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Hayek on Labor Unions: Coercion and the Rule of Law

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It is probably... impossible in our time for a student to be a true friend of labour and to have the reputation of being one (Hayek [1959] 1967, p. 294).

Introduction

As this epigraph implies, unions have a much better reputation than they deserve. Even today (2007) a majority of the general public thinks that labor unions are the best friend that any working man or woman could have. That is simply wrong, and in Friedrich Hayek's writings on unions, from *Monetary Nationalism and International Stability* ([1937] 1972, pp. 21-2) wherein he first noted the inflationary dangers of collective bargaining, to *1980s Unemployment and the Unions* (1980), which Arthur Seldon characterized as the summation of Hayek's teaching on unions ([1980] 1984, p. 9), Hayek explained why. He argued that while unions benefited some workers, it was always at the expense of other workers, and that as a whole, unions have made workers significantly worse off than they would otherwise have been. Moreover, he saw unions as they were (and, in large measure, as they still are) in Britain and the U.S. as major threats to the free economy as well as the free society in general. He endorsed voluntary unionism on grounds of freedom of association properly understood, but he saw actual unions in both countries as wholly involuntary organizations to which politicians had granted

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both immunity from the ordinary rule of law and power to wield coercive authority mainly against workers who preferred to be union free. The malign consequences of coercive unionism examined by Hayek fall into two broad categories: conflicts with the rule of law and perverse social and economic effects. In both, Hayek saw immense problems which could only be solved by major reforms of public policy.[2] In this essay I discuss the issues of coercion and the rule of law.

I first discuss what Hayek meant by "coercive" unionism and what he saw as the sources of the unions' coercive powers in Britain and the U.S. Next I consider Hayek's vision of voluntary unionism as an instrument of discovery. Finally, I cover Hayek's views on coercive unionism and the rule of law as it relates to freedom of association, freedom of contract, and strikes and picketing.

Coercive Unionism

In *The Constitution of Liberty* (1960), Hayek outlined his views concerning the proper scope of government. He argued that the principal function of a just government is to provide the protective services of the classical night watchman state. Later, in *Law, Legislation and Liberty I* (1973), he characterized these protective services as those necessary to enforce the "rules of just conduct" among people. I have characterized these rules of just conduct as the rules of voluntary exchange (Baird 1995). These rules are general (applicable to all situations) and abstract (not designed to accomplish specific purposes). They set the environment within which people

[2] Although Hayek made frequent references to labor unions in several essays, his thinking on this issue is most completely represented in just three sources: "Unions, Inflation and Profits" ([1959], 1967), Chapter 18 of his *Constitution of Liberty* (1960), and the monograph he wrote for the Institute of Economic Affairs in 1980, *1980s Unemployment and the Unions.* The IEA published a second edition of this monograph in 1984 that consisted of Hayek's original essay and a postscript by Charles G. Hanson that addressed the Thatcher union reforms of the early 1980s.

remain free to pursue their own purposes. To enforce such rules government must have some coercive power. According to Hayek, coercion is evil; but some coercion, exercised exclusively by government for the sole purpose of preventing people from trespassing against each other, is necessary.

To Hayek the rule of law has two parts: Government must be limited to enforcing the rules of voluntary exchange, and government must apply those rules uniformly over all people and to itself. People wielding governmental authority may grant no special privileges to, and impose no special burdens on, anyone. Hayek referred to the principle of equality before the law as *isonomia.* (1960, Part II). The private use of coercive force, except in self defense, is always contrary to the rule of law.

Now, unions are not governments. They are private organizations of private individuals. They should never be able to deal with any people except on the basis of voluntary exchange. Yet, in Britain and the U.S. politicians have granted unions the unique privilege of using coercion to get what they want.

> Public policy concerning labor unions has, in little more than a century, moved from one extreme to the other. From a state in which little the unions could do was legal if they were not prohibited altogether, we now have reached a state where they have become uniquely privileged institutions to which the general rules of law do not apply. They have become the only important instance in which governments signally fail in their prime function – the prevention of coercion and violence (1960, p. 267).[3]

What sort of coercion and violence did Hayek have in mind?

[3] I do not know how unions were treated by the law in Britain in the latter part of the 19th century, but it is clearly not the case that in the U.S. the legitimate functions of unions were ever proscribed or prosecuted (Baird, 1984).

> The unions cannot achieve their principal aims unless they obtain complete control of the supply of the type of labor with which they are concerned; and, since it is not in the interest of all workers to submit to such control, some of them must be induced to act against their own interest....
> It is the techniques of coercion that unions have developed for the purpose of making membership in effect compulsory, what they call their 'organizational activities' (or, in the United States, 'union security' – a curious euphemism) that give them the real power (ibid., pp. 273-4).

