

THE MORALITY OF RIGHT-TO-WORK LAWS.

I

May I preface my remarks by saying that I, like Mary, have been given the better part. It is much simpler to outline the facts in the right-to-work controversy than it is to deal with the difficult question of rights and duties involved.

May I also congratulate your program committee upon its decision to call for the facts in this area. I shudder at times to consider the damage that can be done by abstruse speculation on concrete matters, completely untrammelled by any contamination by the facts of the case. For example, I know of several rather conservative clergymen who have publicly espoused compulsory arbitration of all strikes. This, of course, is vehemently opposed by both labor and management alike. It has proved a failure wherever it has been tried. Furthermore, a strong case could be made for the thesis that such a proposal is pure socialism, since it must of necessity repose ultimate economic decisions of industry in the hands of the government. We except from these remarks, of course, activities in which strikes are not permitted. Here we must have arbitration as a lesser evil, as compared with the festering bitterness of unsolved differences.

Proponents argue that we settle other disputes among citizens in courts of law. But the analogy fails because most strikes are over claims and interests, not rights. Claims and interests are proper subjects of direct bargaining between the two parties concerned. Outside mediation is also proper and often helpful. But one can hardly adjudicate matters which do not involve definite rights.

In most cases, moralists must exercise practical judgment and practical prudence in passing on the ethical implications of economic issues. To do this well, we must know facts as well as principles, and in addition show some skill in choosing the principles and facts that most faithfully reflect the concrete situation under study.

After these preliminary remarks, we can turn directly first to the legal and then to the economic aspects of right-to-work laws.

These laws in effect provide that neither membership or non-membership in a labor union shall be made a condition of employment. They further hold that a contract limiting employment to union members is against public policy. In addition they may give the right to sue for damages to any person denied employment because he is either a member or a non-member of a union.

In effect such laws prohibit any form of compulsory union membership. There are three types of union security involving union membership as a condition of employment. One is the closed shop. Under a closed shop agreement, an employer may hire only workers who are already union members. Such an agreement is illegal in any industry covered by the provisions of the Labor-Management Relations Act (Taft-Hartley Act). Next there is the union shop. Here a non-union worker may be hired, but he must agree to join the union within a stated time or at least pay dues or he will not be retained in the job. Finally, there is the maintenance-of-membership for the duration of the agreement. No one is compelled to join the union; but none may leave without forfeiting his job.

The history of compulsory membership in economic associations is long and involved. There were elements of this in the medieval guilds. The practice carried over into English and American common law. The generally accepted notion was that there was one group for any particular economic activity. All who engaged in that activity should belong to this group and should abide by its rules. We have a rough parallel today in our bar and medical associations and possibly some of our teaching societies. Such membership was considered as natural and normal as the citizenship men acquired at birth.

The specific modern institution known as the closed shop, while akin to these other groupings, had other objectives as its primary *raison d'être*. The closed shop was largely a defensive device used to thwart anti-union tactics of employers. Employers would try to break unions by giving preference in hiring to non-union members. If a union was strong enough in a given trade to exercise some control over its labor market, it could thwart this maneuver by demanding a closed shop.

Unfortunately the workers that most needed the protection of unions did not have the economic strength to force reluctant and antagonistic employers to recognize them. The result was a constant effort to secure the protection of government for this natural right to organize. There were many legislative landmarks in this struggle. Among the most significant were the laws curbing the use of court injunctions in labor disputes, forbidding the transportation of strikebreakers across state lines, and finally laws directly protecting labor's right to organize. Until the year 1947, the bulk of federal laws passed in recent decades defended and protected labor's rights. In 1947, a combination of conditions led to the passage of the Taft-Hartley Act, a law that substantially restricted the rights and privileges previously won.

The Taft-Hartley Act was passed in accord with the power of the federal government to regulate interstate commerce. Its aim was to curb certain practices of labor and management that tended to promote industrial strife and to interfere with the free movement of goods in interstate commerce. In this context, such a law would normally be pre-emptive, superseding any state statutes that ran contrary to it or that even exercised parallel jurisdiction. Congress, however, took an unusual stand when the matter of union security was involved. It outlawed the closed shop and insisted that the employer be free to hire any worker he chose. It did permit employers and unions to negotiate for the union shop, provided certain conditions were met. But it also allowed the states to enact laws prohibiting even this limited form of union security. This was the well-known section 14-b, which reads:

Nothing in this act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization in any State or Territory in which such execution or application is prohibited by State or Territorial law.

This in effect gave the green light to states that wished to pass laws prohibiting union security.

