackneyed expression, what are the 'takeaways' for labour law?

## 1. Human Dignity and Theoretical Foundations for Labour Law

Labour law scholarship continues to wrestle with the rationale for labour law (see further: Collins, Lester and Mantouvalou). As has been widely discussed, one strand of these debates has been the argument that human rights law forms an underpinning for labour law and that labour rights are human rights (eg Mantouvalou). In turn, this draws a connection between the protection of human dignity and rights at work (given the central place occupied by dignity within human rights law). One reading of *Fratelli Tutti* is to see it as potentially making a contribution to this academic debate on the justifications for labour law.

Consistent with Catholic Social Teaching, there is a strong emphasis throughout *Fratelli Tutti* on human dignity as the most fundamental value that shapes social action. The Pope argues that we must ensure that everyone has access to work, but also that this is work performed under dignified conditions that allow people to develop 'healthy relationships' with others and to find opportunities for personal growth and self-expression (162). Dignity is cast as the bedrock upon which claims for equality stand. All persons share the same 'innate human dignity' (22) and all were 'born with the same dignity' (118). The equal dignity of human persons means that 'differences of colour, religion, talent, place of birth or residence, and so many others, cannot be used to justify the privileges of some over the rights of all' (118). Indeed, Pope Francis invokes equal human dignity as an explanation for placing limits on the rights of private property (120). This reasoning could be extended to identifying the limits on freedom of business, which is a significant debate in contemporary human rights and labour law, eg when interpreting the EU Charter of Fundamental Rights.

Of course, it would be superficial to assume that the interpretation of human dignity advanced by Pope Francis equates to secular scholarship on the same concept. McCrudden has explained the divergences between the conceptions of human dignity in Catholic theology and those found in secular human rights law. Without minimising the tensions that may emerge (eg on gender, discussed below), documents like *Fratelli Tutti* suggest that there is space where greater dialogue between legal and religious scholarship could enrich our thinking about the rationale for labour law.

## 2. 'Bringing the Peripheries to the Centre'

Pope Francis is clear that we need to invert existing priorities in order that those who find themselves on the margins of the labour market become the centre of our concern. He has spoken often about those on the 'peripheries' and in *Fratelli Tutti* he refers to 'geographic' and 'existential' peripheries. With respect to *geographic peripheries*, he shines a spotlight on the situation of migrant workers. The repeated attention in the encyclical to the treatment of migrants indicates that, for him, this is not a marginal topic; instead, it is

key test of whether we truly recognize the dignity of all: 'if all people are my brothers and sisters ... then it matters little whether my neighbor was born in my country or elsewhere' (125). His idea of *existential peripheries* embraces those who, through marginalisation and oppression, become 'hidden exiles' in their own country, such as those who experience racism or people with disabilities (98).

Putting the peripheries at the centre brings into question the adequacy of existing labour law. In recent years, the rise of the gig economy has frequently exposed how those on the periphery can fall outside the protective cloak of labour law due to the classification of their employment relationship. Undocumented migrant workers are another group on the periphery whose labour rights are limited and often unenforced. The pandemic has exposed how those who were already on the periphery can find themselves acutely vulnerable because they are not covered by measures to assist employees. A good illustration in the UK can be found in *R (Adiatu) v HM Treasury*, where an Uber driver unsuccessfully challenged his exclusion from Statutory Sick Pay and the government's furlough scheme (Coronavirus Job Retention Scheme). In Ireland, trade unions have drawn attention to the situation of migrant workers in meat processing factories who may not enjoy any entitlement to sick pay. *Fratelli Tutti* does not attempt to prescribe detailed solutions to these complex issues and, for some, that will be a weakness. It is, though, a rallying call that these are the concerns that should be at the heart of an agenda for labour law, rather than at the margins.

### 3. Social Dialogue as a Method for Change

The Pope acknowledges that some will dismiss his ideas as utopian (190). With this in mind, he places considerable weight on identifying the processes through which we could begin to reorder economy and society. This echoes his thinking in *Evangelii Gaudium*. There he argued that progress begins with a recognition that 'time is greater than space' (222). By this, he intended that we should 'work slowly but surely, without being obsessed with immediate results' (223). Flowing from this long-term perspective, in *Fratelli Tutti*, the Pope identifies 'social dialogue' as the method by which change could begin to occur. Although the Pope does not limit this dialogue to the field of industrial relations, its invocation has a clear resonance with models of employment in which workers and their representatives play an active role. In pluralistic societies, the Pope sees patient and painstaking dialogue as the road that can lead us to the identification of shared 'fundamental values'. This dialogue must provide space for the voice of those on the peripheries. Indeed, Francis has linked dialogue to respect for human dignity; in his view, this can help us 'to see others in their deepest dignity' (*Evangelii Gaudium*, 228).

Political debates on labour law reform have a tendency to focus on changes to the substantive content of the law. *Fratelli Tutti* prompts us to think about whether more emphasis should be placed upon the role of social dialogue in governance of the workplace and the labour market. The Pope's analysis of how to bring about enduring change chimes with research that draws attention to the need to enhance mechanisms for worker participation: see further Bogg and Novitz.

## Religious Ethics and Labour Law

In the secular context of today's workplaces, it might be surprising to find inspiration in the writings of a religious leader. Indeed, some will point to areas of Church teaching that conflict with a secular understanding of human rights and query whether religious teaching has any place in debating the future of work and labour law. As I have discussed elsewhere, this is particularly pronounced in respect of issues of gender and sexuality and those tensions remain evident in *Fratelli Tutti*. On the one hand, the document is addressed to 'brothers and sisters' and it criticises the denial of equal rights to women (23). On the other, there has been debate over whether the title of the document is or is not inherently gender-specific, while others have pointed to the absence of female voices in the sources cited within the document. The lack of a feminist perspective in Catholic Social Teaching is, regrettably, not a new concern, but one that has been expressed over time by some Catholic theologians. Firer Hinze has drawn attention to the historically gendered perceptions of women's role in the labour market that lay within 'Catholic worker-justice rhetoric'. Although Catholic Social Teaching today endorses equality for women in working life, gender equality does not stand out as a 'headline' theme in *Fratelli Tutti*. There is even greater silence on the situation of LGBT people. In contrast to certain other forms of inequality (eg race, disability, age), LGBT issues are not expressly addressed. Nevertheless, it is notable that the ethos of *Fratelli Tutti* is strongly disposed towards inclusivity. In striking language, the Pope refers to the need to recognise 'people's right to be themselves and to be different' (218).

In summary, the vision of economy and society presented by the Pope should certainly not be shielded from critique, but arguably it warrants reading and analysis as a significant contribution to our thinking about social justice, work and the law.



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