



9-1-1960

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Recommended Citation

Bernard D. Meltzer, *Symposium: Some Introductory Observations*, 35 Notre Dame L. Rev. 595 (1960).

Available at: <http://scholarship.law.nd.edu/ndlr/vol35/iss5/3>

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SOME INTRODUCTORY OBSERVATIONS

*By Bernard D. Meltzer**

Twenty-five years ago the critical issue in industrial relations was "Unions of Their Own Choosing." We were mired in a great depression, which first rocked the foundations of our system and then reshaped it. The resultant changes in our social framework are now so familiar and so fixed that their significance is sometimes overlooked. The government accepted affirmative responsibility for full employment; it sponsored security for workers and for farmers; it expanded the regulation of financial and business practices; and, finally, it provided legal protection for labor organizations and gave them moral approval.

These changes were followed by a dramatic growth in the numbers and power of the union movement. The new structure of unionism posed new issues and sharpened old ones, concerning the impact of the union on the public interest. In the 1930's the dominant issue was whether legal protection to organization was needed to improve the balance between the power of the workers and that of the employers. That issue has been turned on its head; today, the concern is whether the significant increase in union power has created a new imbalance which threatens to disrupt the institutions of economic order.¹ In the 1930's, the central issue was deflation; today the question is whether inflation or unemployment or both are the price for strong unions. In the 1930's, the issue was how to bring democracy into the plant; lately, the question has been how to promote democracy, as well as fiduciary responsibility, in the relations between the union and those whom it represents.

It will be clear to all that the issues which I have just mentioned in most general terms do not exhaust the problems which must be considered in a total assessment of the impact of the modern union; and additional issues will emerge in the course of this Symposium. As background for the whole range of issues involved, it may be useful to recall the ideas which, long before the depression, powered the rise of the labor movement.

Any single explanation for the growth of labor organizations would oversimplify a many-sided institution. But two recurring and related themes deserve attention. The first emphasized the destructive impact of the machine age on the worker's value system, his sense of craftsmanship, his economic security, and on his need for fellowship. It viewed the union as the proper response to the pervasive human desire for mutual aid, cooperation, and a sense of status.²

This explanation interweaves with a more familiar rationale which stressed the organized worker's unequal bargaining power. That idea, which, incidentally, goes back to Adam Smith,³ became the principal justification first,

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1 See e.g., LINDBLOOM, *UNIONS AND CAPITALISM* (1949); Chamberlin, *Labor Union Power and the Public Interest*, in BRADLEY, *THE PUBLIC STAKE IN UNION POWER* 3 (1958).

2 See generally TANNENBAUM, *A PHILOSOPHY OF LABOR* (1951).

3 *WEALTH OF NATIONS*, Book I, ch. VIII.

for increased judicial toleration of organized labor⁴ and then, for affirmative legal protection.⁵

"Labor's unequal bargaining power" has remained one of our sacred phrases despite telling criticism by economists.⁶ In dealing with the rise of the labor movement, we need not go into those criticisms; for the presumption in favor of free association seems wholly adequate to justify the earlier forms of labor organization. Their powers were limited because of the pressures generated by the non-union sector. They were limited also because of employer hostility, which, incidentally, has written a sorry chapter in our national history. Such limited power did not warrant denying to labor unions the right of combination which had freely been extended to capital.⁷ Indeed, early protagonists of labor's right to concerted action, such as Mr. Justice Holmes, were doubtful that association would raise wages.⁸

The union began, moreover, to have an impact on matters other than wages. It began to create a body of industrial rights and became the mechanism of what is now called industrial democracy. Union demands led to jointly-determined standards, such as seniority, and to grievance procedures, which became significant limitations on arbitrary managerial power. The impact of such protection on costs was uncertain; in any event, the money costs did not seem excessive for non-wage innovations which have been hailed as a major contribution to an industrial civilization.⁹

In the great depression, the architects of the Wagner Act suggested that collective bargaining not only redressed bargaining inequalities, but also might increase aggregate purchasing power and thereby might prime the pump in the short run and stabilize the economy in the longer run.¹⁰ The purchasing-power idea has, however, been undermined by economic analysis. Thus Professor Viner reminded us that "wages . . . are both costs and incomes; as costs, they are certainly obstacles to employment; as income they are certainly a stimulus to employment."¹¹ The purchasing-power theory ignores this duality and assumes that an increase in the wage rate means an increase in total wages. But this assumed conclusion doesn't necessarily follow; indeed, an increase in wage rates may, because of its adverse impact on employment, reduce the payroll.¹² Incidentally, the purchasing-power idea, together with "unequal

⁴ See, e.g., *American Steel Foundries v. Tri-City Central Trades*, 257 U.S. 184, 209 (1921).

