

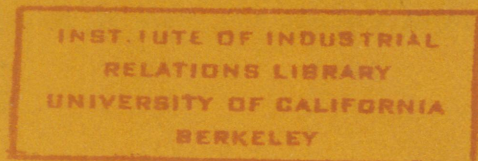
Labor monopoly  
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# Personal Freedom and Labor Policy //

by  
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## FOREWORD

*Sylvester Petro, author of this pamphlet, has been a Professor of Law at New York University Law School since 1950, specializing in the law of labor relations. He is a graduate of the University of Chicago, class of 1942, and received his degree of Doctor of Law (J.D.) from the same university in 1945. As a member of the Illinois Bar he practiced law in Chicago. For several years prior to his attendance at the University of Chicago, Prof. Petro worked in the steel mills and was active in the CIO in promoting unionization of his fellow workers. He is the author of the recently published book, *The Labor Policy of the Free Society*, which is widely acclaimed as one of the most informed and cogent treatises on the subject published in this generation.*

*The Institute of Economic Affairs of New York University is publishing this brief study by Prof. Petro in the belief that it provides a refreshingly intelligent departure from the usual special interest or unrealistically neutral appeals that crowd the literature on labor. Prof. Petro's ideas deserve attention and consideration by all those who believe they have the "final" solution to the problems concerning our national labor policy.*

*— Haig Babian, Editor*

# Personal Freedom and Labor Policy

*by Sylvester Petro*

**S**INCE that first step toward peaceable cooperation, when division of labor and voluntary exchange were tried in place of incessant war and pillage, mankind has pursued a glowing wish. Religions, traditions, customs, habits, institutions—the binding structure of daily life—have been shaped by and in their turn have helped to shape the wish. “I will find myself a wife to love, and I will build a house, and I will have children, and I will deal on friendly terms with my neighbor, and I will make my stay on earth as comfortable as I can, and I will prepare to account for my existence, and I will say ‘I have been what I had to be and I have done what I wished to do!’” The great “I”, capitalized in English, let it not be forgotten, has been central in every man’s reckoning. No amount of formal disavowal in impersonal and merely abstract philosophy can change that fact. It has been central, too, even in self-immolation, when comfort, position or life is given up for “you” or “him” or “them” or “it”. Perhaps, indeed, the great wish is never so close to realization as when freedom, choice, will, personality—for it has many names—is so expended.

And this has caused a long confusion which, too, has many names. “The individual is nothing, the group is all.” “Altruism is a virtue, egoism a vice.” “Individual selfishness must not be allowed to obstruct social goals.” “Every man has his allotted role and must be prepared to play it as the leader directs.”

If we ought by now to know better, it is still easy to understand and to forgive the error. The group is more than the individual; the preservation of family or of society is more important than the preservation

of any single person. For the good life is possible only in society; and the good life in society is a matter largely of cooperation and communication among persons in groups. These are facts which have led some to a sharper and fuller perception of great truths. However, when improperly understood, these facts have led to the error which most gravely imperils our age: *holism* (or groupism)—the idea that groups or societies are meaningful apart from the persons who constitute them, and that there are “social goals” or “group goals” apart from the wishes and desires of living persons.

## “Society” Only Individuals

**Y**ET we ought to know better. Almost a century ago, Sir Henry Maine set the whole matter straight in giving as his definition of primitive society, “It has for its units, not individuals, but groups of men.” And he drove home the point with one of the most fruitful generalizations which social science has yet produced: “*The movement in the progressive societies has hitherto been a movement from status to contract.*” In reality there are only persons, only individuals; only persons have hopes and dreams, fears and loves, aims and desires. The success of a society can therefore be measured only in terms of the freedom of choice of individual persons. This means that the person, not the group, must be the unit of calculation in good society; and that freedom of contract, the formal term for the personal freedom which Whitehead called a necessity to mankind, must be a basic social institution.

## Antisocial Labor Policy

**O**F ALL aspects of contemporary life, none serves better than labor relations to demonstrate the vicious, antisocial consequences of the holistic view, with its subordination of the individual to the group, its sacrifice of personal freedom to group power and authority. Here the individual, undifferentiated person, he whose dignity poets and political philosophers have sung and extolled, has been thrust rudely out of sight and out of consideration. Labor relations law, policy and practice have for the past generation been

a continuing, large-scale experiment in suppressing the individual and glorifying the group.

