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A MORAL STUDY*

WILLIAM J. KELLEY, O.M.I.; LL.D.

SECTION I

ON OCTOBER 16, 1946, certain leaders of the Jewish, Catholic and Protestant faiths published a Declaration called "Pattern for Economic Justice." The Declaration enunciates eight rules of conduct, applying them to the thoughts and the actions of persons in the industrial arena and judging the same. The signers of this document acted as individuals not as official representatives of any religious bodies. Yet the signers were men of experience in the field of morality with specialized experience in industrial relations and human relations; hence their eight-point program—Pattern for Economic Justice—was a meeting of the minds on social and moral matters. This meeting of the minds deserves restating at this time.

1. The moral law must govern economic life.
2. The material resources of life are entrusted to man by God for the benefit of all.
3. The moral purpose of economic life is social justice.
4. The profit motive must be subordinated to the moral law.
5. The common good necessitates the organization of man into free associations of his own choosing.
6. Organized cooperation of the functional economic groups among themselves and with the government must be substituted for the rule of competition.

*This article is one of three contained in the booklet *'Right-to-Work' Laws — Three Moral Studies*, published by the International Association of Machinists and reprinted here with permission. Similar views were expressed by the authors of the two remaining studies, Dr. Israel Goldstein, Rabbi of the Congregation B'nai Jeshurum in New York and Rev. Dr. Walter G. Muelder, Dean and Professor of Social Ethics, Boston University School of Theology.

Father Kelley is a Lecturer at The Catholic University of America. He was formerly Chairman of the New York State Labor Relations Board and Director of Education for the New York State Joint Legislative Committee on Industrial and Labor Conditions.

7. It is the duty of the State to interfere in economic life when necessary to protect the rights of individuals and groups, to aid in the advance of the general economic welfare.
8. International economic life is likewise subject to the moral law.

This eight-point program carries explanatory notes for each point and a policy statement from the respective faiths and the names of the signers.

INVITATION

I, Reverend William J. Kelley, O.M.I., LL.D., was invited to write an article on "Right-to-Work" legislation, for *THE MACHINIST*, official publication of the International Association of Machinists, by their esteemed President, Albert J. Hayes. Permit me to draw the attention of the reader to the following statement which appears on page 1 of each copy of this paper.

THE MACHINIST is read by more than 3,000,000 in the United States, Canada, Alaska, Hawaii, and the Canal Zone.

To be invited to write for such a vast number is indeed an honor and a tremendous responsibility. I accept the honor extended by President Hayes with abiding appreciation. I assume the responsibility with honesty and humility. Primarily, but not exclusively, these 3,000,000 readers of *THE MACHINIST* are gentlemen and gentleladies of the labor movement. These 3,000,000 readers are of different races and of different religious faiths. Mindful of this fact my first affirmative statement is a definition of man. Man is a creature of God, made to His image and likeness; he has a body and a soul; he is endowed with an intellect and will. He has rights and duties—both personal and social.

Pursuant to canon law this article has been submitted to my proper ecclesiastical and religious superiors and has their approval.

In writing this article I wish to stress the importance, need of and relationship to religion. As Leo XIII states:

We approach the subject with confidence, and in the exercise of the rights which belong to Us. For no practical solution of this question will ever be found without the assistance of Religion and the Church. It is We who are the chief guardian of religion, and the chief dispenser of what belongs to the Church, and We must not by silence neglect the duty which lies upon Us. Doubtless this most serious question [the social] demands the attention and the efforts of others besides Ourselves—of the rulers of States, of employers of labor, of the wealthy, and of the working population themselves for whom We plead. But We affirm without hesitation that all the striving of men will be vain if they leave out the Church.¹

A great American likewise stressed the importance of religion. Witness the testimony of George Washington:

Of all the dispositions and habits, which lead to political prosperity, Religion and morality are indispensable supports. . . . [R]eason and experience both forbid us to expect, that national morality can prevail in exclusion of religious principles.²

To those who hold that religion and business are to be separated and "never the twain shall meet," I say in the language of the hour, "I won't buy that." Such a theory is tantamount to excluding God from the economic and social thoughts and actions of man. No man can put God out

¹ *Condition of the Working Classes* (Encyclical *Rerum Novarum*), para. 13 (May 15, 1891).

² PADOVER, *THE WASHINGTON PAPERS* 318-19 (1955).

of his world. Man is a social being created by God. Man is not an economic unit. His final end is God and not economic production. Precisely because he is a moral being, he has certain rights and responsibilities as an individual and as a social person, and I now invite the men and women of good will in general, and Catholics in particular, to examine what the Catholic Church teaches regarding those rights and responsibilities and their relationship to present day "Right-to-Work" laws enacted in 17 states.

