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UNIONS AND CIVIL LIBERTIES: CLAIMS vs. PERFORMANCE*

≡ [by Benjamin Aaron] //

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I

A recent union publication on security and civil liberties¹ quotes a statement by George Meany, president of the AFL-CIO, in part as follows:

We know from experience that you can't get careless with your freedom because that's basic to this thing we call trade unionism.

We are proud we can say that the labor movement has been in the forefront of preserving these freedoms; that we are ahead of the rest of the country. . . .

Now there is no need to question the sincerity of Mr. Meany's assurance about what he has learned from experience; but surely we are justified in regarding the latter part of his statement as pure rhetoric. When Mr. Meany boasts of organized labor's record of battling to preserve our freedoms, he employs phrases which Thomas Reed Powell called "the greenbacks of our common speech," the value of which is sometimes doubted and must therefore be secured by "the gold of the specific and the concrete."² Concerning union efforts in behalf of civil liberties there has been much said but considerably less done, and it is time for the leaders of the movement to back up their claims with the gold of the specific and the concrete or hold their peace.

I think it can be demonstrated that in the last decade organized labor has seldom if ever taken its place in the van of the outnumbered forces battling to preserve civil liberties, that in fact it has, with a few notable exceptions, lagged behind and in some cases has joined with the majority in trying to stamp out political heresy of varying shades and degrees. The pervasive fear of subversion and the frantic pursuit of the

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will o' the wisp of absolute security that have characterized this country since the end of World War II have inevitably been reflected in the conduct of union affairs, both internal and external. The net result has been an intense preoccupation on the part of labor leadership with the security of the union as an institution and a lamentable disregard for the rights of individual workers as union members and as citizens.

Time does not permit an extensive documentation of this thesis, although I will mention a few examples in passing. In any event, my purpose today is to discuss the factors that have influenced trade union policies and practices with respect to civil liberties questions in general and, more particularly, with respect to the federal loyalty-security program, broadly defined.

II

It should occasion no surprise that union leadership has, especially in recent years, emphasized institutional security to the detriment of individual rights. After all, that is what our Government has been doing, with the approval of a majority of the people. Even today, when popular suspicion that the ship of state is being scuttled by subversives in our midst is noticeably on the decline, prominent citizens still castigate the courts for leaning "too far backward in the maintenance of theoretical [sic] individual rights,"³ and for allowing "the spy and [the] subversive immunity through technical rather than logical interpretation of the law."⁴

There are a number of additional reasons, however, why union leaders are so heavily preoccupied with the security of their respective organizations. Of these, undoubtedly the first in importance is the heritage of strife shared in common by the entire labor movement. Since their inception unions have

had constantly to repel external attacks and to suppress internal defections. As Professor Clyde Summers has said, when collective bargaining negotiations break down, the union "goes to war."

The employer is the enemy; giving him any aid or comfort is treason. To supply him with labor is to furnish him the weapon with which the battle is fought and is clear treason. Making statements in any way favorable to the employer is gross disloyalty. Criticizing the union is sedition. A union on strike manifests the fierce loyalties, false or true patriotism, suspicious fear, and rigid regimentation of a nation engaged in total war.⁵

Similarly, unions have been traditionally harsh in their treatment of members found guilty of aiding rival organizations or of undermining their own. Many union constitutions contain provisions of long standing aimed at excluding or eliminating "subversive" elements from membership. Frequently, the allegedly subversive conduct is defined in such broad and vague terms as to remind one of the criteria employed by some agencies of the federal government under the loyalty-security program. The Glass Bottle Blowers, for example, provide expulsion for anyone "found to have leanings toward dictatorial principles," while the Printing Pressmen would exclude any person "who is imbued with or is an exponent of the false doctrines of sovietism and communism."⁶

It is scarcely to be wondered at, therefore, that the great majority of union leaders, as well as their members, were seemingly so indifferent to the inherent evils of Section 9(h) of the Taft-Hartley Act,⁷ which is designed to bar from union office any person who refuses to affirm, among other things, "that he does not believe in . . . the overthrow of the United States Government by force or by any illegal or unconstitutional methods." Although they denounced the entire law in the most bitter terms, union spokesmen had scarcely a word to say about the affidavit provision specifically. Those who did object to it did so chiefly because they felt

insulted by the gratuitous reflection on their own patriotism. The graver implications of thought control remained virtually unnoticed, as was evidenced subsequently by the considerable union support behind the feckless proposal to take the curse off the provision by making it applicable to employers.