⁵ See § 1, National Labor Relations Act, 29 U.S.C. §§ 141 *et seq.* (1952).

⁶ A comprehensive and critical appraisal of the considerations urged as the source of labor's inequality is found in HURT, *THE THEORY OF COLLECTIVE BARGAINING* (1930). See also Machlup, *Monopolistic Wage Determination as a Part of the General Problem of Monopoly*, in *WAGE DETERMINATION AND THE ECONOMICS OF LIBERALISM* 49, 54-55 (1947).

⁷ Cf. Holmes, J., dissenting in *Vegeahn v. Guntner*, 167 Mass. 92, 104, 109, 44 N.E. 1077 (1896).

⁸ See Holmes, J., dissenting in *Plant v. Woods*, 176 Mass. 492, 504, 505, 57 N.E. 1011 (1900).

⁹ See SLICHTER, *TRADE UNIONS IN A FREE SOCIETY* 12; Rees, *Some Non-Wage Aspects of Collective Bargaining*, in Bradley, *op. cit. supra* note 1, at 124.

¹⁰ See S. Rep. No. 573, on S. 1958, 74th Cong. 1st Sess. S. 1958, with minor amendments, became the Wagner Act.

¹¹ See Viner, *The Role of Costs in a System of Economic Liberalism*, in *WAGE DETERMINATION AND THE ECONOMICS OF LIBERALISM*, 15, 32-34 (1947).

¹² *Ibid.*; see also Haberler, *Wage Policy, Employment and Economic Stability* in WRIGHT, *THE IMPACT OF THE UNION* 34, 55-57 (1951).

bargaining power," implied that strong unions were an instrument for redistributing wealth from the rich to the poor — an idea which is still widely held. But the relevant empirical evidence gives no support to the notion that unions have increased labor's relative share. The evidence — and here there seems to be a refreshing consensus among economists — shows that the proportion of the national income going to workers as a class has remained substantially constant¹³ despite striking changes in the membership and power of organized labor.

The stability of labor's share does not mean that particular unions may not make impressive gains through collective bargaining. But it does raise a troublesome question: At whose expense are such gains made? We will return to that question.

It is clear that the rationales for labor organization which I mentioned did not provide any guidance as to the proper scale or scope of organization in a particular industry. As unions extended their scope, a new rationale emerged: The gains of the organized sector would be undermined and limited by competitive pressures unless organization embraced all or substantially all enterprises producing for a common market. In the familiar slogan, competition was to be taken out of wages.

Over large sectors of our economy, this goal has been achieved as a result of the impressive successes of labor organization following the passage of the Wagner Act. More than 80 per cent of the employees are unionized in such strategic industries as basic steel, automobiles and trucking;¹⁴ and in some cases, the same union bargains for employees in industries which compete with each other. Mr. Hoffa, although he already seems quite busy, has announced his dream of combining all of the workers in the transportation industry into one massive union.

The new structure of labor power has made it plausible for employers to borrow the ideas and slogans developed by unions. Now, employers complain about unequal bargaining power. This claim is made not only by the small laundry confronted by the Teamsters, but also by the corporate giants. Now, industry urges that the union may be indifferent to the fate of particular enterprises and their employees just as the non-unionized capitalist was said to be indifferent about employing any particular employee. The circle of rhetoric — and perhaps of reality in some cases — has come full turn.

More important is the criticism that some modern unions do not promote that elusive objective described as a social balance, but, on the contrary, derange the economic institutions which are directed at its achievement. It may be useful to summarize the main and familiar lines of this criticism, which is to be more fully developed and appraised by later speakers.

The first point is that some unions have substantial monopoly powers, whose exercise prevents the proper allocation of resources between industries

¹³ See Kerr, *Labor's Share and the Labor Movement*, in TAYLOR AND PIERSON, *NEW CONCEPTS IN WAGE DETERMINATION* 260, 280-281, 296 (1957).