The major portion of the content material herein written rests on the natural law, and the natural law is written in the hearts of all men, regardless of their race or religion.

SECTION II

The Natural Law

Man, the moral being, is not an isolationist. By his nature he is a social being. Since he lives in society and not in a vacuum, there are social principles he must know. Since man is a rational creature he has the ability and capacity to think. Precisely because he is a rational, moral, social being man ought to know his rights and demand them; he ought to know his duties and fulfill them. Let us now consider one of man's inalienable fundamental God-given rights.

There is resident within man a natural instinct for association. This instinct man has from his very nature from the day he was created by God. This God-given instinct antedates and takes precedence over any statutory recognition, whether by federal, state or municipal law. Inherent in man's nature is the desire and need for association. Leo XIII, in his famous en-

cyclical letter on *Condition of the Working Classes*, writes as follows: "Experience of his own weakness urges man to call for help from without."³ Leo is fortified in this declaration by Sacred Scripture and he cites two texts from the *Old Testament*.

It is better that two should be together than one for they shall have the advantage of their society. Woe to him that is alone for if he falleth he has none to lift him up. *Ecclesiastes*—Chapter 4, Verses 9 and 10.

A brother that is helped by a brother is like a strong city. *Proverbs*—Chapter 18, Verse 19.

The yearning to satisfy this instinct of association comes naturally to man and is his by right.

Right reason and Sacred Scripture both support man's right to association.

The Duty of Government

Since man has this natural right, society has the obligation to honor this specific right. Leo XIII says:

Rights must be religiously respected wherever they are found and it is the duty of public authority to prevent and to punish injury, and to protect each one in the possession of his own. Still, when there is a question of protecting the rights of individuals, the poor and helpless have a claim to special consideration. The richer population has many ways of protecting themselves, and stand less in need of help from the State; those who are badly off have no resources of their own to fall back upon, and must chiefly rely upon the assistance of the State. It is for that reason that wage earners, who are, undoubtedly, among the weak and the necessitous should be especially cared for and protected by the Commonwealth.⁴

³ *Condition of the Working Classes*, para. 37.

⁴ *Id.* at para. 29.

Leo XIII further defines the obligation of society to honor this specific right of association:

Civil society exists for the common good and, therefore, is concerned with the interest of all in general and with the individual interest in their due place and proportion. Hence, it is called public society, because by its means, as St. Thomas Aquinas says, "men communicate with each other in the setting up of a commonwealth."

But the societies which are formed in the bosom of the State are called private and justly so, because their immediate purpose is the private advantage of the associates. . . . Particular societies that although they exist within the State and are each a part of the State, nevertheless, cannot be prohibited by the State absolutely as such. For to enter into a society of this kind is a *natural right* of man, and the State must protect natural rights, not destroy them, and if it forbids its citizens to form associations it contradicts the very principle of its own existence, for both they and it exist in virtue of the same principle, namely, the natural propensity of man to live in society.

There are times, no doubt, when it is right that the law should interfere to prevent associations, as when men get together for purposes which are evidently bad, unjust or dangerous to the State. In such cases, the public authority may justly forbid the formation of the association and may dissolve them when they already exist. But every precaution should be taken not to violate the rights of individuals and not to make unreasonable regulations under the pretense of public benefit. For laws only bind when they are in accordance with right reason and therefore, with the eternal law of God.⁵

St. Thomas Aquinas in his *Summa Theologica* writes as follows:

Human law has the nature of law insofar as it partakes of right reason; and it is clear

that in this respect it is derived from the eternal law. But insofar as it deviates from reason, it is called an unjust law and has the nature not of law, but of violence.⁶

Men in America join unions of the necessity of things. A primary purpose men have in joining a union is that in concert with their fellow members, they strive to achieve better wages. Leo XIII has some very specific thoughts on wages.

There is a dictate of nature [emphasis added] more imperious and more ancient than any bargain between man and man, that the remuneration must be enough to support the wage earner in reasonable and frugal comfort. If through necessity or fear of a worse evil, the workman accepts harder conditions because an employer or contractor will give him no better, he is the victim of force and injustice.⁷

SECTION III

The Quest for Security

The American working men and women have over the years, sought to protect their primary right of association by seeking security clauses in their collective bargaining contract. There are three security clauses and they are as follows:

1. *Maintenance of membership.*

This clause compels a union member to retain his or her membership for the duration of the contract.

2. *Union Shop.*

Under this provision all workers in a plant must become union members within 30 days of being hired.

3. *The Closed Shop.*

Under the closed shop provision, the employer may hire and employ only union members. The closed shop has been outlawed by the Taft-Hartley Law.

⁶ *SUMMA THEOLOGICA*, I, II, q. 93, art. 3.

⁷ *Condition of the Working Classes*, para. 34.