A second reason for the tendency of unions to elevate group interests above individual rights can be found in the desperate battles for control or survival that many of them have had with Communist elements seeking to capture or wreck their organizations. The problems encountered by the CIO in dealing with some of its left-wing affiliates, which culminated in their ouster from the parent body in 1949 and 1950, are still fairly fresh in our memories. Less familiar are the similar experiences of individual unions in the twenties and thirties. In some instances the price of victory was fearfully high. Two doughty anti-Communist union leaders in the maritime industry--Joe Curran of the National Maritime Union and the late Harry Lundeborg of the Sailors' Union of the Pacific--emerged triumphant from their struggles for internal control of their own organizations, but only at the cost of a permanently blunted sense of fair play for their opponents. A brief review of their reactions to the Government's so-called port security program will illustrate the point.

The port security program,⁸ initiated in 1950, requires, among other things, that all maritime and waterfront personnel have credentials, issued by or acceptable to the Coast Guard, certifying to the reliability of the holder. The system followed by the Coast Guard in administering its screening program was described by a federal court, in a decision invalidating most of the procedure,⁹ as one of "secret informers, whisperers and tale bearers . . . likely to bear upon the innocent as well as upon the guilty."

Yet the only protest voiced by the NMU officialdom was that the Coast Guard screening procedure was not thorough enough. Thus, Curran was quoted by the press as criticizing the Coast Guard for rejecting an NMU proposal to call in all seamen's certificates and issue new ones only to those men who were "100 per cent American." Curran also charged that the Coast Guard screening had caught only the "small fry" Communists, while permitting the "big guys" to continue to sail. He revealed that the NMU had its own list of men who had "exposed their Communist leanings," including about 200 members who, at the last convention, either had abstained from voting or had voted against resolutions calling for members to defend their country in any emergency, including war with Russia, and for the expulsion of all Communists from the union.¹⁰ A dissident minority within the union accused Curran of turning over this list to the Coast Guard commandant.¹¹

On the West Coast waterfront, the SUP also welcomed the Coast Guard screening program. Lundeborg assured his constituents that he would see that none of their rights were violated; at the same time he declared he would not "raise a finger to protect any Commies, Trotskyites or other subversives,"¹² terms broadly defined in his personal lexicon to include anyone who disagreed with him. True to his word, Lundeborg wrote to the Coast Guard commandant one month later, protesting the unfair application of the screening program against his members. They had been forced off ships, he charged, which had been allowed to sail "with known Communists, Trotskyites and other believers in foreign ideologies." It seemed "mighty peculiar," Lundeborg concluded, that the Coast Guard had not screened "these characters whose only aim is to disrupt the American Merchant Marine."¹³

To be fair I should also point out that some unions, which had their internal battles with Communists many years ago, were able to view the security problem with far greater objectivity. Time permits citation of only two examples. The Amalgamated Clothing Workers saw the main danger of the post-World War II decade not in Communist infiltration but in the forces of intolerance and repression that were let loose in the land. At the union's 1948 convention, its secretary-treasurer, Frank Rosenblum, prophetically warned that the hysteria against Communism might become "a liability and a source of great danger to the American people . . . and as this hysteria continues and grows we will become more and more its victims."¹⁴ Other leaders of the Amalgamated consistently reiterated this theme, as the abuses of the federal loyalty-security program multiplied, and the union has institutionalized its support of civil liberties by annually bestowing its Sidney Hillman Award upon persons who have distinguished themselves in the fight against racial and political intolerance.