A number of states passed such laws or constitutional amendments, but, at the present writing, eighteen are in effect. In order of passage, these states are: Florida, Arkansas, Arizona, Nebraska,

South Dakota, Georgia, Iowa, North Carolina, North Dakota, Tennessee, Texas, Virginia, Nevada, Alabama, Mississippi, South Carolina, Utah, and Indiana. Of these states, only Indiana may be considered a predominantly industrial state.

It is helpful in understanding a law to know the factors that led to its passage. In practically every state that passed a right-to-work law, we note certain common elements. They are predominantly rural states. Most of them have low income levels. Most are seeking new industries. The actual campaign for the laws was generally carried on in two diverse patterns. There was a public campaign which emphasized the right of workers and the traditional American liberties allegedly violated by union-security measures. But the more private, fund-raising campaigns stressed the impact that such laws would have on union organizing. They held out promises that new industries would be attracted to states providing cheap and docile labor. Behind any local campaign were the national campaigns spearheaded by the National Association of Manufacturers and the Chamber of Commerce of the United States. In addition, a National Right to Work Committee was formed and was headed by former Congressman Fred Hartley, of Taft-Hartley fame.

No serious effort is made to disguise the fact that agitation for such laws comes from employer groups, seconded by some farm federations. To the knowledge of the present writer, there has been no attempt to organize any type of worker support for the measure, even in states where there are few unions and where workers could easily be induced into taking anti-union stands. It is surprising that no such efforts were made, since even the most naive must recognize that the motivating forces behind these laws have been traditionally opposed to all unions. As we shall see later, not all employers favor this type of legislation. In the more industrial states, many employers have openly opposed it. This is an important factor in its failure to take hold in such states.

Indicative of worker attitudes are the results of polls taken under the Taft-Hartley Act. As the law was originally passed, a secret ballot conducted by the National Labor Relations Board had to favor the union shop before a union and an employer could legally

negotiate such an agreement. The voting was so overwhelming in favor of union security—over ninety per cent—that in 1951 Senator Taft secured the repeal of the voting requirement. These votes are the fairest test available of workers' reaction to the so-called violation of their rights by compulsory unionism.

We must also note that the existence of a collective-bargaining contract indicates a high degree of active or passive support for the union on the part of workers. If such support did not exist, it is simple under present laws to challenge the representative character of a union. An employer may make such a challenge. Likewise, a petition signed by thirty per cent of the workers can force a representation election.

So much for the legal background of right-to-work laws. It is also interesting to note the economic and social factors that affect and are affected by union-security arrangements.

First, we might consider the impact of these laws on union organizing. This impact is highly selective. It is probably negligible in occupations requiring a high degree of skill. It would not be too important in any activity that had an extremely low degree of labor turnover. It would sometimes be quite negative if the employer were favorable to unionism. Even neutrality might be sufficient in some cases. The common element in these situations is that a worker is likely to remain a union member if there are no pressures in the opposite direction. There are unions in right-to-work states that enjoy this type of security. Their presence explains what statistics we have—they are limited—on union membership and its growth or decline under laws forbidding union-security agreements.

On the other hand, if the occupation calls for unskilled workers, or there is a high rate of labor turnover, or an employer unfavorable to unions and working against them, or any combination of these elements, then right-to-work laws can in effect prevent union organization. This happens because normal turnover, and quits forced by employer hostility, effectively prevent a union from getting a permanent majority. It is even difficult enough to get a temporary majority sufficient to win a NLRB election and be certified as bargaining agent. This difficulty is enhanced if the employer com-

mits unfair labor practices and thus can count on two or more years of litigation before an election is held.

Even if we assume that a union were to secure a position as bargaining agent in the situation just described, it is a tremendous and bankrupting effort for it to hold on. Normal quits, plus employer forced quits, will cut its majority to a minority and leave it open for a decertification election. The alternative to this is a continuing, expensive organizing campaign. If this is practiced on a large scale, the union would be committing economic suicide, since it would be spending far more than it takes in by way of dues. In effect, it becomes impossible really to organize unions under such conditions. Yet these workers are often the ones that most need the protection afforded by a genuine trade union.

The analysis just given explains why union organizing in right-to-work states is at a virtual standstill. A check with the textile unions, for example, or an analysis of NLRB voting figures for the area, shows that these laws have the effect claimed by their sponsors when they urge chambers of commerce to support the enactment of such laws.

Even when laws forbidding union-security agreements do not prevent the formation of unions, usually because employers are favorable to unions, they can have a deleterious effect upon labor relations. The main reason for this is that a union in such a situation is constantly on the defensive in relation to its members. Even with a friendly employer, the union is compelled constantly to prove itself to its members. This means that it is continually fighting and making demands for matters that it probably could quietly negotiate without any difficulty. Hence an element of conflict is introduced when neither side really wants it.