⁵ *Id.* at paras. 37, 38.

One of the most eminent authorities on the subject of the closed shop is the Reverend Dr. Jerome Toner, O.S.B., who received his doctorate from The Catholic University of America, writing on the closed shop. In *The Closed Shop in The American Labor Movement*, Father Toner writes:

The position of the Catholic Church on the closed shop, although not specifically endorsing it, is on the whole, favorable to it. Having regarded organization of employees as the normal condition, and, according to Monsignor John A. Ryan, "never accepting the philosophy of individualism and unlimited competition," the Catholic Church defends the natural right of men to join "the most important of all associations within the State, working men's organizations. Leo XIII considered these associations to be part of the State, and under given conditions the closed shop may be used without offending Catholic morality."⁸

Father Toner then cites The American Hierarchy statement, *The Church and Social Order*.

"If silence gives consent," Father Toner writes, "there is unqualified endorsement of the closed shop. If the closed shop is an evil, if it is un-American, if it is immoral, then the document reaffirming 'the jurisdiction of the Church as the teacher of the entire moral law, and more particularly as it applies to man's economic and social conduct in business, industry and trade,' could not have overlooked the closed shop when it condemned the abuses of unionism."⁹

In all efforts to achieve security clauses in collective bargaining contracts, it is absolutely necessary that such efforts should be morally achieved and democratically

operated. There must be no violence, no force, no intimidation of any kind, direct or indirect, exercised by labor in its quest for security clauses.

In my judgment the security provisions with the above condition observed, are proper moral matter for collective bargaining contracts. They are a necessary means to the security sought in the act of association. To deny the use of a necessary means to obtain a just end, namely, the right of association, is contrary to sound social morality.

SECTION IV

The writer of this article has had 21 years experience in the field of labor relations. This includes both state and federal service. It was my privilege to have been Chairman of the New York State Labor Relations Board from 1943 to 1949; and from 1949 to 1954, I also served as an arbitrator for the Federal Government. Based on these 21 years of personal experience, I am of the considered judgment that the majority of American working men and women are fundamentally good people. During this period of 21 years, I have had a chance to study both the national policy and the policy of several states regarding union security.

It is a matter of historical record that the national policy of our government in the first part of the 20th Century was anything but favorable to the working man.¹⁰

It is found that concerted activity was "a combination" in restraint of trade or commerce among the several States.¹¹

¹⁰ See *Loewe v. Lawlor*, 208 U.S. 274 (1908) (Danbury Hatters case).

¹¹ See also *Lawlor v. Loewe*, 235 U.S. 522 (1915); *United States v. Workingmen's Amalgamated Council*, 54 Fed. 994 (1893).

⁸ TONER, *THE CLOSED SHOP* 177 (1944).

⁹ *Id.* at 181.

Federal Policy

The policy of the Federal Government changed and was spelled out in the Wagner Act of 1935 which gave legal recognition to man's fundamental right to join associations of his own free choosing. The legislative intent of the Congress of the United States was to encourage collective bargaining.

In 1947, the national policy changed again. The Labor-Management Relations Act declared men were free to join or not to join a union. The federal statutes outlawed the closed shop and permitted the union shop under certain conditions. The union shop restriction was later removed, because experience showed that the overwhelming majority of union employees voted for such union shops when that issue was put before them in the democratic privacy of the election booth. The federal statute still outlaws the closed shop.

State Policy

During the period from 1935 to 1945, several states enacted labor relations laws. These statutes say that the state policy is to encourage collective bargaining.

Right-to-Work Legislation

In recent years, 17 states have passed legislation called "Right-to-Work" laws. I wish to state my position regarding these laws and in so doing I am writing as a moralist and ask the reader to regard me as an advocate of justice and charity for the employer, employee and the public.

While the 17 statutes may have certain variations in language they have the end-result in common—union shop is outlawed. I would like to direct the attention

of the reader to these state statutes. The "Right-to-Work" laws themselves give no guarantee of any kind that men may get a job. Some of our beloved Americans think that these new statutes assure men of a job. These statutes have this in common:

1. That no worker should be required to be a member of the organized labor movement to obtain or retain employment.
2. That the union shop clauses in a labor contract conflict with individual freedom of the worker to work where and how he pleases.

So according to the state, protection of the worker's freedom demands that the union shop should be prohibited.

At first blush these declared objectives seem quite harmless and persuasive; but that is far from the reality of the economic arena and they also conflict with social morality. Let us examine the argument that no worker should be required to be a member of a union to obtain or retain employment. The proponents who advance this argument seem to me to overlook the justice of the issues involved, they seem to ignore man's *social* responsibility and in this legislation they put individual claims before that of the majority of employees in a given plant. The proponents overlook the fact that union members have marched on picket lines, have paid dues—money for legal counsel and research experts to help achieve the common good of the group to which the union man belongs.