It may surprise some people to learn, too, that the United Brotherhood of Carpenters, not generally regarded as a model of internal union democracy, has steadfastly refused to join in the indiscriminate denunciation of Communists or in the reckless campaigns against so-called subversives within union ranks. At the height of the national hysteria over security, the union's journal admonished its members against engaging in censorship and "book burning." In some cases, it pointed out, "Communists or Communist sympathizers . . . may have written something which affirmatively serves the ends of democracy."¹⁵

A third factor to be considered in this discussion is the opportunity that the federal loyalty-security program gave to certain union officials

to exploit the popular revulsion against Communists for their own special purposes. Consider the case of Dave Beck. Unlike Curran and Lundeborg, who developed their intense hatred of Communists as a result of intimate association with them, Beck appears never to have been confronted by any serious threat of Communist infiltration of his own union. Nevertheless, his jurisdictional warfare in the thirties with Harry Bridges and the International Longshoremen's and Warehousemen's Union had made him fully aware of the useful purposes which the mere possibility of that danger might serve. Thus, we find his personal news organ, The Washington Teamster, which frequently carried his signed editorials and always mirrored his views, gravely warning its readers in 1952:

If you see union members stirring up trouble in their own organization, you see signs of communism, for that is the way communists work. If you see otherwise sensible union people going to rump meetings and attempting to defy union rules . . . somewhere in the background, or perhaps right out in front, you will find a communist doing his dirty stuff.¹⁶

Other union leaders, not previously celebrated for their devotion to democratic values, found refuge in the federal loyalty-security program when their enemies began to close in. Captain William V. Bradley, president of the International Longshoremen's Association, a former affiliate of the American Federation of Labor expelled because its leadership was allegedly dominated by gangsters and other corrupt elements, is a case in point. Bradley had two principal natural enemies, the New York-New Jersey Waterfront Commission and the rival organization established by the AFL to wrest control of the East Coast waterfront labor force from his grasp. Shortly before an NLRB representation election between the rival unions, Bradley scored the Commission for barring from the waterfront many IIA men with "minor" criminal records while failing to screen out

"even one subversive." At the same time Bradley announced that he would send letters to all IIA locals, ordering them to "drop any man who does not have or cannot get Coast Guard security clearance."¹⁷ The IIA won the election, and it seems reasonable to assume, as I am sure Bradley did, that if his sudden publicized resurgence of patriotic fervor did not materially influence the result, it certainly did not prejudice his chances.

The heightened awareness of the dangers of subversion in recent years seems to have revived in the minds of some labor officials fading memories of ancient misdeeds. It must have been something of a shock to one Anthony Salgado, president of Los Angeles Local 300 of the Hod Carriers Union and delegate to the 1955 State Federation of Labor convention, to learn that he had been unseated because of his support, in 1934, of the Communist Party candidate for governor of California.¹⁸ The Hod Carriers Union is not generally reputed to be a haven for radicals, and one may be pardoned for suspecting that the unfortunate Salgado had incurred the disfavor of his peers more recently than 1934 and for somewhat different reasons than those which were publicized.

Candidates for public office are not the only ones who have found it useful to accuse their political opponents of being "soft on Communism." When Stephen Kreznar, president of a Milwaukee local of the Communications Workers of America, was discharged by the Wisconsin Telephone Company because he was denied security clearance by the Government, the union contested his dismissal on the ground that this was not sufficient/^{reason}~~grounds~~ for discharge under the collective bargaining agreement. The 1956 convention sustained the union's position after a lengthy debate. Subsequently, an arbitration board upheld the discharge, and shortly before the next convention A. T. Jones, the parent union's vice president,

announced that he would oppose Joseph A. Beirne, the incumbent, for the presidency. Jones promised to make the Kreznar case a major issue in his campaign and accused Beirne of failing to guard the CWA membership against "Communist infiltration" and of making "hundreds of good, clean (and now heartily angry) CWA convention delegates an unwitting party" to Kreznar's defense.¹⁹

The final explanation of the characteristics of union leadership I have been discussing is somewhat complex and imprecise; it can best be stated in terms of the growing emphasis by union officials on the importance of being respectable and of enjoying the good will of the employers with whom they deal and of the general public as well. Now there is obviously nothing wrong with that objective; the trouble is that the chosen criteria of respectability have not always been the best, and that is especially true with respect to public positions taken by some union leaders on loyalty-security matters.