The fruit has been bitter. But it all could have been, in fact it was, predicted. Protection of personal rights and personal freedom was necessary not only if real persons were to achieve their personal goals. The primacy of the individual as against the group was necessary also if the greatest group—society—was not to be exploited and abused by the leadership of subordinate collectivities. For the expression “glorification of the group and subordination of the individual” is merely a rough and imprecise way of saying that the most aggressive and often the most unscrupulous persons—those who become leaders of groups through coercive practices—are to have their way as against the desires of all others, that is, society.

Anyone with moderate awareness must realize that trade union leaders in the United States today are generally guilty of antisocial conduct, that the habits and tendencies of some threaten the foundations of society, and that a good many are cheap crooks and embezzling scoundrels. As a matter of fact, today almost everyone thinks that there is something wrong in labor relations and that something needs to be done about it. This is all to the good. Yet we must be sure that we know what we are doing before we act. If we wish to accomplish an enduring result, we must identify and attack the basic cause of the evil. Another law against stealing will do no good. We already have such laws. They deal with only the most superficial symptoms of the things that have gone wrong in labor relations.

The basic cause of almost every antisocial aspect in labor relations today lies in the fact that, owing to legal and political errors of omission and commission, individual workingmen are daily denied and deprived of the rights which our longest traditions and most carefully wrought principles designate as the rights of free men.

## Personal Freedom in Jeopardy

**T**HE labor relations process begins with the organizing stage and continues through the stages of collective bargaining and administration of the col-

lective agreement. At no point in this complex process do law and government adequately protect the rights which men must have if they are to be free. At some points, indeed, law and government themselves deny those rights.

Under the law, workingmen are declared to have the right to join or not to join a union, free of either physical or economic coercion by trade unions or employers. It will be shown presently that this law is substantially unenforced as regards trade-union coercion; but first it must be noted that the law itself lacks inherent integrity. For after thus declaring the right of workingmen to join or not to join unions, the law goes on to permit unions to impose arrangements (sometimes called "compulsory-unionism agreements," sometimes called "union-security contracts") which require union membership as a condition of employment. All such arrangements are forbidden by law in 19 states, but federal law permits some, and the laws of almost all industrialized states allow all forms of compulsory unionism, including the most drastic form—the full closed shop, which means that a man must belong to the union *before* he is hired.

Compulsory unionism and personal freedom are incompatible. Employment in a free society is a volitional contractual arrangement between a person seeking work and a person seeking someone to work for him. But compulsory unionism is a device by means of which an outsider to the employment relationship imposes a toll upon both real parties involved. It is, therefore, indistinguishable in principle—sometimes indistinguishable in fact—from the tolls imposed by brigands and the "protection money" demanded by extortionists. If corruption prevails among the leaders of unions which practice compulsory unionism, no one should be surprised.

Compulsory unionism is, as the name accurately discloses, coerced unionism. But the basic principle of current national labor policy is the principle of free employee choice—free of physical or economic coercion by either unions or employers. We cannot have it both ways. Either we are in favor of permitting unions and employers to use economically coercive devices in order to impose or to prevent union membership, or we are not. Integrity demands that if



unions be allowed to impose compulsory unionism agreements, employers must be allowed similarly to impose nonunion agreements. As things stand at present, the acceptance of compulsory unionism must mean in the long run that every worker will have to join a union, or shortly become a member, if he wishes to work. To speak of personal freedom in such circumstances would be a cheap fake. Legal acceptance of compulsory unionism arrangements amounts to an anomaly in any legal system having as its basic principle the idea of personal freedom and free employee choice.

The law lacks integrity too in that, while declaring a right of employees to join or not to join unions, it also provides that a union selected by a majority of employees in any "appropriate bargaining unit" is the exclusive representative of *all* employees in that unit. Suppose that there are 1,000 men employed in an "appropriate bargaining unit." An election is held in which 600 cast ballots. Of the 600, say that 301 vote in favor of the union and 299 against. In every such case the union will be hailed as the "free choice" of the employees and will be "certified" as the *exclusive bargaining representative* of every employee in the unit—including the 299 who voted against it and the 400 who did not vote at all.