Some larger unions can be compared with two-platoon football teams. They have an offensive and a defensive team. The offensive handles organizing and strike problems. The defensive handles negotiations and tries to improve labor-management relations. Even when these activities are not formally separated, many unions have personnel who excel in one or other of these fields. Assignments are made according to need. When a union is not in a fight for survival, the defensive, constructive team is used. When union

security by agreement is lacking, a team is sent in to obtain security by fighting for it.

It is for this reason that many employers favor union security, since it is the only sure foundation for planning long-range industrial peace. Such were the conclusions of the well known study, by the National Planning Board, on *The Causes of Industrial Peace*. Similar conclusions were expressed by many employers in a November, 1952, study made by the National Industrial Conference Board. Finally, your attention is called to an analysis by Ernest DeCicco, of Loyola University, Chicago, which appeared in the April 15, 1957, issue of the *New Leader*. This article is particularly good in explaining the economic, social, and psychological factors underlying the demand for union security.

We would be less than candid if we did not note that union-security provisions make easier the work of the dishonest and racketeering labor leader. They give the Communist union official a more secure foothold. All this assumes, of course, that these unworthy officials have a grip on the political machinery of the union, so that workers cannot easily vote them out of office. Under these conditions, a worker must at least pay his dues to retain his job. But expulsion from the union does not mean loss of a job, if dues are paid.

We can acknowledge these facts without accepting them as arguments against union-security provisions. We could say that "abusus non tollit usum." Or we could use the principle of double effect, arguing that the good outweighs the bad. Actually, we do not favor either reply. Union abuses often have been unconscionable. They should, indeed must, be remedied. But remedial measures should strike directly at the evil, and not at an accepted practice that *per se* does not involve abuses. Direct guarantees of the rights of union members either through legislative penalties for abuses or through special civil courts analogous to the UAW public review board, are an imperative need today.

I would conclude with two observations. First, as a matter of fact, the right to work is by no means an unconditional right today. It is often surrounded by restrictions, some imposed by law, others by the employer. A worker in covered fields normally must partici-

pate in social security. He may be subject to health examinations, security checks, and even residence requirements for certain jobs. The employer may require him to contribute to pension or health funds. He may often insist that he buy company products rather than those of competitors. He rightly demands that the worker accept rules of plant discipline. In terms of economic realities, the worker represented by a union has more real freedom to express his views and obtain reasonable demands than the individual worker who must accept employment, under normal conditions, on a take-it-or-leave-it basis.

Second, it is unrealistic today to consider the trade union as a purely private organization. Already its activities are rather thoroughly regulated by law. Undoubtedly they will be more so in the future. Courts feel increasingly free to intervene in so-called internal union affairs. In the terminology often used to translate papal encyclicals, unions are quasi-public bodies rather than free associations. As such they have rights and needs distinct from those of their members taken as individuals. The idea that groups of this nature should have quasi-legislative powers, including the right of compelling all persons eligible for membership to join such a group, is well understood in papal social documents. (Cf. L. M. Caldiroli, S.J. "Securezza Sindicalé e libertà d'impiego nella lege Taft-Hartley" in *Civiltà Cattolica*, April, 1957, p. 144).

Thus far in this report, we have made an attempt to assume at least the appearance of objectivity. It is usually a sterile task, and often a sign of ungraciousness and lack of a proper Christian spirit, to impute motives or to call names. Yet we would be lacking in candor if we completely omitted any subjective appraisal of right-to-work laws.

Your reporter has worked in the labor-management field for nearly twenty-five years. He has close friends on both sides of the fence. He knows many of these contacts on an "off-the-record basis." Drawing from this experience, your reporter has no hesitation in saying that there is much insincerity among the informed groups that are sponsoring right-to-work laws. These advocates are anti-union and they know that the laws they sponsor will hurt legitimate unionism. Privately they will admit this.

Please do not misunderstand these statements. Not all advocates of these laws are insincere. Many who are not dupes believe in them. But the basic national campaign is only a thinly disguised attack on unions as such. A realist will appraise it on this basis and judge accordingly.