Many illustrations of this point are readily at hand. Before Dave Beck's proclivity for handling other people's money established him in the public mind primarily as an expert on financial security, he was widely respected as an authority on national security, specializing in teachers' loyalty oaths. It is sobering to recall that only a few years ago Beck was generally regarded as a highly "responsible" union leader who ran his union "like a business." The fact that as a member of the Board of Regents of the University of Washington he demonstrated that he was a "sound man on Communism" also did much to enhance his reputation.

Beck is, of course, a special case. Unfortunately, other union leaders, whose integrity is unquestionable, have also succumbed to pressures from either their members or outside forces to seek respectability

by giving public assurances of their opposition to Communism and subversion that are as unnecessary as they are undignified. One of the most depressing of these cases is that of the International Typographical Union, long considered a model of a democratic labor organization and one of the few remaining unions whose officers have not, as a matter of principle, filed non-Communist affidavits with the National Labor Relations Board. Proposals that they do so were voted down at the 1947, 1949, and 1950 conventions of the union, but each time with a little more difficulty. At the 1950 convention Woodruff Randolph, the union's president, intervened decisively in favor of a resolution to require all candidates for union office to take a non-Communist oath. Assuring the membership that no candidate's declaration of loyalty would be questioned or investigated, he explained that the resolution would afford "some protection for propaganda against the Union."²⁰ But the action proved unavailing, and in 1952 the convention amended the "obligation" required of every member by including the same oath earlier demanded of candidates for office. The reason for this action was succinctly stated by one of the delegates: "I think it was something that was needed and we have it now--they can't throw the brick bats back at us again."²¹

Thus the ITU, while still refusing to comply with the filing requirements of the Taft-Hartley Act and thereby depriving itself of the facilities of the NLRB, gradually yielded to the external pressure to conform, and in the end went further than the Act itself demanded by exacting a non-Communist oath from each of its members. What can we say of such a sad and senseless gesture? "Not such aid nor such defenders does the time require."

Similarly, many unions have felt it necessary to respond to the needless persecution of their members by congressional investigating committees by defending their organizations rather than the particular people affected. Thus, when the investigating body calls in a number of union members whose past affiliation with the Communist Party is well known, and then triumphantly reveals that association all over again, the standard reaction of the union involved is to cite its long record of militant opposition to Communism and to denounce the smearing tactics of the committee. Defense of the union members called to testify, many of whom left the Party years ago and have since been leading useful lives, is presented merely as an afterthought, if it is presented at all.

Lately, some United States senators and representatives have been urging unions to fire officers who invoke the Fifth Amendment when called to testify under oath. Last June three special representatives of the International Association of Machinists, former members of the left-wing United Electrical Workers (UE), invoked the Fifth Amendment when questioned about past membership in the Communist Party by the Senate Internal Security Subcommittee. All testified that they no longer belonged to the Party, but refused to say when they had left. They were promptly fired by the IAM executive council, which announced with pride that this was "the first action taken by a union with regard to its representatives since the AFL-CIO Executive Council . . . set its Fifth Amendment policy."²²

Now the AFL-CIO policy statement referred to was made in regard to "cooperation with all appropriate public agencies investigating racketeering," and it says that

if a trade union official decides to invoke the Fifth Amendment for his personal protection and to avoid scrutiny by proper legislative committees, law enforcement agencies or other public bodies into alleged corruption on his part, he has no right to hold office in his union.²³

The readiness of the IAM to apply this policy to officers who invoked the Fifth Amendment to avoid answering questions about their past membership in the Communist Party may be explained in part by the fact that it had recently been publicly accused by James Carey, president of the International Union of Electrical Workers (IUE), of "giving haven" to Communists from the rival UE.²⁴ The summary discharge of the three IAM officers dramatically underscored the Machinists' one million dollar libel suit against the IUE.