Merely to understand the exclusive bargaining principle, let alone experiencing how it works out in practice, is to realize that it is irreconcilable with personal freedom. The exclusive bargaining (or "majority" rule) principle means that every intimate detail of the workingman's employment life is a matter for decision by the trade union. The workingman and his employer are barred *by the full force of law and government* from dealing directly together on any matter subject to collective bargaining. It is one thing for a workingman voluntarily to delegate such authority to a union or to any other person or entity. But for the law to decree that despite his own wishes to the contrary, a worker must accept the working conditions bargained for by a trade union is something entirely different. It amounts to nothing less than an absolute negation of that freedom of contract which is basic to a free society and which, Maine thought, distinguished the progressive societies.

## Evils of So-Called Majority Rule

**T**HE practical consequence of the majority rule principle is what might be expected. In the collective-bargaining process and in the administration of the collective agreement, the strong unionists are favored and the antiunionists and the nonunionists are neglected, if indeed they are not positively mistreated. What course is open to the nonunionists and the antiunionists? They must work themselves into the good graces of the union leaders who by force of law have been certified their overlords. Or they must engage in the perilous politicking necessary to unseat the bargaining representative. Or they must leave their jobs.

But if they leave their jobs and seek work of a similar kind, they are likely to find another branch of the same union in power wherever they look; for industry-wide unionism is characteristic of the American economy. And so they must curry favor with the union leaders or engage them in a political struggle. The chances of victory in such a struggle, always slim, are especially so in the case of an established bargaining representative. It has all the weapons—financial resources, trained personnel, and, most important of all, its governmentally privileged and protected status as exclusive bargaining representative, with the control over employment terms and conditions which that status involves.

Things might be a little better if there were some healthy and constructive competition among trade unions themselves. Then if the leaders of one trade union abused their position, employees would have, as consumers do, the alternative of shifting their allegiance. But with the amalgamation of the AFL and the CIO, this possibility too, for whatever it might be worth, is considerably reduced. The prime objective of the amalgamation, judging from efforts thus far expended, seems to have been to eliminate any competition for members among the affiliates of the merged "labor" movement. Of course, such proselytizing is always referred to as "raiding," and the agreements to refrain from competition for members are called "nonraiding pacts." But our cartel-



minded trade-unionists could not be expected to be in favor of competition or of describing their own particular cartels accurately.

Like all cartelists, they are interested mainly in eliminating competition. Like only a specially favored few, however, they are successful, because they have the full power of government behind them. The exclusive bargaining principle will be better understood when it is accurately defined. It is really a governmentally granted monopoly—a denial of the workingman's right of freedom of contract, a transmogrification of the precious personal freedom of one into the special privilege of another.

There are other anomalies in the law of labor relations, other formal rules which cannot be squared with personal freedom and the social good. But the two just covered are the fundamental flaws in our labor policy; they formally condone or compel denials of personal freedom. It is a hard thing to say that the written law of a country which prides itself upon being a free society contains specific and rigorous negations of personal freedom. But the facts must be identified and confronted if we are to understand the real reasons for the personally and socially perilous conditions which exist in labor relations.

## Laws Not Enforced

**D**EFFECTS in labor law enforcement are as grave as the defects in the law itself. Violence and economic coercion, both prohibited by federal law and the law of most states, occur continuously in labor relations. Local police, state officials and federal authorities have been seriously remiss in the enforcement of these laws. As a consequence, countless individuals have been terribly abused; and the net sum of the individual wrongs amounts to a social evil of colossal proportions. Society is hurt, not only in the sense of immediate and direct individual injuries, but also in an indirect sense. The prevalence of trade-union coercion has created a monopolistic structure more abusive economically than any business firm's activity has ever been.

There is not space here for a full description of the process. We can hit only the high spots. At the

organizing level, trade unions rely often upon physical intimidation and economic coercion to induce union membership. Violence and the threat of violence are common features of "organizational campaigns." Those inclined to doubt this can have their doubts removed very quickly by consulting the official records of judicial and legislative agencies, or merely by remaining alert to what is going on. Occasionally, local police will make an effort to prevent the violence of union organizers. More often, genuine effort is lacking; the authorities are satisfied merely to keep it from amounting to civil insurrection. A New York judge not too long ago issued an order limiting pickets to 300!

### **"Peaceful" Coercion: Monopoly**

**W**HEN conditions are propitious, union organizers will resort to physically peaceable but economically coercive methods of compelling nonunion workers to join. All such methods may be categorized as secondary boycotts or attempts to induce such boycotts. The most widely used mode of inducement is the "stranger picket," a term denoting picketing of an establishment by a union which represents none of the employees. The picket is designed to induce customers and suppliers, and their employees, to refuse to do business with the picketed employer. When the locale of the inducement is shifted to the place of business of the suppliers or customers, the same kind of secondary boycott exists in a more clearly recognizable form. All such conduct violates federal law, and most of it violates state law. Still it prevails virtually unchecked.