I think for a man to insist that he shall exercise his God-given right and duty to work against a particular employer and against the majority rule of his fellow-workers, is unjust. I hold that history testifies that the union shop in America has

been a stabilizing influence in industrial relations. I hold that the same American history testifies that open shop legislation has only led to unrest and low wages. Such was the story of the "American Plan 1920-1923." I hold that such legislation makes a mockery of the constitutional right to organize for the common good and welfare.

In responding to the second argument relative to the worker's freedom, it is essential for a proper judgment to understand what kind of a right-to-work man has. Man doesn't have an absolute right. A right to work is a relative right and is related to the other rights of individuals and groups. We ought to be very careful and calm when we evaluate the term "freedom" because sometimes liberty is insincerely advanced as an argument whereas in reality private interests are the motivating consideration behind the proponents' cry of violation of freedom. It seems to me that this "Right-to-Work" legislation defies the majority rule of our democracy and even goes to the extent of placing an individual right before the group rights of fellow-workers.

There is no such thing as unlimited freedom; freedom to be genuine must be exercised within reasonable limits, which limits are spelled out in the natural, moral law which is written in the hearts of all men.

Backward Steps

In 1908 and in 1915, the United States Supreme Court rendered some decisions that involve man's right-to-work.¹²

In their essence, these decisions hold "that the right of the worker to bargain in majestic and poverty-stricken aloofness for

the wages of his services is a right of which he cannot be deprived."

In the *Hitchman* case,¹³ Justice Brandeis wrote a dissenting opinion dealing with the subject of the right-to-work which seemed to be more realistic than the majority opinion. This realistic thinking of Justice Brandeis was later followed and spelled out in the rights of collective bargaining.

I think that prudence prompts us to take judicial recognition of this fact of economic life and of labor relations; namely, that if employees are able to secure the benefits of the union without their burdens, members would tend to drop out and unions would become ineffective.

In my general conclusion that union security is morally justifiable, I am in the company of such distinguished moralists as Archbishop Rummel of New Orleans, whose recent message to the Louisiana Legislators merits the reading of those interested in this legislation. Similarly, I am in company with such scholars as Reverend William J. Smith, S.J., Reverend Benjamin Masse, S.J., and Reverend Louis Twomey, S.J. Also, Reverend Dr. John Cronin and Monsignor George Higgins. I am also in the company of the editors of the "St. Louis Register," official organ of the Archdiocese of St. Louis, whose language is:

The avowed purpose of the Right-to-Work Bill in Missouri is to protect the worker from paying dues against his will as a condition of employment.

The actual purpose is to hamstring unions.

The real aim of this campaign, although it pretends to be interested in protecting the

¹² *Adair v. United States*, 208 U.S. 161 (1908); *Coppage v. Kansas*, 236 U.S. 1 (1915).

¹³ *Hitchman Coal & Coke Co. v. Mitchell*, 245 U.S. 229 (1917).

individual worker, is to destroy unions by making them ineffective.

Based on this analysis of the law and the principal arguments of the proponents, I hold that these "Right-to-Work" laws take way from man a necessary means to achieve and protect his God-given right of association.

CONCLUSION

1. "Right-to-Work" laws are immoral according to Catholic social teaching.
2. No man or woman of good will should contribute money to proponents of this legislation to defray "the educational campaign expenses." To contribute financial aid would be morally wrong.
3. All good men and women, Protestants, Jews, and Catholics should seek by every *just* means to get such "Right-to-Work" laws repealed and should oppose them whenever they are proposed.
4. Men of good will should not be a party to or cooperate with the proponents of "Right-to-Work" laws.
5. The "Right-to-Work" bills don't guarantee the individual any right at all. They provide him with an opportunity to work alone, to work at less than union wages.
6. The "Right-to-Work" laws recall the

"American Plan" or Open Shop Plan of 1920-24, which led to low wages, strikes, industrial unrest.

7. The "Right-to-Work" laws may well be an invitation to disaster of the general welfare.

SPECIAL PLEA

Leo XIII points out the pre-eminent position of legislators:

Some there must be who dedicate themselves to the work of the commonwealth, who make the laws, who administer justice, whose advice and authority govern the nation in time of peace and defend it in war. Such men clearly occupy the foremost place in the State and should be held in the foremost estimation, for their work touches most nearly and effectively the general interest of the Community.¹⁴

I appeal to the Legislators of the seventeen states to repeal the "Right-to-Work" laws now in existence.

I can find no more powerful way to conclude these conclusions than by the following quotation of Pope Pius XII:

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.

¹⁴ *The Condition of the Working Classes*, para. 27.