In Britain if a union, through strikes and threats of strikes, could get employers of a particular kind of labor to agree not to hire any union-free workers, the instrument of coercion would be to present recalcitrant workers with a "choice": join up or don't work. In the U.S. the same sort of coercive choice was imposed through the "union security" provisions of the National Labor Relations Act (1935). In 1947 that Act was amended by the Taft-Hartley Act, and subsequent decisions of the U.S. Supreme Court reduced compulsory union membership to the forced payment of union dues. It remains true in the U.S. that unions can coerce workers who prefer to be union-free to support them as a condition of continued employment.

However, unions do not stop there. Sometimes individual workers who wish to become or remain union-free are threatened with beatings and worse. Sometimes the threats become reality. Sometimes the families of recalcitrant workers are also victims of threats and attacks.[4] And all of this has been considered proper. How could this be?

[4] For thorough documentation of union violence in the U.S. see Thieblot et al., (1999).

> All this has become possible because in the field of labour relations it has come to be accepted belief that the ends justify the means, and that, because of the public approval of the aims of union effort, they ought to be exempted from the ordinary rules of law. The whole modern development of unionism has been made possible mainly by the fact that public policy was guided by the belief that it was in the public interest that labour should be as comprehensively and completely organized as possible, and that in the pursuit of this aim the unions should be as little restricted as possible ([1959], 1967, p. 281).

Muddled thinking and widespread belief in the "myth" that unions have benefited the working class and that those benefits would vanish in the absence of unions, leads public opinion to several false conclusions.

> [T]he fact that it is a natural aim of the unions to induce all workers to join them has been so interpreted as to mean that the unions ought to be entitled to do whatever seems necessary to achieve this aim. Similarly, the fact that it is legitimate for unions to try to secure higher wages has been interpreted to mean that they must be allowed to do whatever seems necessary to succeed in their effort. In particular, because striking has been accepted as a legitimate weapon of unions, it has come to be believed that they must be allowed to do whatever seems necessary to make a strike successful. In general, the legalization of unions has come to mean that whatever methods they regard as indispensable for their purposes are also to be considered legal (1960, p. 274).

This unthinking support of labor unions is based on confused notions of social justice.

> The struggle for the recovery of Britain may mean a struggle against those long regarded as the 'good' people, whose 'social conscience' led them to try to impose some ideal design on the distribution of incomes. These are the politicians in all parties, in the trade unions, supported by well meaning, but muddled people in high places ([1980], 1984, p. 47).

The principal source of the coercive powers enjoyed by British unions was the 1906 Trades Disputes Act, which, unlike U.S. legislation in the 1930s, didn't actually grant any coercive powers. Instead, the 1906 act simply immunized labor unions and labor union leaders from any prosecution for acts of coercion and violence. This may sound a bit exaggerated, but it is not. Even Sidney and Beatrice Webb, staunch supporters of British unions in the late 19th and early 20th centuries, regarded the Trade Disputes Act as "nothing less than monstrous" (Hanson 1984, p. 70). As Hayek pointed out in 1960 (p. 268) and Hanson repeated in 1984 (p. 70), A. V. Dicey, the renowned British constitutional lawyer, condemned the 1906 law for having made "a trade union a privileged body exempted from the ordinary law of the land" (ibid., pp. 69-70). From 1906 until the Thatcher reforms of the 1980s (despite a feckless attempt by the Heath government in 1971 to make some changes), unions could, with impunity, use both threats of and actual force and violence against employees and employers as well as customers and suppliers of strike targets to achieve whatever they wanted – as long as it was in the context of a labor dispute.

Hayek cites the sources of American unions' coercive powers as the Clayton Act of 1914, and the Norris LaGuardia Act of 1932 together with the Supreme Court decision in *Hunt v. Crumboch* (325 US 821 [1945]). Curiously, he failed to cite the most important piece of legislation in this regard: the National Labor Relations Act of 1935 as amended in 1947 (Hayek 1960, p. 268). The Clayton Act was an attempt by Congress to make unions exempt from antitrust laws. It

didn't work because the 1921 Supreme Court decision in *Duplex Printing v. Deering* (254 US 443) prevented the exemption from applying to most union activities. The Norris LaGuardia Act overrode the *Duplex* decision as far as antitrust was concerned. In addition, it made it impossible for federal courts to grant injunctions against any sort of union activities in labor disputes; authorized mass picketing, even by non-employees, during strikes; and made union-free agreements between workers and employers unenforceable (Baird, 1995, Section III). *Hunt v. Crumboch* was an especially egregious Supreme Court decision wherein the Court granted union leaders the privilege of driving an employer out of business simply because they did not like the employer (Baird 2000, Section III).