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II

Shortly after the people of the state of Nevada by popular referendum approved a right-to-work law, Bishop Robert J. Dwyer of Reno wrote as follows in his diocesan weekly relative to the controversy that prevailed in Catholic circles:

The difficulty is that some theologians and Catholic publicists are prone to write and speak as though they were the Holy Father himself. Instead of stating the facts and drawing their conclusions, with emphasis on the actual limitations of their authority, they sometimes create the impression that they have a private pipeline to infallibility. It is unavoidable that a certain amount of confusion should arise from this.¹

I cannot settle for myself whether I speak today as a theologian or a publicist. I am sure, however, that on the basis of the rules of logic the two concepts and the two roles are not mutually exclusive. As a matter of fact, *I believe that we have suffered in the right-to-work controversy precisely because our good theologians have not been good publicists and our good publicists have not been good theologians.* It appears to me that in the widespread debate over the morality of such laws our moral theologians have not been conspicuous by their pronouncements, but rather industrialists, editors, labor leaders, lawyers, social philosophers, economists, sociologists and religious leaders have written and spoken in abundance with moral decision in the matter. It is particularly gratifying, therefore, to find the Catholic Theological Society of America this year sub-

¹ *Nevada Register*, November 12, 1954.

jecting this controversial subject to discussion and I sincerely hope that our consideration here today will not memorialize the alleged confusion caused by independent and free-speaking theologians who have already ventured a moral opinion in the much debated issue.

I do intend that my views will be provocative of theological discussion rather than emotional reaction. I definitely do not intend that they shall be absolutely final or in any sense be interpreted as clothed with the protecting garment of ecclesiastical or papal infallibility.

The preparation of this paper obviously demanded the gathering together of materials from proponents of the right-to-work laws and from those who have expressed opposition to the laws. I am initially indebted to the Heritage Foundation of Chicago which sent me, unsolicited and without cost, long prior to the writing of this talk a good size book on the subject studiously compiled by Father Edward Keller, C.S.C., and also a pint size pamphlet distilled by Father Ferdinand Falque. I am also indebted to Monsignor George Higgins of the Social Action Department of the National Catholic Welfare Conference for literature which I requested to supplement my own personal file on the matter under discussion. Incidentally, the Heritage Foundation sent along an order blank that I might obtain additional copies of their publications for my friends; the Social Action Department simply requested that I return the materials as soon as possible.

The controversy thus far relative to the morality of right-to-work laws has been principally centered upon the human right to work and the protection of this right through the medium of state legislation. It is alleged by the proponents of these laws that the union shop contract widely prevalent today and maintenance-of-membership clauses included in many labor-management contracts stand in violation of the fundamental right to work, which therefore must be protected through state, and even federal, legislation. Discussion of this type relative to human rights always excites a great deal of interest and usually arouses widespread support for the particular right supposedly violated. Discussion, on the other hand, relative to human duties seldom occasions great interest and most definitely

produces no overwhelming rush toward the assumption of the burdens which duties imply.

I am personally convinced that the right-to-work controversy has been too conspicuous for its emphasis upon the problem of human rights involved and rather inattentive to the correlative duties on the part of employees, employer and the State. As a matter of fact in human relationships, duties are prior to rights for the simple reason that human rights arise from the universal duty of mankind to reach its proper end of human perfection. Man's duties to himself, his neighbor and to God are foundation for the rights he enjoys as a rational being. I propose, therefore, to examine first this controversial segment of social-economic legislation in terms of the duties and rights involved and then secondly, to evaluate the right-to-work law from the standpoint of the moral determinants of a human act, namely, the object, the intention and the circumstances.

The right to work is founded upon the duty to work. Man as a person must seek perfection through the realization of his existential ends. Man must normally work as a means of continuing his physical existence and perfecting his faculties of body and soul. He must as a consequence ordinarily work to provide nourishment, shelter, clothes for himself and for his family, if he assumes such a responsibility. His work, moreover, must be related to the perfection of his other faculties and thus he must labor as befits a carrier of human dignity and cannot allow himself to be depersonalized by work to the extent that he is rendered less perfect as a man. Work must serve to perfect man physically, mentally, morally, socially and spiritually. Man has the duty, therefore, to choose work that will perfect him as a person according to his individual talents and in the totality of his being. He has the duty to avoid work that will degrade him as a person because it is non-perfective of faculties and capacities.

If man has the duty to perfect himself and thus reach his existential ends in part through work, he has also the correlative right to work to so perfect himself. Man's right to work, however, is not absolute and unconditioned. He has no right to work which physically is beyond his endurance or which can lead to injury of his

physical person; he has no right to work that will dull his mental faculties and cause deterioration of his personality because it fails to challenge his mental initiative or imposes excessive strain; he has no right to work which will place him in danger of wrongdoing or unethical conduct; he has no right to work which by reason of persons, places or circumstances endanger his spiritual life; he has no right to work in situations that impede his development as a social being and bring harm upon society of which he is a part. *Man, and this point must be stressed because of its neglect, is a member of society and thus his right to perfect himself through work must be exercised with respect to the rights of other persons who seek also to achieve perfection.* While man, therefore, has a natural right to work so as to perfect himself, he is not free in the exercise of this right to the extent that he may interfere with the rights of others struggling for perfection in their chosen line and circumstances of work. Man has obligations toward his fellow workers in justice and charity to the extent that he will not place obstacles to their perfection by reason of his own pursuit of perfection. Man's right to work is thus a socially conditioned right and not absolute.

