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## PRIVATE COOPERATION—A NEW CATALYST IN THE OLD ISSUE OF COMMON GOODS VERSUS HUMAN FREEDOMS

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Only two courses, both equally destructive of individual liberty and progress, appear to many observers to be open to the United States—the one course is some form of Statism or state ownership of all property, with the usual appendage of a vast bureaucracy, and the other course is some form of veiled, intolerant rule by a privileged group, as is the case with Fascism.<sup>1</sup> But the writer believes that a third course is open to our Country, and this one alone is in keeping with our tradition of initiating great economic-political experiments that have expanded the individual liberties and comforts of all peoples.

Although obviously no name or label has yet been commonly accepted to sufficiently define this third course, it appears that its keystone must be a kind of systematic cooperation by all business, labor and social groups, within their own groups, with each other and with the government—cooperation in constructively settling all disagreements or conflicting interests in the best public interest. If this course is earnestly pursued, a mirror of the future would reflect much cooperative action by all private bodies (which are freely formed and reformed at will around

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<sup>1</sup> *Statism or Fascism*: See Moore, *The Communist Party of the U. S. A.* (1945) 39 AM. POL. SCI. REV. 31; Note, *Communism, Constitutionalism and the Principle of Contradiction* (1944) 32 GEO. L. J. 405; Powell, *Authority—Freedom in a Democratic Society* (1944) 44 COL. L. REV. 473.

the whole gamut of common human interests) these bodies providing the government, through their representatives, with data and advice regarding those governmental actions affecting them, thereby eliminating large independent fact finding, policy making and power grabbing bodies within the government that result today in vast duplication of effort and great public distrust.<sup>2</sup>

“RIGHTS OF MEN” v. “DUTIES OF MEN”

To signalize the adoption by the United States of this third course, a statute might be enacted setting forth in broad outlines the rules for cooperation among business, labor and social groups.<sup>3</sup> As a complement to our Federal Constitution, which stands as an inspiration to all free peoples everywhere, but which rings in terms of “powers” of governments and “rights” of men, this statute will proclaim the “liabilities” of governments and groups and the “duties” of individuals.<sup>4</sup>

Congress would be, of course, the final arbiter in all disagreements between groups by deciding upon the broad, general

<sup>2</sup> *Ineptitude of Vast Bureaucracy*: Herbert Hoover's Lincoln Day 1946 speech in which he said that we must “embrace the concept that man can accomplish more by cooperation outside the government than by coercion from the government. It is this cooperation among free men aligned to public interest that releases the energies of peoples for creative achievement and abundant production. The tens of thousands of community committees, local governments, labor unions, commercial associations, farm organizations and our host of other free institutions can do a million services in the public interest every year which Statism will wither on the vine.”

<sup>3</sup> *A New Type of Statute*: An encouraging trend in declaring an obligation instead of a “power,” is the Employment Act of 1946, Chap. 33, Public Law 304 (laws of 79th Congress, 2nd Session) Sec. 2—“The Congress hereby declares that it is the continuing policy and responsibility of the Federal Government to use all practicable means consistent with its needs and obligations and other essential considerations of public policy, with the assistance and cooperation of industry, agriculture, labor and state and local governments, to coordinate and utilize all its plans, functions, and resources for the purpose of creating and maintaining, in a manner calculated to foster and promote free competitive enterprise and the general welfare, conditions under which there will be afforded useful employment opportunities, including self-employment for those able and willing to work, and to promote maximum employment, production and purchasing power.”

<sup>4</sup> *U. S. Constitutional Examples*: Art. I, Sec. 1—“all legislative power,” Sec. 3—“the Senate shall have the sole power,” Sec. 8—“the Congress shall have the power,” Art. II, Sec. 1—“the executive power,” Art. III, Sec. 1—“the judicial power,” Amendment I—“the right of the people peaceably to assemble,” Amendment II—“the right of the people to keep and bear arms,” Amendment IV—“the right of the people to be secure in their persons,” Amendment VI—“accused shall enjoy the right to a speedy and public trial.”

principles to be followed; and the Executive Department, slendered from its present state and made more responsible to the people's will, would mediate and arbitrate on the details of these disagreements.

