

Trade unions and individual liberties

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From time to time, we read in the Press of attempts by trade unions to enforce a so-called closed shop. More often than not, it is really a union shop that is being sought, whereby all workers in an establishment are required to join the appropriate trade union: a closed shop implies that only workers who already belong to the union can be considered for engagement in the first place. The subject is one which arouses strong feelings on both sides. On the one side, it is regarded as a natural right of the trade unions, and, on the other, as a gross interference with the liberties of the individual citizen. The argument is not confined to Britain. It has long been a subject of debate in the United States, where the closed shop is illegal under the Taft-Hartley Act, but the union shop is permitted by Federal law, though it may be banned by State law. On several occasions, attempts have been made to introduce 'right to work' laws which would ban the union shop in the State concerned. For the most part, Catholics have been prominent in their opposition to these moves to ban the union shop, and have shown greater unity on this issue than have English Catholics. The subject is clearly an important one, and calls for careful and dispassionate study in the light of moral principles and the realities of the world in which we are living.

There can be no doubt that the closed shop, properly so-called, is open to serious abuse. If the union denies entry to men who are quite capable of doing a certain job, and a closed shop is being operated, these men are denied the chance to earn their livelihood in a particular way. In such circumstances, the union might be able to use its bargaining power to extort unjustly high wages from their employers, and to cause injustice to the community at large by raising the price of certain goods unnecessarily. On the other hand, if a craft union is prepared to enroll all those who have served their apprenticeship, if the ratio of apprentices to journeymen is not unreasonably restricted, and if apprenticeship is genuinely required to qualify a man for the job, the closed shop would be open to no more, and to no less, objection than is the union shop. It is therefore upon the latter that attention must be concentrated.

Two arguments are commonly used in connection with the union

shop. The argument of the unions is that they are conferring substantial benefits on all workers covered by the agreements they make with employers, and that it is wrong for non-members to enjoy these benefits without contributing towards the support of the union. Against this it is argued that a man ought to be free to decide whether or not he will join a union, and he cannot be genuinely free if failing to join will mean that he is not allowed to earn his living in certain ways. Both arguments are over-simplified and need to be scrutinized carefully.

Some Catholic writers have gone so far as to state that there is an obligation in commutative justice for the worker to join his union. This line of argument is difficult to follow, for commutative justice is concerned with the exchange of goods or service. There is an obligation to give the exact value of what one receives in the exchange, or in other words to pay the just price when buying and not to ask more than this when selling. Normally, however, one is not compelled to take part in any exchange if the price is not attractive. One might be morally bound to pay £2 for some article if buying it, but if one did not think it worth paying that much there would be no compulsion to buy. It is difficult to see how the worker comes under an obligation in commutative justice, binding, as such obligations necessarily are, under pain of sin and carrying the duty to make restitution, merely by working in an industry where the union is operating. He has not entered into a bargain or contract with the trade union to the effect that it should render him specified services in consideration of which he would pay a specified membership subscription. Whatever obligation the worker may be under towards the union, it cannot be one of commutative justice.

Moreover, it would be exceedingly dangerous to generalize the argument that a man who benefits in some way from the activities of others should be compelled to contribute towards the cost of those activities. We all benefit in many ways from the activities of our fellow men, but rarely are we presented with a bill for our share of the cost of these activities. If Bill Brown builds a garden wall to protect his plants from cold winds, the cost of that wall is his concern and his alone. He cannot reasonably expect Jack Jones to contribute because his plants also derive some protection. Jack Jones may welcome the fact that his garden is now more sheltered, but he may well have considered the desirability of building a wall and decided that he was not prepared to make any significant payment in order to improve his garden in this way. This being so, it would be totally unjust for him to be compelled to make such a payment because he derives this benefit as an incidental result of Bill

Brown's decision to build himself a wall. Any argument that a worker is under an obligation to join his union must therefore be a special one. It cannot be one in commutative justice, and it cannot arise simply from the fact that he benefits from the activities of the union.