Traditionally, we have recognized many limitations of the right to work in the interest of the worker himself, his fellow workers and society at large. We have always accepted the fact that inherent natural limitations exclude certain individuals from particular types of work; we have admitted legitimate restrictions of the right to work by industry alone, labor alone or the two conjointly; we have been reconciled to restrictions of the right to work by government. Talent, ability, skills, education, health, security, criminal record, alcoholism, family background and many other personal factors condition the right to work universally at the present time. Our legal, medical, educational and professional groups generally restrict the right to work within a given profession in the interest of the worker himself, his fellow man and society as a whole. The fundamental basis of these many limitations is most obvious; *the good of the individual and the good of society. Ethically and morally the absolute right to work is a myth and no law can enforce the absolute right to work.* It is to be noticed, however, that while we are usually

willing to accept restriction of the right to work in terms of our own protection and struggle for perfection, we are most reluctant to admit restrictions upon our own right to work in the interest of our fellow man and society. *It would seem imperative to me, therefore, that in considering the morality of right-to-work legislation we must give special attention to the duty that every man has to see to it that the exercise of his right to work does not come into conflict with the work rights of others who have chosen an effective and moral medium through association to attain to total perfection as a person.* Restrictions upon the right to work, whether imposed by an individual upon himself, by management or labor, alone or together through contract, by the state or federal government are morally permissible and in many cases absolutely necessary in the interest of man as a person and as a member of society. *Limitation is a quality inherent in all human rights whereby their scope and exercise are given boundaries by reason in the interest of man and society.* As Father Thomas Higgins, S.J., has stated, a most pressing modern need is the accurate statement of the individual's debt to society and of society's obligation to the individual. *Rights are finite.* They are necessarily limited because they flow from individually different personalities limited in themselves, because of varying capacities, obligations and needs.²

The right to associate is founded upon the duty to associate. Man is by nature a social being and attains to perfection in society. Rightly did Aristotle observe that the man who can live without society must be either a beast or a god. Man cannot take care of the totality of his physical needs by himself; he cannot obtain even to a modicum of the world's available knowledge without the assistance of others; he cannot penetrate fully the moral law which his own nature commands through unaided effort; his spiritual perfection must be attained with the guidance and direction of others; man's social and economic well-being cannot be achieved without the co-operation of others. Man is by nature inclined, by reason of instinct and intelligence, to seek his perfection in and through

² *Man as Man*, Bruce Publishing Company, Milwaukee, 1949. Page 241.

assistance rendered by his fellow man. The roots of human sociability are to be found in man's inability to achieve his existential ends solely through his own effort and actions. Thus by instinct leaning to association, man through intelligence and free-will decides upon association. Here, again, our preoccupation with the right to association has allowed us to dismiss lightly our duty to associate in terms of the attainment of human perfection. It would appear to me important, therefore, in considering the morality of right-to-work legislation that we must weigh carefully the duty that the individual worker has to enter into association with his fellow worker. Obviously, man will have no obligation to enter into such associations that are directed by intent or general abuse to his imperfection as a person; *but it appears to me that the individual worker does have an obligation to associate himself with organizations that in intent and administration are devoted to his perfection as a person, especially in the social-economic order where he is frequently incapacitated in attaining perfection on the basis of his own efforts.* Consequent upon his duty to associate with those of his own group in the economic order is his ever more serious duty of maintaining through active processes of co-operation the integrity of the organization and the welfare of the membership. Pope Pius XII stresses the obligation of workers and employers to associate in their own interest and that of the economic order at large:

To fulfill the role which is theirs in the national economy, to promote their professional interest, to realize their legitimate economic and social claims, the workers *ought* to unite in solid professional organizations.

Present circumstances render still more pressing and imperious the *obligation* of the workers, as also of employers, to exercise that right. He has the *duty* to co-operate for the welfare of his fellow citizens, especially those to whom he is united by common interests. He has the *duty* to collaborate for the restoration of a more balanced social order. . . . The isolated worker cannot achieve this. . . . In the present state of things, therefore, *there is a moral obligation to take an active part in the professional organization.*

It appears rather difficult, then, to accept the reasoning of some who argue that it is equitable for a person to accept the benefits of an association of workers and still not contribute to the financial and organizational needs of the association itself, but rather contribute to the welfare of society in services of an alien nature. Logic, social justice and charity seem to dictate that society is best served by individuals of compatible interests and purposes enriching society through the collective betterment of their particular segment of society, whether it be professional, educational, legal, social service, economic or even religious. I wonder if the supporters of the free-rider theory in the ranks of the clergy, would apply their principle ecclesiastically by allowing a parishioner to neglect contributions to his own parish and still receive its services, while permitting the parishioner to fulfill his obligation of Church support by generous direct donation to a Catholic Church mission in remote Africa?