¹⁴ See Lindblom, *op. cit. supra* note 1, at 85; and *Extent of Collective Bargaining and Union Recognition*, 64 MONTHLY LABOR REVIEW 765, 766 (1947). Although these earlier estimates probably hold good today, there is apparently a dearth of reliable data about the penetration of particular unions in particular "industries."

and areas. The social waste which results is paid for by consumers in the form of higher prices and by other workers who are excluded from the better jobs because high costs mean lower output. This criticism, which was forcefully developed by the late Henry Simons almost a generation ago,¹⁵ has become a major theme in the more recent literature of apprehension.¹⁶

The second criticism is the related one that some unions have exercised their power to institutionalize so-called featherbedding practices and thereby have unduly obstructed efficiency and growth.

The third criticism is summarized by the dictum of Charles O. Hardy, that "collective bargaining with strong unions, price stability, and full employment are incompatible. We can have any two of these but not all three."¹⁷ One aspect of this problem has recently been popularized, with the help of the steel companies, by the slogan of wage-induced inflation or the wage-price spiral.

The issues arising from these three criticisms are, I believe, profoundly more difficult and more significant than the last problem which I propose to mention, the so-called national emergency strike, which has recently been the subject of so much public concern. Such strikes, national defense aside, typically, although not invariably, occur where large-scale bargaining has broken down and may properly be viewed as one incident of the increased size of modern unions and modern bargaining structures. Such strikes result, of course, from the failures of both labor and management to devise a settlement. But the onus of disrupting the flow of the community's income typically falls on the union because it is usually asking for more and because it formally declares the economic war. Critical strikes are, of course, local as well as national in scope — as communities disrupted by public utility strikes know.

Monopoly power is, we know, a matter of degree for both unions and enterprises. The extent of such power may vary from union to union and within the same union at different times. Consequently, it is not very helpful to talk about union monopolies in general. Discussions of monopoly power can be meaningful only if we can say something about the following questions in relation to particular unions:¹⁸ (1) What has been the magnitude of their impact on wages and costs in any given period? (2) For how long a period can particular unions continue to make gains? (3) What are the probable consequences of such gains on consumers, on employment in the industry involved, on employment generally, on profits, and on the survival of marginal firms?

As to such matters, we look to economists for light. But even a layman may suggest that it will not be easy to get reliable answers or a professional consensus about the reliability of particular answers.¹⁹ And in this area, as in

15 Simons, *Some Reflections on Syndicalism*, 52 JOURNAL OF POLITICAL ECONOMY 1 (1944), reprinted in SIMONS, *ECONOMIC POLICY FOR A FREE SOCIETY* 121 (1948); references are to the reprint.

16 See e.g., Lindblom, *op. cit. supra* note 1, critically reviewed by Rees, *Labor Unions and the Price System*, 58 J. POL. ECON. 254 (1950).

17 *Prospects of Inflation in the Transition Period*, in C. O. HARDY, K. B. WILLIAMS & H. S. ELLIS, *PRICES, WAGES AND EMPLOYMENT* ("Postwar Economic Studies," No. 4, Washington: Board of Governors of Federal Reserve System, 1946).

18 Cf. Rees, *Do Unions Cause Inflation?* 2 JOURNAL OF LAW AND ECONOMICS 84 (1959).

19 See *id.* at 85 *et seq.*

others, we may have to take comfort in Samuel Butler's observation that "life is the art of drawing sufficient conclusions from insufficient premises."

The trouble with much of the discussion of the union-monopoly problem is, however, not connected with gaps in our empirical knowledge. A good deal of the discussion simply avoids the problem by definitions or by distinctions which, in my opinion, don't bite into the basic purposes of our anti-trust tradition. Thus, there is the familiar observation that unions are supposed to exercise monopoly power. The law, after all, draws a distinction between labor markets and product markets and in general exempts union control of the labor market from the Sherman Act. But the justification for that immunity depends in part on the effects of union monopoly on the large variety of objectives behind the prohibition of restrictions on commercial competition — objectives such as protection of consumers and of free entry or economic opportunity. And any approach or distinction which doesn't relate the consequences of union power to the underlying objectives of the anti-trust tradition is, in my opinion, inadequate.