The policy adopted by the United Auto Workers to deal with this type of situation seems more equitable than that followed by the Machinists. Under the UAW policy, members are assured of their rights to invoke the Fifth Amendment for their own protection, but are warned of the unfavorable inferences that will be drawn from such conduct by the general public, and are urged not to avail themselves of the privilege unless it is absolutely necessary. Grievances are filed and vigorously prosecuted in cases in which union members have been discharged from their employment solely on the basis of their refusal to testify before an investigating committee.²⁵ Any union official, whether appointed or elected, who seeks the protection of the Amendment must be tried by the governing body within the union having jurisdiction; unless he can present "clear and sufficient evidence that he is beyond a doubt not disqualified from holding office," he must be removed.²⁶

Recently, seven minor UAW officials invoked the Fifth Amendment in testifying before the Senate Internal Security Subcommittee. All were promptly tried by their local unions. Subsequently, Walter Reuther, the union's president, reported that in each of the five cases completed as of that time, the officer had been found by his local union not to be

disqualified, and that these results had been approved by the international executive board.²⁷

Reuther's report included a summary of the findings in each of the five cases; in my view the decisions reached were sensible, and both the international executive board and the local unions concerned are to be commended for their courage in not yielding to outside pressures to remove the officers involved. Unfortunately, the actions taken did not stop there. Obviously incensed by what he termed a "smear campaign against the UAW" by a group of senators, Reuther announced that the union's executive board had voted to refer the entire question, whether it had acted in accordance with the full requirements of the UAW constitution and the AFL-CIO ethical practices codes, to the Public Review Board created by the union at its last convention. That board, composed of seven distinguished citizens, was created primarily to insure that the rights of union members were not infringed by arbitrary or illegal actions of the leadership. I interpret the reference of the instant cases to the board as a bid for a kind of Good Housekeeping seal of approval of the actions already taken by the union, and I regret that the leadership felt it necessary to seek this reassurance.

III

In the preceding discussion I have deliberately emphasized those attitudes and actions of union officials with respect to problems created by the federal loyalty-security program that I believe to be wrong. The result is an admittedly distorted picture of organized labor's record, which, considered as a whole, contains many instances of noble and courageous defense of individual freedom. Nevertheless, I conclude that on balance the record does not bear out Mr. Meany's proud boast

that I quoted at the outset. On the contrary, it seems to me that in recent years labor leaders have generally gone along with the trend toward subordination of individual rights to organizational and national interests deemed (mistakenly, in my judgment) to be of superior importance. As a group, however, they have frequently behaved much better in this regard, and never any worse, than the elected representatives who make our laws; and in a sense, as I have tried to show, they have been truer to their own traditions.

What is the point, then, in making such an issue of their shortcomings? It is currently the fashion in some quarters to assert that a union is indeed like a business, and that only the naive expect from union leaders a greater devotion to moral values than that evinced by the ordinary citizen. I cannot agree with that view, which seems to me to result from what may be termed a semantic fallacy. The fact that the bulk of organized labor in this country has traditionally pursued a policy of "business unionism," characterized by a concentration on the economic betterment of workers and by relatively less interest in broader social objectives, does not necessarily mean that a union is nothing more than a business. My image of the labor movement is quite different: I see it as a great potential liberating force, as an institution which, having contributed so enormously to the economic welfare of this country, can turn increasingly to the task of protecting and expanding the rights of all citizens to free and equal participation in the affairs of our society. This new role for unions can never be realized, however, without a shift in the direction of their current policies involving at least a partial break with the past. The psychology of the embattled organization, whose very survival hangs in the balance, is no longer an appropriate motivating force for our large

and well-established unions. Respectability for its own sake need no longer be considered the summum bonum; but I believe that, as the country returns to normalcy, the respect for unions will be enhanced, not diminished, when they begin once again to exert the same fearless efforts in defense of basic democratic values, including the rights of individuals to be protected against the tyranny of the majority, which have characterized their pursuit of economic objectives.

