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A JURIST'S VIEW OF PROPOSED CHANGES IN THE PRESENT NATIONAL LABOR RELATIONS ACT

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IT IS a distinguished privilege to follow my good friend, the able and dedicated Chief Executive of the great city of New York, in a symposium commemorating the vision, courage and patriotism of his beloved father; my esteemed colleague in the Congress of the United States; the late Senator Wagner, whose life-long devotion to social justice came to fruition in the National Labor Relations Act,[1] approved in nineteen hundred thirty-five, on the fifth day of July.

Just as the day prior is solemnly observed as Independence Day—so it would be proper to mark July fifth as the birthday of our Declaration of Dependence—when the voice of the people was heard to recognize the equality of origin, nature and temporal destiny of industry and labor; the natural correlative rights and duties of employer and employee; the interdependence of industry and labor in the social and economic life of this nation; the lengthwise threads of capital and the crosswise threads of the worker necessarily interweaving in the fabric of the nation's pattern of lasting labor peace based on the natural principles of social justice.

Even as the personality of Thomas Jefferson was perpetuated in the first declaration, so, too, the character of Senator Wagner was imprinted upon the declaration of our mutual social and economic interdependence.

The Wagner Act was hailed by many as labor's Magna Charta, and fittingly so—since, like England's Magna Charta, it was this nation's first positive expression of labor's fundamental rights, rights already long recognized, however, as

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[1] 49 STAT. 449 (1935).

basic and essential to the survival of a free people in a dynamic economy.

During the previous century, Abraham Lincoln had said: "All that serves labor serves the nation. All that harms is treason. . . . If a man tells you he loves America, yet hates labor, he is a liar. . . . There is no America without labor, and to fleece the one is to rob the other."

The classic statement on labor's right to organize, enunciated in nineteen hundred twenty-one by William Howard Taft,[2] Chief Justice of the United States, was to be echoed in nineteen hundred thirty-seven by his successor, Charles Evans Hughes:

> Long ago we stated the reason for labor organizations. We said that they were organized out of the necessities of the situation; that a single employee was helpless in dealing with an employer; that he was dependent ordinarily on his daily wage for the maintenance of himself and family; that if the employer refused to pay him the wages he thought fair, he was nevertheless unable to leave the employ and resist arbitrary and unfair treatment; that union was essential to give laborers opportunity to deal on an equality with their employer.[3]

Since colonial times working men had banded together to form trade unions for the purpose of bargaining collectively with their employers. These had been, in the eyes of the law, private organizations and associations, and the resulting contracts similar to other contracts among and between individuals.

Now, labor organizations had come to be recognized as being affected with a public interest. And, if I may use the simile of the institution of marriage, the contract between the industrial employer and the employee union effected not only a contract relationship, but also a status in which the public must have an interest.

For, the product of a good management-labor relationship is far more than economic, although inevitably it results in economic advance and development of industry and labor and the purchasing public. It brings internal peace and a

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[2] American Steel Foundries v. Tri-City Central Trades Council, 257 U.S. 184, 209 (1921).

[3] NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1, 33 (1937).

community climate for good citizenship. It provides the material means for the healthy, well-adjusted family which is the necessary unit of our nation and source of our future citizens. It furnishes the essential economic guarantee of the dignity of every individual, the ultimate reason for the existence of these United States.

It must be admitted that the express aim of the National Labor Relations Act was: "To diminish the causes of labor disputes burdening or obstructing interstate and foreign commerce," [4] clearly a proper exercise of the power granted through the Constitution to the Congress.[5]

The Act stated:

> The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership associations substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.[6]

Hence, emphasis on the body economic's essential "oneness," on the total effect of the interaction of its members and the inseparability of its parts suggested that labor, if strengthened by a more equitable distribution of the nation's goods, promised increased material prosperity for the whole economy.

Thus Senator Wagner had described the depression immediately prior: ". . . when the domestic market finally closed to further investment, and foreign trade collapsed because our own people had no money with which to buy goods, the crash came . . . ."

A federal law providing for collective bargaining was argued, justified and defended as a step toward a sound economy. Nevertheless, it was obvious that the great humanitarian Senator from New York, long-time friend and political

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[4] National Labor Relations Act, prologue, 49 STAT. 449 (1935).
[5] U.S. CONST. art. I, § 8, cl. 3.
[6] National Labor Relations Act § 1, 49 STAT. 449 (1935).

comrade-at-arms of the Happy Warrior, appraised the economic fruits of labor peace as contributing to a social order based on the natural law and the teachings of the gospel.

