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# Religion Anti-discrimination and the Decline of Labor Law

Nathan B. Oman

*William & Mary Law School*, nboman@wm.edu

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# Deseret News

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## Religion, anti-discrimination and the decline of labor law

By Nathan B. Oman

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Wisconsin is witnessing a pitched battle over the legitimacy of labor law, but when Sen. Rand Paul of Kentucky recently expressed skepticism about anti-discrimination laws his views were an embarrassment even among his allies on the political right.

Why is labor law open to massive political attack, while merely criticizing anti-discrimination law is a good way of becoming a political pariah? Religion provides one possible answer.

Labor law and anti-discrimination law regulate the workplace in fundamentally different ways. Anti-discrimination laws treat workers in isolation, protecting them against mistreatment on the basis of race, religion, gender, and – in some jurisdictions – sexual orientation. It holds up the ideal of an individual judged wholly independent of any accidents of birth or identity.

Labor law, in contrast, creates associations of workers, often using mild coercion, and forces management to bargain with the associations. In contrast to the individualism of anti-discrimination laws, labor law envisions an ideal marketplace in which every worker is embedded in an association that both regulates his behavior and protects his interests.

Anti-discrimination law reflects a basically Protestant view of the moral universe, while labor law reflects a basically Catholic view of the moral universe. For Martin Luther every individual came alone before the throne of God, stripped of the mediating influences of tradition, community, or priesthoods, seeking mercy for his exposed and sinful soul.

The individualism of Luther's vision and his insistence on the irrelevance of identities based on the accidents of birth and community finds its echoes in the individualism of anti-discrimination laws. Not surprisingly, those laws are in large part the creation of a Protestant religious tradition, the African-American Christianity of Martin Luther King Jr. and the civil rights movement.

In contrast to Protestantism, Catholicism accepts the legitimacy of tradition in defining identity and insists that spiritual life requires participation in the "community of the saints." The Catholic believer comes before the throne of God not as a naked and exposed individual but surrounded by saints, angels, the Blessed Virgin, and the interceding priesthood of the Church, all advocating on his behalf.

Labor law reflects this communal vision of human identity and human flourishing. Not surprisingly, Catholics have always figured prominently in the leadership of the labor movement. Senator Robert Wagner, the author of the National Labor Relations Act (the Magna Carta of the American labor movement) kept a heavily annotated copy of a papal encyclical on the workplace in his papers and, though born a Protestant, converted to Catholicism in the 1940s.

Budget deficits, equity between tax payers and public employees and the raw mechanics of power account for most of the political pyrotechnics in Madison. But it is not accidental that both the U.S. Conference of Catholic Bishops and Archbishop Jerome Listekki of Milwaukee recently issued letters supporting the union protesters.

Despite our nation's laudable commitment to religious diversity, the majority of religious Americans

are Protestants and Protestant assumptions are deeply embedded in our culture. In such a culture, it is unsurprising that a body of law based on Catholic notions of solidarity, community and skepticism about the ultimate merits of unfettered individualism enjoys a more precarious position than its Protestant cousin.

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*Nathan B. Oman is an associate professor of law at The College of William & Mary in Virginia.*

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