If such an obligation exists, it must surely be one in social justice, arising from the duty on society as a whole and on individual members of society to promote justice and the common good. In so far as the union was necessary for securing just wages and decent conditions of employment for the workers in an industry, an obligation *might* arise on the individual worker to support the union. This being so, the obligation to join would be greatest when the union is most in need of increasing its bargaining power. Normally, bargaining power is weak when membership is low. To-day, many unions are able to secure voluntary membership on such a scale that their bargaining power is unaffected by the small minority of non-members. It is, in fact, in just this kind of situation that British unions have been inclined to fight for the union shop. Its achievement would achieve nothing except a slight increase in funds. It is therefore impossible to accept the argument on behalf of the union shop that 'the proportion of workers who are members of the union must be so high as to give the union virtual control over the labour supply.'¹

The obligation to join the union arises not because the individual benefits from its activities but from the fact that his membership may be necessary to the promotion of a just social order. It therefore follows that the obligation can only exist in so far as the activities of the union are, in fact, directed, at least in the main, towards such an end. In the event of the activities of the union being directed towards ends which were not just, the obligation to join would automatically cease. Two further rules may be stated. Since the existence of an obligation to join the union is conditional, it follows that the decision to enforce a union shop cannot be left to the unfettered control of the union itself. Whilst it does not follow that the State would be justified in legislating for the outright proscription of the union shop, it would be justified in exercising such controls over the trade unions as would ensure that no worker was compelled to join an organisation seeking to promote unjust

¹J. R. Kirwan, 'Changing Trade Unions', *Christian Democrat*, January 1961. It might perhaps be possible to argue that there is still an obligation on each individual to join, and that this obligation does not cease to exist for a few because the majority have already honoured it.

ends.² Secondly, an obligation to support the union exists only in relation to those activities that are directed towards the immediate task of securing justice in the wage contract between worker and employer. It does not apply to those activities of the union which are of wider consequence, even where these have an indirect bearing on the wage contract and the character of the economic and social order. In other words, a man may be under an obligation to support the work of the union in collective bargaining, but not its political activities.

The operation of the union shop involves, in the present state of the law, a serious threat to the freedom of the individual to seek any employment for which he is qualified. If he is expelled from the union *for any reason whatsoever* and a union shop operates, he is denied the opportunity to seek certain jobs, and may actually be dismissed from a job he already holds. The man who is simply too mean to pay his union dues deserves little sympathy, perhaps: so too the man who remains at work during a just strike because he is unwilling to share the sacrifices of his fellow workers. There are other cases, however. A man may be expelled because he has refused to take part in a strike that was totally devoid of justification. In such a case, he is being deprived of his livelihood because he refuses to participate in an immoral act, and it is intolerable that society should permit the unions to exercise so grave a sanction in such a case, or indeed at all.³ It is, perhaps, arguable that an individual worker ought not to be too ready to put his judgment before that of his union when considering the morality of a strike. There are bound to be many instances where moral judgments are extremely difficult to make,

²It may be accepted that the ends of the British trade union movement in the industrial field are just. This does not mean that there are not occasions on which particular unions or even the T.U.C. pursue unjust ends. Occasional lapses would not oblige a worker in conscience to resign his membership, nor even alter the obligation to join. Nevertheless, it will be argued below that a member is under an obligation to do whatever he can to ensure that his union is pursuing just objectives, and that it is wrong for an individual worker to be subject to any penalty because he refuses to give active support to unjust policies.

³Many members of the labour movement have been reluctant to apply to the expulsion of a union member where a union shop exists the arguments they themselves have used in the exactly parallel case of an association of manufacturers collectively stopping supplies to a price-cutting dealer.

and when it is safe to accept orders from above.⁴ Nevertheless, the idea that a worker has no responsibilities in this matter must be rejected. He must, of course, use his judgment as a union member entitled to vote at meetings where union policy is determined. A point may be reached where he is under a moral obligation to do more, and to refuse to give active support to a policy which he believes, perhaps even knows, to be morally wrong. Even if circumstances may relieve him of the *obligation* to refuse such active support, the law ought to give him full protection if he should decide to refuse it.⁵