The right of the state to legislate is founded upon the duty of the state to legislate. Man enters into political society by his free will to find assistance in his quest for human perfection. Political society is natural to man and is meant to serve his need of perfection, unattainable on his own limited efforts. Political society once formed, executive, legislative and judicial processes constitutionally established, government has as its primary function the promotion and protection of the common and the individual good in their proper relationship. Specifically, in its legislative function the state is directed to assist the people as a whole and individuals as members of the whole to human perfection. Through promotive and protective legislation the state concerns itself with the general and individual welfare and necessarily remains subordinate to the efforts of individual persons and groups of persons in the attainment of perfection. The state in its legislative program, therefore, must necessarily concern itself with the rights of individual persons who struggle for perfection and who could be denied perfection as persons through infringement of their rights, but it must likewise pay respect to the efforts of individuals or groups of individuals to bring about human perfection through the medium of their own concerted action. Here the principle of subsidiarity clearly applies and seems

to dictate that the state shall leave freedom for those who so choose to perfect themselves, not restricting them in their effort to fulfill their duty in co-operative action for human perfection. Messner, applying the principle of subsidiarity in this connection, writes:

The political community is an association of individual and social persons with their own existential ends and their corresponding functions, rights and powers, who can reach their essential self-fulfillment only by complying with the responsibilities implied in these ends. The state is an institution for co-ordinating these powers and functions for the good of all. Therefore it has the functions and acquires rights where the separate powers and will of individual persons and communities fail in the service of their existential ends. Its function is accordingly limited to that of facilitating, stimulating, and co-ordinating the activities of the individuals and social groups.³

Again, stressing the fact that government must strive through legislation to protect the invasion of individual rights, Messner is even more emphatic about the duty of government to protect processes of social co-operation, when he states:

Social co-operation is indispensable for the attainment of existential human ends themselves. Consequently the second fundamental function of society is to ensure the economic and cultural welfare of its members by enabling them to make use of the resources mobilized by their social co-operation.⁴

It would seem essential to me, therefore, that in the right-to-work controversy that the role of the state be placed in its proper perspective. *When there is a definite threat to the welfare of the individual or society through the restriction of the right to work by labor associations or by employer associations, or by both together, the state definitely would have to intervene through the medium of protective legislation.* Thus one can see almost immediately the necessity of civil rights legislation where there is clearly a violation of social justice and human rights and where such violations are seriously harmful to individuals and society. On the other hand, it

³ *Social Ethics*, B. Herder Book Co., St. Louis, 1949. Page 573.

⁴ *Ibidem*, p. 120.

would appear that the state definitely has the obligation to encourage by promotive legislation or by the absence of restrictive legislation the efforts of individuals in collective association to promote their own welfare and the welfare of society. Pope Pius XII, indicates the role of the state in this manner most specifically.

The right of association is a fundamental one for the workers. It is given by nature itself. It is the duty of the State to protect this right and *to facilitate the exercise* thereof. No power may deny it to any group of workers whatever, provided that, in a given association, nothing is opposed to the common good and the security of the State. The executive power of the State must not interfere as such in the problems of labor relations, *except in case of grave necessity*, to aid, for example in re-establishing an equilibrium upset by the preponderance of those who exert too great an economic strength.

In reference to abuses which may arise in connection with labor organizations' undue restriction of the right to work or of restrictions which are unjust and supported by labor-management contract, it would again appear on the basis of the principle of subsidiarity, *that the moral forces of the people themselves and of membership within the organization must be aroused to the correction of existing abuses. The realism of Catholic social philosophy clashes with the idealistic thinking of many who believe that all weaknesses in political, economic and social life can be eliminated by restrictive legislation.* Labor-management contracts, therefore, which do not unduly restrict the right to work, but *include restrictions in the interest of the good of the employee, the employer and the common good are perfectly moral and ought to have the sanction of law rather than discouragement.* Freedom ought to be left by law to labor and management, on the principle of subsidiarity, to negotiate contracts which promote the social and economic betterment of both parties and at the same time constructively contribute to the progressive embodiment of the principles of social justice in the social life of man.