Such action will encourage in most people the best, honest effort and ingenuity in their particular spheres and a real social consciousness—arising from the fact that social responsibility for their actions is placed directly in their hands. In this way, individual man will be dignified and his talents used to glorify his Creator; but in the other courses, man would on one hand be institutionalized and orphanized and on the other hand, enslaved and victimized.

Of course, the exact mechanics of this cooperative action are not clear at this writing, but the following factors may be counted on to prove of real assistance in their eventual refinement:

#### THE EXPERIENCE OF TRADE ASSOCIATIONS

(1) The abovementioned initial statute ought to clarify the problems that business firms face when they seek to cooperate with competitor firms in their industry to solve problems, the solution of which will inure to the benefit of the public as well as their industry.<sup>5</sup> In this respect, the enormous increase in recent years of the number of Trade Associations working to this end is an inspiring beginning in cooperative action.<sup>6</sup>

In addition to valuable experience and a growing collection of tested techniques, the Trade Associations have made progress in spite of a public attitude, trained in hearing so much about

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<sup>5</sup> *Problems of Cooperating Competitors*: Hayes, *Standardization and the Antitrust Laws* (1946) *Industrial Standardization*; U. S. v. Socony-Vacuum Oil Co., 310 U. S. 150 (1940); Anderson v. Shipowners Assn., 272 U. S. 359 (1926) ("good motives irrelevant"); Standard Oil Co. v. U. S., 221 U. S. 1 (1910) ("rule of reason").

<sup>6</sup> *Growth of Trade Associations*: See Report of ATAE Com. on Cooperation with Dept. of Commerce, 26th Annual Meeting of ATAE, Chicago, Ill. Nov. 15-17, 1945, by C. J. Judkins, Chief, Trade Association Division, U. S. Dept. of Commerce (12,000 Trade Associations, consisting of 40,000 employees in the aggregate, are furnishing services to most of the nation's 3,300,000 business firms); See page 1, Col. 5, N. Y. Journal of Commerce, 3/18/46, consisting of article on trade association growth; Assistant Attorney General Wendell Berge recently said: "the trade association movement has grown by leaps and bounds within the last generation. . . Trade associations, if intelligently directed by men of vision, can be instruments for expanding trade and commerce rather than restricting it."

“rules for competition” and so little about “rules for cooperation,” that naturally thinks negatively about all forms of business cooperation as attempts to victimize the public through agreements to limit development of a product or service or maintain high prices for the same.<sup>7</sup>

#### DAWNING CONSCIOUSNESS OF TODAY'S FUNDAMENTAL NEEDS

(2) People everywhere are dimly becoming conscious that a great, new forward step must be taken for Democracy, which has seemed to falter on the ragged cliffs of increasingly complex modern activities.<sup>8</sup> This third course offers a real opportunity to take that step as well as to satisfy the very evident and crying need of today, namely, for the spiritual and social side of man to catch up with his material progress.

In other words, this course calls for vigilant and responsible action from small, independent groups of citizenry, each a leader in his own sphere and each conscious of the effect of his sphere on the whole country and the world. Faith can be safely pinned to the biblical prediction that where several individuals gather together sincerely in the name of cooperation for the common good and to help themselves, new and unexpected horizons are opened up to these individuals time and time again.

Finally, this course for the people of the United States will indeed prove to be the course for the people of the whole world to follow, and already on this world plane, the United Nations has provided a good beginning.<sup>9</sup>

#### SPECIAL CHALLENGE TO MEN OF LEARNING

(3) This third course for the United States should challenge men of learning, of training, and of the professions to sacrifice some of the contentment derived from busying them-

<sup>7</sup> *Public Attitude on Trade Associations*: See Lewin, *The Associated Press Decision—An Extension of the Sherman Act?* (1946) 13 U. CHI. L. REV. 247. An encouraging trend is detected recently in the public attitude of trade associations as taking on the guise of semi-public agencies. This trend may be inferred from the recent Supreme Court decision in the Associated Press case (U. S. v. Associated Press, 326 U. S. 1 (1945)).