What I am suggesting is the need for a resurgence of moral fervor, a rededication to what Walt Whitman called the "peerless, passionate, good cause," the "stern, remorseless, sweet idea" of freedom. When and if this new spirit asserts itself, I am confident that unions will assume their proper place among those working to make America once more a land of freedom and dignity.

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Footnotes

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¹Fleischman, Kornbluh, and Segal, Security, Civil Liberties and Unions (1956).

²The Logic and Rhetoric of Constitutional Law, 15 Journal of Philosophy, Psychology and Scientific Method 654 (1918), reprinted in McCloskey (ed.), Essays in Constitutional Law 85 (1957).

³Statement of Herbert R. O'Connor in a speech to the American Bar Association meeting in London, quoted in the New York Times, July 26, 1957, p. 8.

⁴Address of J. Edgar Hoover to the American Legion convention in Atlantic City, quoted in the New York Times, Sept. 20, 1957, p. 10.

⁵Disciplinary Powers of Unions, 3 Ind. and Lab. Rel. Rev. 483, 489 (1950).

⁶Id. at 501-502.

⁷61 Stat. 146 (1947), 29 U.S.C. §159(h) (1952).

⁸40 Stat. 220 (1917), as amended, 64 Stat. 427 (1950), 64 Stat. 1038 (1950), 50 U.S.C. § 191 (Supp. 1952); Exec. Order No. 10173, 15 Fed. Reg. 7005 (1950), as amended by Exec. Orders No. 10277 (1951) and No. 10352 (1952).

⁹Parker v. Lester, 207 F.2d 237 (9th Cir. 1953).

¹⁰New York Times, Sept. 13, 1950, p. 55.

¹¹Letter to Commandant, U.S. Coast Guard, from Committee for Democratic Unionism, N.M.U., dated Sept. 14, 1950 (mimeo.), cited in Brown and Fassett, Security Tests for Maritime Workers: Due Process Under the Port Security Program, 62 Yale L.J. 1163, 1182 n.99 (1953).

¹²The West Coast Sailor, Aug. 18, 1950, p. 2.

¹³The West Coast Sailor, Sept. 29, 1950, p. 1.

¹⁴Proceedings of the 16th Biennial Convention, Amalgamated Clothing Workers of America 232 (1948).

¹⁵The Carpenter, July, 1953, p. 23.

¹⁶The Washington Teamster, June 27, 1952, p. 8.

- ¹⁷New York Times, Feb. 24, 1956, p. 42.
- ¹⁸Los Angeles Herald Express, Aug. 16, 1955, p. 1.
- ¹⁹Daily Lab. Rep. No. 83: A-11, Apr. 29, 1957.
- ²⁰Proceedings of the 92nd Session of the International Typographical Union 100-102 (1950).
- ²¹Proceedings of the 94th Session of the International Typographical Union 59 (1952).
- ²²Daily Lab. Rep. No. 112: A-11, June 10, 1957.
- ²³AFL-CIO Codes of Ethical Practices 10-12 (1957).
- ²⁴Daily Lab. Rep. No. 112: A-11, June 10, 1957.
- ²⁵See, for example, the recent arbitration between the union and Pratt and Whitney, Inc., 28 Lab. Arb. Rep. 668 (1957), involving this issue.
- ²⁶Administrative Letter, Vol. 9, No. 19, June 3, 1957, reprinted in Daily Lab. Rep. No. 111: E-1, June 7, 1957.
- ²⁷Administrative Letter, Vol. 9A, No. 3, Aug. 26, 1957, reprinted in Daily Lab. Rep. No. 169: E-1, Aug. 29, 1957.