Mr. Hoffa's blueprint for the combination of all transportation workers into a single union brings the underlying problem into sharper focus. Should the law tolerate such a union under the leadership of Mr. Hoffa or anyone else? Should we, in other words, take the competition out of wages in enterprises which may be viewed as being in different industries which compete with each other? Can we formulate and enforce any meaningful standards with respect to the desirable scope of existing or future combinations, or are the issues of size, power, and inter-industry penetration best left to *laissez faire*?

Another popular method of disposing of the monopoly problem is to refer to the ringing declaration of the Clayton Act that "the labor of a human being is not a commodity or article of commerce."²⁰ As Barbara Wootton, a pillar of the British Labor Party, has suggested, this declaration is worthy of King Canute in its defiance of economic theory²¹ and, I would add, industrial reality.

A worker is a resource of production. He is also, we know, a human being. The Clayton Act is a wise reminder that errors in social policy, as well as in labor-management relations, will result from ignoring the human facets of the worker. But similar errors may result from ignoring his productive facet. And to recognize that a worker is a resource of production is not to suggest that he is to be treated like a machine or a chattel. It is instead to recognize his social contribution and his power to get paid for his services, usually without dependence on any one employer and without the compulsion or the benevolence of the state. And that power still has some connection with the idea of freedom.

The third theme in the monopoly discussion has been that unions are not the only institutions with market power. United States Steel, the union aside, may have, we are told, more influence on prices than accrues to the Steelworkers because of the link between labor costs and prices. If the thrust of

20 Section 6, 15 U.S.C. § 17 (1952).

21 SOCIAL FOUNDATIONS OF WAGE POLICY 102 (1955).

this suggestion is that we should wholly abandon our anti-monopoly laws because they are an obsolete mythology, this suggestion is understandable — although, I would urge, unfortunate. But if we are to preserve our anti-monopoly tradition, and if both United States Steel and the Steelworkers are monopolists, both would seem to need attention unless labor monopoly acting with enterprise monopoly is less dangerous to the objects of an anti-monopoly tradition than enterprise monopoly acting alone. The implication that two monopolies are better than one raises sharply the question of whether the effect of the second monopoly offsets or adds to the impact of the first.²² Are consumers, for instance, better off because a union monopoly bargains with an enterprise monopoly?

It may be that significant monopoly power is necessary to achieve values, such as worker-security or "industrial jurisprudence," and that such values will be considered sufficiently important to override the social costs of union monopoly. And even if those social costs are deemed excessive, substantial difficulties of devising and enforcing appropriate remedies would remain. Nevertheless, it is clear that to appreciate the impact of union power on the public interest we must replace exchanges of partisan rhetoric with a sober attempt to determine the consequences of union power in particular industries and in the economy generally. Perhaps economists are too divided and the issues too complex to permit a meaningful consensus on what the consequences are, let alone their desirability. But the increased and responsible concern with the impact of union power promises to improve our understanding of the social costs involved.

One such cost, for which union power is being increasingly blamed, is, of course, inflation, which bears heavily on the small saver, those on fixed retirement incomes, and civil servants and others whose pay often lags. The unions reply that they are only catching up with prior price increases, and both sides maneuver for the most expedient base periods for comparisons. Here again, we turn to the economists for light. I want only to raise some of the underlying questions: (1) What is the mechanism through which changes in prices or wages in one sector of the economy are translated into inflation, that is, an increase in the general level of prices? (2) Is it unions or governmental fiscal policy which is the important pressure toward inflation? (3) Does the government pursue inflationary policies for the purpose of avoiding the adverse impact on employment which does result from, or might result from, "excessive" wages? And the last question is really the first question: How much inflation have we had since the Korean War? Professor Rees has recently suggested that, because of the upward bias in the Consumers Price Index, "it is not clear that there has been any rise in the true level of consumer prices over the past decade, except for the brief rise caused by the Korean War."²³ We seem to have had quite a scrap about who is guilty without any clear proof of the *corpus delicti* or at least without knowing whether grand larceny or petty larceny was involved.

²² This question is discussed by Machlup, *op. cit. supra* note 6, at 62.

²³ Rees, *op. cit. supra* note 18, at 92.

