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Recommended Citation

James R. Morris (2016) "Mr. Fitzpatrick on the Morality of Right-to-Work Laws - Comment," *The Catholic Lawyer*: Vol. 2 : No. 3 , Article 2.

Available at: <https://scholarship.law.stjohns.edu/tcl/vol2/iss3/2>

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The discussion which Mr. Fitzpatrick began in the April 1956 issue of THE CATHOLIC LAWYER with his defense of the morality of the "Right-to-Work" laws is continued by Mr. Morris in the following direct reply.

MR. FITZPATRICK ON THE MORALITY OF RIGHT-TO-WORK LAWS—COMMENT

JAMES R. MORRIS*

IN A RECENT ARTICLE IN THIS JOURNAL, Bernard H. Fitzpatrick has demonstrated again a more thoughtful consideration of the issues involved in compulsory union membership than is common.¹ Nevertheless, he has arrived at major conclusions some of which appear to this writer to be untenable. Before advancing to the heart of the issue developed by the author, a few preliminary comments may be worthwhile.

Mr. Fitzpatrick correctly points out that "... the moral right of association is a freedom, not a compulsion." But he adds: "what follows from this, of course, is not that shop closure is unjustified but that shop closure cannot be justified by the principle of free association."² This is an unfortunate misstatement. It clearly follows that the moral right of freedom of association precludes shop closure since compulsory association or membership denies the freedom of association. Freedom to associate means the freedom not to associate, otherwise there is merely the compulsion to associate. The author correctly pointed out that the right to life outranks the right to work.³ However, we should not overlook the fact that in a complex market economy in which most individuals are employees, the right to work becomes necessary to sustain the right to life. Closing the doors to employment or even narrowing the doors to employment in the various ordinary vocations of life well may have the practical effect of interfering seriously with the right to life itself.

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¹ Fitzpatrick, *Morality of Right-To-Work Laws*, 2 CATHOLIC LAWYER 91 (April 1956).

² *Id.* at 97.

³ *Id.* at 93-94.

In discussing the area of both intrastate and interstate labor left open to state legislation, meaning the possible prohibition of compulsory union membership, the author concludes that "Right-to-Work" laws are "morally indifferent" legislation.⁴ He suggests that the problem may be compared to the taxing power of a public corporation. At least three questionable premises are involved in the reasoning which he developed: First, that the union benefits the reluctant worker; second, that the union, a private and self-seeking organization, may be equated with a public corporation; and third, that morality inheres in the use of government power to compel reluctant individuals to support government projects. Morally, all social organization, including government, is for the benefit of individuals, not the other way around. Insofar as there is a departure from this concept, there is a departure from morality.

To suggest that the legislator need not take notice because "the possible damage to the individual is minimal"⁵ is of questionable validity as moral principle. The most that can be said is that some wrongs work lesser injuries than do others. In addition, it should be noted that in practice this opens the door to collectivist philosophy through the implicit suggestion that the welfare of the reluctant individual may be disregarded in order to advance the group. We may conceive of morality and immorality as being at opposite poles. If a small degree of damage to the individual may be morally disregarded, this moves the base or criterion of morality one degree further towards the

pole of immorality. And a further movement of one degree from this new base likewise presumably may be justified on the grounds that it is minimal! Practically, this seems to be the way by which collectivists move continually towards submergence of the individual. Thus, today, a vast degree of socialism is accepted in the United States and continual moves towards more socialism are justified on the grounds that a small additional degree is of minimal injury to the individual and presumably is of great benefit to the collective mass.

But to come to the heart of the matter raised by Mr. Fitzpatrick, we must turn elsewhere. Insofar as the author suggests that there is moral justification for shop closure, he does so on the grounds that shop closure may be necessary to enforce standards, to prevent wage cuts.⁶ Thus he is concerned basically with the results of the competitive market mechanism. The nature and functioning of the market mechanism is a complex matter which cannot be developed in this brief space.⁷ A few of the elements of the problem may be examined however. The author contends that it is immoral for a worker to displace another by accepting a wage lower than the other has been receiving.⁸ The reasoning involved therein also is the case for restricting output to the level of the least productive in order to prevent a more-productive worker displacing the less-productive worker. Indeed, there is no substantive difference between displac-

⁶ Fitzpatrick, *supra* note 1, *passim* (especially pp. 97-107).

⁷ See Knight, *The Determination of Just Wages*, in *TWENTIETH CENTURY ECONOMIC THOUGHT* 465 (Hoover ed. 1950) for a discussion of wage determination.

⁸ Fitzpatrick, *supra* note 1, at 97.

⁴ *Id.* at 95-96.

⁵ *Id.* at 96.

ing a worker by accepting less pay for the same work and displacing him by doing more work for the same pay. Indirectly, adoption of the author's reasoning leads to adoption of the socialist slogan or principle, "from each according to his ability; to each according to his need." Manifestly, uniform output and wage standards would compel such low levels of production and consumption that such standards are rejected. And, of course, the socialist notion is equally impossible. The difficulty arises in that wages are payments for services rendered and the values of the services which different people are able or willing to render are of varying worth. And these varying values are determined by causes quite apart for the most part from the nature of the market mechanism which is an organizing and facilitating device.

The author, because of his preoccupation with the maintenance of "standards," says that an industry-wide strike in the coal industry would be justified *because* a common standard is involved.⁹ This overlooks the fact that this is merely the exercise of union monopoly power. The apparent strike against the commercial operators really is merely bargaining through the employers, as intermediaries in the market, with the consumers of coal. It is the use of the coercive force of collective action to take what is wanted by a producer-minority group.

The mere erection and maintenance of fixed "standards" cannot be surrounded with an aura of morality. Indeed, competitive forces cause standards to rise towards the level of the most efficient and productive producers rather than vice versa, as witness the historical trend of real wages in

the United States. There is a far greater morality in freedom—which is a primary moral value in itself—plus flexibility and growth of the economy, which benefits all in the long run, than in the maintenance of the inflexible standards of monopoly by producer-minorities.

Mr. Fitzpatrick tries to justify shop closure in certain circumstances on the grounds of material benefits—the maintenance of "standards"—allegedly flowing from unions. The pastor of the Sacred Heart Church in Staples, Minnesota has said succinctly:

Man's personal freedom is not something which he owes to society, or something that society must at times disregard for material advantages, but something anterior to society and something upon which all Christian civilized organization must depend.

When we see this we have the proper notion of Christian freedom; when we fail to see it, we deny the very foundation of morality, substituting utilitarianism for ethics.¹⁰

Group price fixing by labor unions functioning as bargaining agents for bargaining units (and binding reluctant workers) is the partial socialization of wages and labor since the relevant issue in socialism is power or control. Very grave moral and ethical problems are involved in the continuing trend towards the elevation of the "group" and the submergence of the individual. Shop closure to facilitate the maintenance of monopoly standards cannot be justified morally since this is the improper use of force. Force may be employed morally only to resist the pressure of immoral force or power.

¹⁰ FALQUE, THE TRUE PURPOSE OF RIGHT-TO-WORK LAWS (Heritage Foundation).

⁹ *Id.* at 104.