<sup>8</sup> *Democracy Today*: See generally, Finer, *Towards a Democratic Theory* (1945) 39 AM. POL. SCI. REV. 249 and citations referred to therein.

<sup>9</sup> *The United Nations*: Douglas, *A Free Society—at Home and Abroad* (1944) LAW GUILD REV. 1; Helsen, *Membership in the United Nations* (1946) 46 COL. L. REV. 391.

selves only with their particular work and the comforts of being with their particular circle, and to throw themselves into this struggle to work out methods of cooperation with groups whose interests conflict with theirs.

Lawyers are particularly well equipped for this work and ought to play an important role, as they did in the past, during our Country's first great experiment. Signs of awareness of these problems are on every hand.<sup>10</sup> Lawyers might well spend more time advising on cooperative methods and less time dissecting the human wreckage resulting from controversies that might have been prevented through cooperation.

Lessons may be learned from Trade Association executives who have advanced the cause of human brotherhood. Examples of such cooperation are large Research Institutes, supported by competitors of an industry, and cases of concerted action on the part of competitor firms to eliminate unfair practices within their industry.<sup>11</sup>

#### VOLUNTARY RESTRAINT IN LABOR RELATIONS, BUYING PRACTICES, ETC.

Although recent months have seen disgraceful and catastrophic struggles between labor and management, here, too, the solution may be found in effective cooperation between the two groups in place of the needless conflicts that have injured them both, as well as the public.<sup>12</sup> Profit sharing may be a partial solution, for thus partial responsibility is placed effectively on labor for continued and efficient production. Only then can labor groups logically accept liability for acts of their members inconsistent with the common objectives of production and private gain.

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<sup>10</sup> *Men of Learning*: Friebolin, *The Lawyer and the Community* (1945) 18 OHIO BAR 463; Marx, *The Lawyer's Role in Public Administration* (1946) 55 YALE L. J. 498; Llewellyn, *The Modern Approach to Counselling and Advocacy—Especially in Commercial Transactions* (1946) 46 COL. L. REV. 167.

<sup>11</sup> *Achievements of Trade Associations*: See Judkins, Report of ATAE Com. on Cooperation with Department of Commerce, 26th Annual Meeting *supra* note 6; Sharfman, *The Trade Association Movement* (1926) 16 AM. ECON. REV. 1 Supp. 203; KIRSCH, *TRADE ASSOCIATIONS IN LAW AND BUSINESS* (1938).

<sup>12</sup> *Labor and Management*: Dodd, *The Supreme Court and Organized Labor 1941-45* (1945) 58 HARV. L. REV. 1018 (all references therein).

Similarly, the vicious inflation that means misery and fear to fixed-income groups stalks our land all because the people competing for the scarce commodities will not cooperate, thus leading to futile exhaustion and great distrust of others. Through cooperative action, groups could provide that the buyer honestly in the greatest need ought to be the first to buy the scarce item at an honest price. However, there is evidence in recent months that more people are learning to practice voluntary restraint in these matters so that the best public interest is served.<sup>13</sup>

#### CONCLUSION

With the passing of the day when men could find freedom and independence from those they distrusted by striking out for undeveloped lands, man must learn that freedom can also be acquired by drawing closer together as well as by drawing apart, and that vastly more public good and private gain can be accomplished through cooperation than through competition.

In this era of attempting great new experiments, our schools must teach how to work together rather than how to work against each other. We must in our business relationships reaffirm the basic religious doctrines and put into positive action our love of God and fellowman. This is an era for new experiment in political economy in which we should face squarely and boldly the challenge of cooperation.

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<sup>13</sup> *Inflation*: Wolfe, *Price-making in a Democracy* (1945) 53 J. POL. ECON. 73; Wall Street Journal, July 3—July 16, 1946.