Just four years before, His Holiness, Pope Pius Eleventh, in his encyclical on *Reconstructing the Social Order,* commemorating the fortieth anniversary of *Rerum Novarum,* had counselled:

> For, though economic science and moral discipline are guided each by its own principles in its own sphere, it is false that the two orders are so distinct and alien that the former in no way depends on the latter. . . . [R]eason itself clearly deduces from the nature of things and from the individual and social character of man, what is the end and object of the whole economic order assigned by God the Creator.[7]

Four decades prior, His Holiness, Pope Leo Thirteenth, had stated that ". . . capital cannot do without labor, nor labor without capital." [8] And his saintly successor asserted that ". . . the principles of right reason and Christian social philosophy regarding capital, labor and their mutual co-operation must be accepted in theory and reduced to practice." [9]

Advising that employers and employed conform to standards of justice and charity in reaching their agreements, the successor to Saint Peter added that they should ". . . be aided in this wholesome endeavor by the wise measures of the public authority." [10]

During more than two decades since adoption of the Wagner Act, American industry and labor alike have suffered the growing pains and conflicts that are the inevitable corollary of adolescence and the pledge of approaching maturity. The bystanding public, like parents, related in flesh and blood; in the same physical, social and economic family; and with shared material and spiritual destiny; have sought from time to time—perhaps not always fairly or wisely—to bring the discipline of good order to both.

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[7] *Quadragesimo Anno,* para. 42, FIVE GREAT ENCYCLICALS 136 (1939).
[8] *Rerum Novarum,* para. 15, FIVE GREAT ENCYCLICALS 8-9 (1939).
[9] *Quadragesimo Anno,* para. 110, FIVE GREAT ENCYCLICALS 154 (1939).
[10] *Id.* at para. 73, FIVE GREAT ENCYCLICALS at 145.

Attention has focused, as it traditionally does in a family, upon the miscreant industry or upon the delinquent union. There are some two hundred national unions, the vast majority of which are functioning according to the principles of the democratic way of life, with due respect to their constitutions and with conscientious leaders, faithful in performance of their duties to their membership, to contracting management and to their country.

Today, we are about to hear from the distinguished president of the American Federation of Labor and Congress of Industrial Organizations—a universally respected citizen of these United States, one whose career has been guided by the ideals of which His Holiness, Pope Pius Twelfth, spoke thus:

> Neither collective bargaining nor arbitration, nor all the directives of the most progressive legislation will be able to provide a lasting labor peace unless there is also a constant effort to infuse the principles of spiritual and moral life into the framework of industrial relations.

Indeed, spiritual and moral principles must animate management and labor in their relations with each other and with the public; but spiritual and moral standards must be the test of action, also, for all of our citizens as well as for their representatives in the Congress when legislating concerning the labor-management relationship.

I am confident that the major labor unions and the individual workers who constitute them would welcome legislation to prevent embezzlement of pensions and welfare funds, and conspiracy by management and fictitious unions to exploit employers and employed. Members of unions with democratic constitutions would rejoice in suitable regulations requiring unions to function in the spirit of our own representative government, and effectively barring from union offices those individuals whose unsavory lives in violation of law have proved them traitors to good citizenship.

It is apparent that public authority must extend greater protection to employees' rights within the union organization; must set a higher standard of fiduciary responsibility on the part of union officials; must safeguard pension and welfare funds.

Such legislative action must be prompt, deliberate and just. In order to provide a remedy for members of unethical and delinquent unions, care must be exercised not to trespass upon the rights of the membership in the vast majority of unions. This legislation must not be punitive and it should be calmly aimed in defense of the worker, with respect for his dignity and for his natural right to partake in an economic and social organization.

Above all, such legislation must be considered apart from those controversial issues in the labor-management relationship as to which there can well exist an honest difference of opinion among right-thinking men. Yet, no matter how beneficial, wise and just the constitutions of labor unions (whether independently deliberated or required by law), the rights of the union members cannot be protected by anyone but the member himself. Democratic methods presuppose participation by the membership in meetings, decisions and elections. Unless the union members are vigilant, they are refusing to pay the price of democracy.

It must be admitted that there is a need for legislation to correct those abuses that cannot be abolished from within the labor movement itself. There has arisen, however, a more urgent necessity—one that is apparent to much of industry and to the greater partnership of labor. I speak of the need for rededication to the principle of spiritual and moral life; a return to God.

The Declaration of Independence expressed the Founding Fathers' reverence for their Creator. There is a need in our time to express loving dependence upon Him who sent His Son here as a divine worker.