BOOM TIMES IN CASUISTRY 101

by Peter Fasolino

ONE NIGHT LAST WEEK I called up a friend of mine, an associate professor of philosophy, and invited him over for a few beers. Harold and I like to get together once in awhile to talk about baseball, usually about the 1957 Yankees. (I have another friend, Max, a New York City sanitation man, whom I call when I want to pursue a rational investigation of the truths and principles of being, knowledge, and conduct. What Harold doesn't know about baseball, Max doesn't know about philosophy; so I can usually hold my own in either discussion. My therapist tells me this is absolutely essential.)

My friend the philosopher refused to come. "Call up Max," he suggested.

"But I want to talk about baseball, not philosophy. Max would kill me on baseball." Harold said nothing. "Besides, I've got a cold case of Pabst in the refrigerator."

"I'll be right over." In college, Harold's favorite pastimes had been drinking beer and talking about philosophy. He had, in fact, decided to become a philosophy teacher only after reconciling himself to the fact that no one would pay him to drink beer all day. (Harold will usually come over for Pabst. Max will come for nothing less than Lowenbrau. After seven years with the New York City Sanitation Department, he has acquired some very expensive tastes.)

"So, Harold, they keeping you busy at the university or what?" I asked somewhat doubtfully when he arrived at my apartment. For three years now his only summer course had been Casuistry 101. During that time very few people had demonstrated much interest in riding on hot subways to attend lectures on casuistry. Harold's lecture notes began to gather dust. Harold himself had gotten rather dusty in past summers. Tonight, though, he looked worn to a frazzle.

"This year," Harold said slowly, with a trace of disbelief, "I've got 227 students in Casuistry 101."

I whistled softly. "How come it's so popular all of a sudden?" I asked, forgetting for the moment my carefully researched anecdote about an incident involving Casey Stengel and Don Larsen, which had occurred in 1956 during an exhibition game against the Cleveland Indians.

"Well," Harold began, "years and years ago casuistry was a sort of a priori application of general principles used to determine ethical courses of action in any given situation. Oh, there were some arguments over details between the Tutorists and the Laxists, and the Probabilorists didn't always see eye-to-eye with the Aequitrobalists. But basically they all used casuistry as some sort of a priori guide to be applied in moral decision-making." Harold paused for a sip of beer. "On the other hand," he continued, "what we have today is Retroactive Casuistry."

"Retroactive Casuistry?" I got myself another beer. "How's that different from 20-20 hindsight?"

"Night and day, old buddy." The Pabst was clearly beginning to get to him. "Night and day. With hindsight you look back and see what you *should have* done. With Retroactive Casuistry, you look back and demonstrate that whatever you actually did was ethically impeccable."

I was beginning to see where it could be pretty valuable.

"You know," Harold mused, "more than half of the class is made up of pre-law and government majors."

"Pre-law I can understand," I commented. "I'd imagine that when you *know* someone is guilty—say a rapist—and you get him off, you'd feel terrible on payday unless you could do an impressive moral tap dance about the importance of due process. But what about the government majors?"

Harold opened another beer and put his feet up. "I guess they want to be sure that during their political careers they will always be able to explain to the voters that their actions—no matter how self-serving they might appear to the untrained observer—actually proceeded from the highest moral principles." Harold has always hated politicians and congenital punsters.

"Well," I asked him tentatively, "do you think it will work?"

"Will it work?" He was starting to swagger already. I was sorry I had asked a question instead of swinging right into my Don Larsen story. "Will it work? Wake up and smell the coffee, boy! What about Tong Sun Park?"

"The Korean influence buyer?"

"The very same. When that first broke, Congress tried to wriggle off the hook with a little retroactive casuistry."

"How so?"

"They explained that they thought Park was a businessman—and certainly there's no harm in accepting tokens of affection from a businessman. Only later did they learn he was a Korean agent. Instead of being influence peddlers, the congressmen become innocent victims of unscrupulous Oriental inscrutability. Guiltless dupes. Overtones of the Yellow Peril and so forth."

"Very neat," I murmured, wondering why I had one beer in each hand.