Such has been the method of growth of most of the giant trade unions. Force and violence have been and are used when all other proscriptive methods are inadequate. After a considerable part of any industry has been "organized," outright violence is no longer quite so necessary in order to organize the remainder. The power of proscription can more readily and controllably be exercised by economic pressure devices.

The immediate product has been a prevailing tendency toward industry-wide unionism in this country. There is nothing in the basic principles of a free and well-run society which would condemn

industry-wide unionism as such. An intelligent society is not concerned with how large a business firm or trade union may become; it does not raise a fuss merely because some men are richer than others. But it is and ought to be concerned about the methods used in expanding the size of private associations or in the acquisition of wealth by any person.

Thus, if industry-wide unionization were the product of a strictly consensual process, we should have no occasion to be concerned. We could rest assured in the belief that such unionization had come about because workers, given a free choice, had found it to be attractive, desirable and useful.

But when industry-wide unionization has been the product of force and compulsion, an entirely different reaction is indicated. Compulsion itself represents a mortal blow to the most precious values of a free society. More than that, habits and modes of conduct developed in the course of growth through coercive methods, can be expected to largely control the future conduct of the giant, powerful organizations which have thus been formed.

The actual conduct characteristic of our giant trade unions confirms these fears. It is true that when an industry-wide trade union has firm monopoly control of the labor supply in its industry, it does not always find it necessary to use violent methods in seeking to achieve its goals. Some prominent unions have been known to dispense with picket lines at times in their strikes against the auto manufacturers. But that has happened only when neither the companies nor the workers made any attempt to continue production during the strike; it has happened, in other words, only when the workers have been in extremely short supply, and when therefore there has been no "back-to-work" sentiment.

The point is that unions built by coercive methods are not likely to be satisfied to operate within the conditions and mandates of the peaceable, free market. They will tend to want to control the market, rather than to respond to it. Union leaders who have seen violence and coercion serving well to build up their unions, will resort to such conduct also when it is necessary to make one of their strikes effective, even though if one considered economic conditions

alone, one would be forced to the conclusion that the strike should never have been called.

Again, the monopolistic methods of economic coercion utilized in order to build up the industry-wide union prove equally serviceable to impose all kinds of uneconomic wages and working conditions. All workingmen are entitled to get as much as they can for their contribution to society, so long as they proceed in a free, peaceable and competitive way. But only a superficial acquaintance with the pressure tactics, the monopolistic boycotting techniques, of our industry-wide trade unions is needed to demonstrate that terms and conditions of employment in the unionized sectors of the economy are brought about in an extreme degree by destruction of free markets. It is a matter of record that a good many trade unions in this country have actually blocked off free trade and free competition to an extent not open to even federal, state and local governments.

I happen to agree with the opinion that inflation is a purely monetary phenomenon, and I therefore do not think that unions alone can be responsible for it. Nevertheless, unions alone can cause disruptions in the price structure, affect the distribution of income, and cause consequent unemployment—just as any other genuine monopolist can. These things, I believe, our industry-wide trade unions have done. And having done so, they have created tremendous political pressures for inflationary governmental policies. Hence I contend that trade unions must be held partly responsible for the inflation we have been suffering, as well as for the abuses of personal freedom, the distortions of the price structure, and, to a considerable extent, the current unemployment.

## Two Grave Threats

**C**URRENT conditions in labor relations pose a clear threat to the things which Americans hold most dear. The power of trade union leaders, built as it is upon compulsion and coercion, holds the individual workingman tightly bound in a web of fear. His well-being, his hopes and dreams, must be worked out, if at all, within the interstices of the plans and ambitions of union leaders. The same power holds

society in thrall as well. Inflation, monopolistic abuse, unemployment, uneconomic use of the most precious resource of all—manpower—these and some others, almost equally bitter, are the fruit of the way in which we have allowed trade unionism to develop. The causes, I have tried to show, are two:

*First*, the abandonment of personal freedom as the primary and exclusive goal of policy. Embodied for us in the principles of private property and freedom of contract, personal freedom is much more in our tradition than a mere philosophical abstraction or a romantic dream. It is the sturdy product of a heritage rich in experience of other systems and other methods of operating a community. Our civilization developed respect and reverence for personal freedom because it made complete sense; it worked; it brought to pass the things which real, living people wished to have brought to pass. Abandoning it has meant what it had to mean—the frustration of the goals of men. If we wish to resecure our liberties and our well-being, we shall have to make personal freedom—perhaps under the name “free employee choice”—the central, unqualified principle of labor policy.