At the present time, the law affords only limited protection to the trade unionist who might be expelled by his union and lose his job because of the operation of the union shop. In the case of *Bonsor v. Musicians' Union*, the Court ruled that a contract exists between the union and each one of the members, and that an expulsion that does not conform to the rules of the union constitutes a breach of that contract. If the member suffers loss through such expulsion, he is therefore entitled to sue for damages. This protection, useful as it is, is inadequate. In the first place, the expulsion may take place and the member suffer considerable hardship over a long period before he receives redress.⁶ Sec-

⁴Granted that other methods of securing a settlement have been tried, and that the act of withdrawing one's labour is morally an indifferent act, the morality of any strike must be judged by the principle of 'double effect'. This requires the fulfilment of three conditions. First, the strikers must not intend but only permit any evil consequences of their action. Secondly, the good they seek must not follow directly from the evil consequences. It would certainly be wrong to strike with the deliberate intention of causing hardship to innocent parties in order to influence the employers. Thirdly, the good in view must be sufficient to justify the evil consequences, and this can be extended to require that there is a reasonable chance of securing this good. (It is, of course, presumed that the strike is for a just cause.) Clearly, this balancing of the good the strikers have in view against the harm done to innocent parties by the strike, and the estimation of the chances of success are matters on which opinions can differ.

⁵In fact, if the majority of workers are on strike, nothing is really gained by a small minority reporting for duty. Few big firms, certainly, would be able to find useful employment for a small minority of the workers. Since the worker would do little harm by staying away, the threat of a serious sanction being used against him would be sufficient to justify his joining the strike. Nevertheless, it must not be forgotten that this case is no different in principle from that of the soldier who is given an order by his superior officer to carry out an immoral act, e.g. to shoot innocent civilians.

⁶There seems, however, to be no reason why the member should not seek an injunction to restrain the union from proceeding with the proposed expulsion. This might avoid the hardships that would otherwise result.

only, it offers no protection in a case where the expulsion is, in fact, in order according to the rules of the union, unless the procedure adopted by the union ignores the requirements of natural justice or the rules themselves are unsatisfactory. The first proviso means that the Courts would probably insist the union should give the member a proper opportunity to answer the allegations that have been made against him. The second means that the Courts would be reluctant to permit the union to frame its rules so as to give it arbitrary powers of expulsion, or to make the union the final arbiter on the interpretation of the rules, thereby denying the member the normal right of every citizen to enjoy the protection of the Courts. There remains, however, the case where a clearly stated rule has been broken, where the union has been scrupulously fair in the procedure adopted, but where the breach of the union rule involved conduct that was in no wise reprehensible but rather the opposite—the case of a man who refuses to obey a clearly immoral strike call.

There is much to be said in favour of the American law which denies the union the right to expel a member when a union shop is in operation for any cause other than non-payment of dues. It is extremely difficult to justify the use of so grave a sanction as expulsion, where it carries with it loss of livelihood, for *any* breach of trade union rules. There is no justification whatever for that power being left in the hands of the unions themselves. If it is to be exercised at all, it should be by a completely independent body that would be guided by sound moral principles and not the peculiar morality of the trade union movement.

There is a choice that the trade union movement should be forced to make. In certain circumstances it might be permitted to enforce the union shop, but at the sacrifice of the power to determine its membership. It would have to enroll all eligible members, and would lose the right to expel paid-up members. Alternatively it could retain full freedom of control over membership but forfeit the right to enforce the union shop.

While there may be an obligation on a man to support the work of his union as a collective bargaining agency working for a just wage contract for its members, he is under no obligation to support its wider political activities. This has been recognized, in part, by Parliament. In the *Osborne Case* in 1909, the Court had held that earlier legislation had defined the scope of trade union activities and that the definition was intended to be comprehensive. Since no mention was made of political activities, such activities must be *ultra vires*.⁷ Amending legislation was

⁷So, presumably, were many more, but only the political levy had been challenged.

introduced, in 1913, to permit the unions to give financial support to candidates at elections. A special political levy was required for this purpose, and members of the union had to be given the right to contract out without prejudice to their rights as union members.⁸ To a limited extent, therefore, the trade union member is free from any compulsion to contribute to the support of political activities of which he disapproves, a desirable safeguard or right under any circumstances (since it is always desirable that a man should join his union) and a vital one where union membership is obligatory.