In reference to the already enacted right-to-work laws and to the theory which sustains them, I am constrained to make the fol-

lowing moral analysis from the standpoint of the object of such laws, the intention which initiates them and the circumstances which surround them in the present social economic order. Here, as a matter of moral prudence, one's moral judgment must rest upon pertinent and relevant facts. With Father Edward Keller, I must shun emotional distortions of socio-economic conditions which would make right-to-work laws seem highly imperative at this moment in the economic life of our country and seek out realistically the factors in the present situation in the light of which these laws may be judged. Also, the present right-to-work law movement has a background which extends over the long history of organized labor here in the United States and thus the present trend cannot be entirely morally separated from the history of labor-management relations extending back over the years wherein labor organizations struggled to obtain status. As a matter of fact, it would appear that the present struggle of organized labor is to maintain status and hence the serious concern evidenced by labor leaders and workers over these right-to-work laws which threaten the security of existing unions and create difficulties in expansion.

The pertinent social and economic facts have been carefully presented by Father John Cronin, S.S., and it is principally upon his social and economic analysis that I base my own moral analysis. Further, I find increasing support for the arguments of Father Cronin in the many statements that have come from individual members of the American Hierarchy over the past two years, and in the many individual statements of Catholic priests throughout the country, who understand the social teaching of the Catholic Church in its American context and who zealously attempt to apply it gradually in our own economic life.

It has been repeatedly stated that the object of the right-to-work laws is to eliminate compulsory union membership as a condition of employment and this objective is declared to be just and moral in view of man's natural right to work. *It is my contention that the right to work is not absolute and may be legitimately conditioned by a labor-management contract negotiated in the interest of the employee, the employer and the social-economic welfare of society.* The issue cannot be reduced simply to that of compulsory

union membership, but must rather be evaluated in the light of man's duty to perfect himself through work and contribute to the advancement of his fellow worker and society as a whole. The individual self-employed worker obviously needs no labor association, but may advantageously be served by some professional group. The unfortunate and the handicapped who are unable to work have a claim upon the charity of others and need no association. The unemployed rich may well continue to live on their investment well managed by others without the assistance of organization. The ordinary worker, however, who by contract must earn his living and seek his perfection in the competitive world of labor and management, wherein exist many intangible and unpredictable factors which are beyond his abilities to know and control, needs the assistance of an association to render his struggle for perfection less arduous and to give him security he needs in a social-economic environment that is characterized by recurrent problems and conflicts.

I would admit the right of the worker to refuse to join a union when it is definitely apparent that the organization is not or cannot be interpreted, either in purpose or policies, as contributing to his own welfare and that of society. *When the union exists, however, in an industry or plant by reason of a labor-management contract and has exclusive right of representation by reason of majority vote, I believe the duty to belong to the union obtains for all workers during the term of employment and for all who are subsequently employed.* The existence of abuses in a labor union of a financial, moral or social nature are not a valid argument against the right of the workers to organize and do not constitute a valid argument for refusal to join a union, unless they exist to the extent that they are irremedial as proven through the concerted and honest effort of membership to remove them.

Further, it is my opinion that the existing right-to-work laws are in serious conflict with the duty of the state, in accord with the principle of subsidiarity, to enable, foster and sustain the cooperative activities of individual persons who through association seek to promote their own welfare and that of society. The direct intervention of the state in this matter is unwarranted by the present status of unions in our country today, which though admittedly

affected by human moral weaknesses, cannot be declared as a social institution to be contributing to the social and economic ruin of individual workers and society. *I have persistently wondered whether those who advocate right-to-work laws would be as vocal and insistent relative to social legislation to guarantee a living family wage in those states which have already passed laws restricting union security.*

The intention of the legislators who support or have been instrumental in the passage of right-to-work laws is a matter of serious dispute. Their subjective justifications of such laws are not clearly evident from the statements of the legislators themselves. Popular citizen support of such laws in state elections is difficult to evaluate in the light of the propaganda and emotionalism which surrounds such contests. What is quite evident, however, is what Father John Cronin points out, namely, that workers in the main are not against the union shop and many employers for reasons of a sound economic nature favor the union shop contract. On the other hand, *support for the right-to-work laws is definitely revealed as coming from definite sources which have had a long record of anti-unionism and consecrated economic individualism.* I personally cannot find honesty of intention among the organized supporters of right-to-work laws at the present time because their arguments reflect the decadent social and economic philosophy of individualism and completely disregard the social and economic responsibility of workers and management alike to promote the common good through processes of social cooperation. Catholics who support such laws appear, in the greater part, to be individuals who have not absorbed the growing sense of social responsibility to work for a just economic order which is inculcated in the social encyclicals of recent Pontiffs.