*Second*, the neglect and distortion of law. This has come about largely as a consequence of the wrong ideas which have prevailed now for almost 50 years concerning legal and judicial administration. I shall enlarge upon this point, and suggest remedies, before dealing with the problem of restoring personal freedom in Labor relations.

For a generation, more or less, the administration of justice in labor relations has been taken away from the courts. Although our federal and state constitutions uniformly establish the constitutional courts as the appropriate agencies for the administration of justice, crippling legislation has left them in labor law not much more than figureheads. Their power to deal vigorously and straightforwardly with vicious and unlawful conduct by trade unions has been greatly reduced by anti-injunction legislation. These are federal and state laws which prevent the courts from ordering unions to end unlawful conduct.

While the anti-injunction legislation did not purport to prevent the courts from continuing to define the meaning of law and thus to direct the develop-

ment and growth of substantive law, this result was achieved in another way. Congress and a number of state legislatures set up administrative tribunals, usually called labor relations boards, and delegated to them the law-defining and law-developing functions which our constitutions give exclusively to the courts. I have but recently completed an exhaustive study of the way in which the federal labor board (the NLRB) has interpreted and applied the National Labor Relations (Taft-Hartley) Act. The conclusion of the study is that, although the constitutional courts worked manfully to correct the misinterpretations and distortions of the NLRB, the functional primacy of the board proved too much for them. A purely political agency, the board used political rather than legal criteria in interpreting and applying the Taft-Hartley Act. The results were, first, extreme distortion of the fundamental provisions of the Act; and second, the destruction of the free employee choice policy of the Act.

Proper administration of the law is at least as important as good law. The first thing necessary in order to correct the evils in labor relations, I therefore submit, is the restoration to the constitutional courts of the country the full responsibility for interpreting and applying our labor relations laws. Concretely, this means repealing all anti-injunction legislation and abolishing all labor relations boards.

## Legal Reforms Needed

**A**s to the reforms needed in the substantive law itself, these may all be subsumed under a single heading: Unqualified supremacy of the principle of free employee choice. Put generally, this means the total outlawing of every form of physical and economic coercion used by either employers or trade unions to dictate to employees concerning their choice as regards joining or not joining unions, or participating or not participating in concerted union activities. In detail, full implementation of the principle of free employee choice will require:

(1) A broad prohibition of restraint and coercion by employers and unions of the right of employees to make up their own minds on the question of union membership or participation in strikes.



(2) A specific provision of law to the effect that picketing, even when peaceable, is subject to that ban when it has or is intended to have coercive effects, either physical or economic.

(3) A specific declaration that the ban on restraint or coercion applies to the economic coercion implicit in all "agreements" proposed by unions or employers which make union membership or non-membership a condition of employment.

(4) A general prohibition against inducing any work stoppage by the employees of one employer when a union has a dispute with any other employer. (This is designed to outlaw all secondary boycotts and other monopolistic pressures.)

(5) Emphatic repeal of the exclusive-bargaining, majority-rule principle, including a positive statement that unions shall be the exclusive bargaining representatives of only those workers who expressly delegate such authority to them. The present statutory and doctrinal requirement, imposing a legally enforceable duty upon employers to bargain only with majority unions, would need to be deleted.

\* \* \*

In arguing the case finally for the principle of free employee choice, I shall say again what I and many others have already said. This sound and workable principle, commended by both theoretical considerations and the felt needs of a people, is being frustrated presently by conceptual and administrative deficiencies. The consequence has been the perversion and distortion of trade-unionism, to the general harm of society. Internal corruption in some trade unions and the external dangers to society posed by almost all industry-wide trade unions can all be traced directly to their compulsory, coercive practices. Besides presenting the gravest kind of social threat, these practices drain the vitality of the principles and policies generally. More is involved than the deprivations of human freedom which characterize our labor relations, more even than the corrupt and uneconomic practices which compulsion and coercion in labor relations are breeding. At stake, too, are the simple honesty, humanity, good sense and integrity of the United States, and its ideals as an intelligently conducted, enduring free society. ■

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