The scale and power of modern unions has not only posed the formidable economic questions which I have touched on, but has also sharpened questions about what internal union democracy is and whether it can be realized.²⁴ I am not suggesting any correlation between size and the grosser forms of autocracy or corruption which Senator McClellan exposed and which inspired the passage of the Landrum-Griffin Act. On the contrary, leaders of international unions have advanced both the ideal and substance of democracy through the development of ethical codes and Public Review Boards. Nevertheless, we know that the difficulties of achieving responsiveness and accountability increase with size of organization, whether the organization is the state or a trade union. In the union movement size presents, moreover, a distinctive problem because typically at the international level there is no opposition group, and size and centralization increase the difficulty of organizing one.²⁵

Indeed, the managerial revolution, with its separation of stock ownership and control, appears to have its counterpart on the union side, with its separation of membership and control. Vital decisions, such as those concerning bargaining demands and strikes, and the union's position on public issues, appear increasingly to be made at the international level. At the same time communication between the international officer and his constituents has become more difficult. The gap between them is being widened by geography, by differences in outlook, and by the professional bureaucracy which surrounds the international officer. It is far from clear that committees or conventions or, indeed, the recent use of opinion surveys, can effectively bridge the gap. And such a gap may persist without producing any effective challenge to the union leadership; for the incumbents at the international level enjoy in practice an immunity against being voted out similar to the immunity of the officers of large corporations resulting from their control of the proxy machinery. These institutional developments have plainly complicated the achievement of the responsiveness and accountability implicit in some definitions of democracy.

These developments may, however, have increased the union's effectiveness as a service institution. And many, if not most, of the rank and file have perhaps cheerfully traded democracy for efficiency. The familiar story of their apathy suggests that a vital democratic experience in the union may be more important to students of unionism — or to opponents of unionism — than to most unionists.

Why then this great public concern with union democracy in a society shot through with voluntary organizations, many of which have at best only a democratic facade? Of the many answers which have been given, I will emphasize only one. The union movement has, as we have seen, been justified as a vehicle of industrial democracy. The union's link with a pervasive value of our society has served as an important justification for such disruption as the union might involve. And the community has now insisted that the

²⁴ See generally Magrath, *Democracy in Overalls: The Futile Quest for Union Democracy*, 12 *IND. AND LAB. REL. REV.* 502 (1959).

²⁵ *Id.* at 514.

union practice what it has preached²⁶ — at least to the extent of keeping the channels of criticism open and providing the machinery and opportunity for democracy. If this assessment is correct, an underlying purpose of the Landrum-Griffin Act may be said to be protecting the moral basis for unionism and, thereby, safeguarding the protection which the law has afforded to labor organization.²⁷

I want to comment on one critical omission in the statute which undermines its democratic premise, *i.e.*, the rejection by Congress of proposals to eliminate exclusion from membership based on race, creed or sex. Congress sought, by protecting free elections and free speech, to give to those admitted to membership a better opportunity to choose their representatives and thereby to influence their policies. But the law gives the bargaining representative large powers to act for all employees in the bargaining unit; these powers extend to union members and non-members alike. Exclusion of an employee from the union is thus a total denial of any institutionalized opportunity to influence those who act for him. Congress, while adding to the democratic rights of union members, at the same time tolerated total disenfranchisement of employees excluded from membership on invidious grounds. This incongruous result seems wholly incompatible with the democratic affirmations which accompanied the act.

Despite this difficulty and others, Landrum-Griffin is a significant attempt to define and to protect the civil rights of union members. The contribution of the law is necessarily limited in this area, and it would take a hardy prophet to predict its actual impact. But one concluding observation is not too hazardous. Unless unions preserve or, where necessary, develop effective internal traditions and restraints against suppression of dissent and abuse of power, the law may prescribe periodic and non-coercive elections, but the law may be less pertinent than Mark Twain's observation. He told us, you may remember: "It is by the goodness of God that in our country we have those three unspeakably precious things: freedom of speech, freedom of conscience, and the prudence never to practice either of them."

²⁶ See Summers, *The Public Interest in Union Democracy*, 53 NW. U.L. REV. 610, 611-612 (1958).

²⁷ Cf. Aaron, *The Labor-Management Reporting and Disclosure Act of 1959*, 73 HARV. L. REV. 851-855 (1960).