Relative to the circumstances which surround such legislation, in accord again with Father Cronin's evaluation, the fact that such laws have been passed in states which are in the early stages of industrialization or have relatively insecure labor organizations must be given serious consideration. The very exercise of the right to associate and the ability of the workers to organize is practically at stake in such situations. As a matter of fact, the duty of promoting one's welfare is difficult to fulfill in such circumstances,

when social co-operation is discouraged through restrictive legislation. It is clear to me that right-to-work laws will not encourage a sense of social responsibility toward other workers and thus the organizing efforts of a union, no matter how extensive or intense they may be, will seldom meet with success. In the present social and economic life the processes of social co-operation must still be strongly encouraged for we have not yet outlived the influences of individualism. Right-to-work laws definitely discourage social and economic co-operation which are vital in a democratic society and a Christian social order.

The declaration that right-to-work laws are "immoral" has been challenged as an adequate description of these laws by proponents of the laws and also by opponents of the laws. Rightly so, I believe, for the terms "moral" and "immoral" are highly relative in meaning in contemporary American thought and expression. The term "immoral" conveys little meaning when applied to the right-to-work laws as far as the general public is concerned and probably is best avoided. But the term retains its meaning for the theologian. Accordingly, I must still consider these laws "immoral" from the standpoint of the objective of such laws, which is the protection of a mythical right and the discouragement of a social duty; from the standpoint of the intention of the supporters of such laws, who reveal the antiquated social and economic philosophy of individualism; and from the circumstances of the laws, which are such that they can render difficult the exercise of the right of the workers to associate and maintain security of association and further discourage a necessary social consciousness that is so important in the attainment of a Christian social order.

I would close this paper with another reference to His Holiness, Pope Pius XII, which I believe is most pertinent to the matter about which I have written and the last sentence of which I am convinced, gives us the moral guidance we seek. He speaks as follows:

The common good requires, dearly beloved brethren, that between all social classes there should exist a sound equilibrium and a harmonious collaboration. In all legislative measures, as well as in their attitude, men in public life should be careful not to create opposition or suspicion between the different

groups of society, but should seek rather to arouse good understanding by removing all the obstacles which are in its way. Like the Church, the State cannot be the ally or accomplice of any class. Over all groups which it integrates and regulates, the State exercises its social authority, both superior and moderating. *And as in the economic field it is the weakness of the workers which prevents maintenance of the equilibrium, it is rather to them that the State gives its sympathy.*

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Digest of the Discussion:

Father Taylor opened the discussion by pointing to one subject on which he thought both speakers had maintained a golden silence, namely, the question of the picket line. *Father Taylor* thought that the constitutionality of the picket line could well be questioned and that its ethical character was equally doubtful. Its only object seemed to be to hurt the employer, to force the employer to yield even before there could be any adjudication of the case.

Father Cronin replied that it was for that reason that he considered the psychological approach to be so important. In labor disputes there is not always a clear-cut question of right and wrong. More often it is simply a matter of opposing claims. As for picketing, *Father Cronin* did not think that this had any direct relevance to right-to-work laws. Picketing in itself is only a means of advertising a point of view. Most states have legislation adequate to curb admitted abuses.

Father Matthew Herron, T.O.R., of Steubenville, asked *Monsignor Carney* whether he would hold that there is a general obligation for a working man to belong to a union. In reply, *Monsignor Carney* made this distinction; if it is clear, by the intent and administration of the union, that the union can contribute to the welfare of the worker, yes, there is such an obligation; if it is clear from the intent and administration of the union that it cannot make such a contribution, then no, there is no obligation.

Father Herron asked whether this obligation would be of positive or of natural law. *Monsignor Carney* replied that it stemmed from man's nature, from his instinct to association, from his intelligent realization of the profit to be derived from association, from his free will to act in accordance with this realization. Therefore, it would be a natural law obligation.

Father John Davis, of Louisville, asked whether *Monsignor Carney* meant to say that only the present right-to-work laws were immoral, or did he think that right-to-work laws in general were immoral. *Monsignor* replied that the state could make right-to-work laws if the right were unduly restricted, if the work situation were such as to demand this for the good of the individual and of society. He said that he meant, therefore, that the present right-to-work laws in the eighteen states that have them are immoral.

Father Davis asked whether *Monsignor Carney* could foresee a possibility in the future when such laws would be justified, if, for example, some union would impose dues that would be too high. *Monsignor Carney* said he would oppose any direct recourse to restrictive legislation on the part of the state. Any possibility could arise in the future, of course, but he felt that the strictest adherence to the principle of subsidiarity was called for here. Agencies other than the state must try first.

The imminence of the business meeting brought this very brief discussion period to a close at this point.

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