Again, however, this protection is not really adequate. Political activity may take many forms. It does not only take the form of giving financial support to election candidates, to which the 1913 legislation refers. In January 1961, for example, the T.U.C. and a number of individual British unions announced their intention to give financial support to the strikes organised by the socialist unions in Belgium. Such strikes were clearly political in their character, being aimed at forcing the Government to amend its austerity programme rather than securing justice from the employers. Whether or not such strikes are justifiable, the support given them by the British trade union movement represented support for political activities with which many union members might disagree. No worker should be *forced* to join a union which is supporting such political activities.⁹

Political strikes of this kind have rarely if ever occurred in this country. Nevertheless, they have been mooted at various times. It has been suggested, for example, that industrial action might be used to oppose proposed de-nationalisation measures. On the whole, it seems a safe conclusion that industrial action for political ends cannot be justified. Two objections can be levelled against such action. In the first place, it comes dangerously near to resistance to the civil power, and therefore only justified in the most desperate situations. In any democratic society, we can rule such justification out. Secondly, such action almost certainly

⁸Between 1927 and 1945, members wishing to pay the levy were required to contract in. Despite the importance attached to the two approaches by the unions and some of their critics, there really seems little difference.

⁹Arguments used by the T.U.C. spokesman when their intention to make a loan was announced, to the effect that they had not considered the rights and wrongs of the dispute, and that the money was being given to relieve hardship among families of strikers are untenable. First, the facts were already public knowledge, and, in any case, to spend or lend £50,000 without knowing anything about the cause for which it will be used is dangerously irresponsible. Secondly, relief to the strikers would undoubtedly help to prolong the strike and increase the hardships to many other innocent persons.

seeks to influence the government by inflicting hardship on innocent persons. Where the evil consequences of an act are *intended*, not merely *permitted*, the act is morally wrong. It follows that if any question should arise of British unions adopting industrial action for political ends, the individual worker should be given adequate protection. Not only should the union member be protected against expulsion where the union shop exists, the worker should have the right to withdraw from membership without penalty because he opposes the immoral activities of the union.¹⁰

This is not an argument that the unions ought to refrain from intervention in politics. There is plenty of scope for them to express a view on various political issues. There is no objection to their supporting candidates at elections so long as those of a different political persuasion are allowed to contract out of the political levy. In the case of direct industrial action for political ends, it is desirable that such action should be made illegal, and the protection of union funds from actions in tort abolished. Subject to these provisos, the unions might be allowed full freedom to take part in political activities. It might still be preferable that if a union wishes to take advantage of this freedom, it should refrain from enforcing a union shop. Again, refraining from enforcing a union shop would be a necessary condition of the union's retaining full control over the membership. In other words, the union could regard itself as a purely voluntary society subject only to a minimum of outside interference: when membership is a condition of employment, a trade union ceases to be a truly voluntary society and should therefore be subject to much stricter scrutiny by the State and the Courts. Finally, if the trade unions were to be fully voluntary societies, abuse of power might be much more difficult. Would the E.T.U. abuses continue if members were free to withdraw? Taking all things into account, there is a great deal to be said for not enforcing a union shop.¹¹

¹⁰This applies whether he opposes the activities of the union because he disapproves of the ultimate aim or because he realises the immorality of the means being used.

¹¹In the case of the E.T.U., of course, the leaders might well do all in their power to enforce a closed shop. This kind of abuse might only be affected, therefore, by legislation against the closed shop. An alternative would be the American system whereby a union is given negotiating rights for a limited period after a ballot conducted by a government agency. This would give workers an easy method of overthrowing an unsatisfactory union leadership by secret ballot. This would, of course, require the British trade union movement to revise its ideas about the Bridlington Agreement against 'poaching' by unions in fields where one union has a foothold.