"The pay raise! The pay raise!" Harold was shouting now, waving his arms wildly. "Tip O'Neill says if you don't have the guts to support it, get the hell out of Congress. To the skilled casuist, avarice becomes fortitude."

"Sounds more like 'The Emperor's New Clothes' to me," I countered glumly.

"Don't be such a spoil sport," he admonished. "Why don't you just get into the spirit of things?"

I didn't want to get into the spirit of things. I wanted to find one good example to refute Harold. It took me quite awhile, but I finally found one. "Jimmy Carter owed no federal income tax in 1976. But he paid $6,000

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RIGHT TO WORK

What is it? Who has it?

by Thomas R. Haggard

"THE RIGHT TO WORK," said Mr. Justice Douglas, "[is] the most precious liberty man possesses." Anyone who prizes political liberty will no doubt sympathize with this—for good reason: human life represents the highest value; and without work, whereby we expend our energies to seek and find what is necessary for the continuation of life, this value cannot be realized.

Yet state "right-to-work" laws are frowned upon by many who have been ardent supporters of liberty—for example, by most who call themselves libertarians. The reason for the opposition seems simple enough, also: these laws, which prohibit employers and unions from agreeing to make union membership a condition of employment, are seen as yet another instance of governmental intervention in voluntary human associations.

What is happening here is that the term *right to work* is being used in two rather different senses. The apparent conflict is not purely semantic, though. At a deeper level, there is a close but complex relationship between the two notions of right to work. When brought out into the light of day, this link suggests that opposition to right-to-work laws is in fact inconsistent with a belief in the right to work as a basic liberty. But there is a caveat: libertarian support of right-to-work laws must be conditional or provisional.

WORKING RIGHTS

What is the right to work?

In a modern industrial society, it is through the complex legal and social relationship known as employment that most people obtain what is necessary for their subsistence. Under this arrangement, the owners of natural resources and the means of production cooperate with the possessors of various physical and mental skills for *their* subsistence. One party to this arrangement is commonly known as the employer, or management, and the other as employees, or labor; but the relationship they enter into properly represents *work* for both of them.

Within this context, the "right to work" is merely a specific form of a broader right, that of contract. But the general right to contract and the particular right to work are both widely misunderstood. Just as "freedom to live" has been distorted by the political altruists into a moral and legal entitlement to have others provide for you the necessities of life, so also is the right to work commonly thought of in terms of *someone's* obligation to give you a job—exactly *who* being irrelevant, as this is said to be the duty of "society" itself.

This, of course, is poppycock! The right to contract *per se*—for work or for anything else—is necessarily a joint, or bilateral, right. It exists only when there are two or more potential contracting parties, and it comes into play *only* when two people mutually agree to certain things; *together* they then have a right against the rest of the world to consummate and enforce this agreement.

Broken down into its individual components, which is really the more important way of looking at it, the right to contract/work amounts to this: from the perspective of the two contracting parties vis-à-vis one another, one has the right to offer *to work* or to offer *work*, and the other has the right to accept. And of equal importance, each also has the right to decline to offer or accept—absolutely, or until and unless certain conditions are met. And since this constitutes the exercise of a right, neither a person's refusal to contract with another, *whatever the reason*, nor the insistence on certain terms, *whatever they may be*, can ever be considered a violation of any other right (the principle of the noncontradiction of rights). So an exercise of the right to contract/work can itself never be considered an act of coercion, as that term is used to describe conduct that injures other people in such a way as to justify a forcible response.

Moreover, since law in its essence merely represents a statement of the circumstances under which persons in society, through their various agents, are going to exercise *force* against individuals within that society, it necessarily follows that the exercise of the right to contract/work as described above should not, consistent with moral reason, ever be made against the law. For as Bastiat put it, "We must remember that law is force, and that, consequently, the proper functions of law cannot extend beyond the proper functions of force." Unfortunately, where the right to contract/work is concerned, this limitation is widely ignored.

In the United States, the right to contract/work, in both its affirmative (offering) and negative (refusing) aspects, is violated on an almost wholesale basis by a plethora of federal, state, and local laws. Hardly any kind of contract has its terms