The National Labor Relations Act (NLRA), was and is the principal legislative source of union exemptions from the rule of law in the U.S. Its doctrines of exclusive representation and mandatory good faith bargaining are the main culprits. Union security, which as we saw above was cited by Hayek, really derives from exclusive representation. Briefly, exclusive representation is the provision in the NLRA that prohibits individual workers from deciding whether they will or will not be represented by a union. Instead, the question is decided by majority vote. A union that is certified by such a vote represents all workers who were eligible to vote. Workers who voted against the union as well as workers who didn't vote must accept the representation "services" of the winning union. Individuals are forbidden to represent themselves. Moreover, once a union is certified, it is presumed to have majority support indefinitely. There are no regularly scheduled future elections wherein workers can reconsider the issue. For example, the United Auto Workers union is the exclusive bargaining agent for all American General Motors assembly line workers even though all of the workers who voted for the union back in the 1930s and 1940s are now dead or retired. Current workers never got a chance to vote.

Although Hayek did not explicitly discuss exclusive representation in American unionism, he clearly condemned the principle twice in *The Constitution of Liberty.*

> Legislation has frequently gone so far as to require not only that that a contract concluded by the representatives of the majority of the workers of a plant or industry be available to any worker who wishes to take advantage of it, but that it apply to all employees, even if they should individually wish to be able to obtain a different combination of advantages (1960, p. 275).

Later, while discussing how to constrain union coercion, he wrote:

> It would be necessary ... to rescind all legal provisions which make contracts concluded with the representatives of the majority of workers of a plant or industry binding on all employees and to deprive all organized groups of any right of concluding contracts binding on men who have not voluntarily [as individuals] delegated this authority to them (ibid., p. 278).

Mandatory good faith bargaining forces employers to bargain with certified unions on matters of wages and salaries and other terms and conditions of employment. The only sure defense an employer has against a charge of failure to bargain in good faith with a union is an unambiguous record of making compromises during the bargaining process. In Britain a union could force an employer to give into union demands by threats and acts of violence. In America, the law itself explicitly forces employers to give in. For example, union security is a mandatory subject of bargaining. The law compels employers to bargain with certified unions on whether workers who are not union members, but who, under exclusive representation, are

represented by those unions, shall be forced to join the union or at least pay union dues.

Hayek never discussed mandatory good faith bargaining. Perhaps he was unaware of this feature of American law. In any case the idea is completely foreign to Hayek's conception of the rule of law. Under the common law of contracts, if any party to a contract were forced to bargain and forced to make concessions, the contract would be null and void. To be legitimate a contract must emerge from a process of voluntary exchange. This is one example of what Edwin Vieira, an American labor lawyer, calls "the apartheid of [American] labor law" (1986, p. 35).

To perfect the exemption of American unions from the rule of law, the Supreme Court in *United States v. Enmons* (410 US 396 [1973]) exempted unions and their leaders from federal prosecution for any threats or acts of violence and coercion as long as the threats and acts were committed in the context of a labor dispute wherein unions were seeking "legitimate union objectives" such as higher wages and collective bargaining contracts. In so doing the Court enacted its own Trades Disputes Act.

Voluntary Unionism and Discovery

Hayek begins his discussion of the proper role for government with respect to unions in *The Constitution of Liberty* (1960) with a rather startling statement:

> It can hardly be denied that raising wages by the use of coercion is today the main aim of unions. Even if this were their sole aim, legal prohibition of unions would however, not be justifiable. In a free society much that is undesirable has to be tolerated if it cannot be prevented without discriminatory legislation (1960, p. 275).

The problem with unions, then, is not what they try to do even when those efforts are coercive. The problem, Hayek suggests, is that the

unions are not subject to the rule of law. Their coercive acts go unpunished. In a free society that which is undesirable must be dealt with by a consistent application of the rules of just conduct and punishment of those who break those rules. No special, discriminatory legislation is justified.

In a system of genuinely voluntary unionism each worker would be free to choose, as an individual, whether to associate with a labor union in any way. Similarly, each labor union would be free to decide whether to associate with any individual worker in any way. Unions would represent only their voluntary members. Employers and unions alike would be free to choose whether to bargain with each other. All labor-related questions would be resolved by voluntary exchange. Government's role would be limited to enforcing the rules of voluntary exchange in labor markets (as well as in all other markets).

Hayek then opines, "as truly voluntary and non-coercive organizations, [unions] may have important services to render. It is in fact more than probable that unions will fully develop their potential usefulness only after they have been diverted from their present antisocial aims by an effective prevention of the use of coercion" (1960, p. 276). This is in keeping with Hayek's view of the competitive market process as a "discovery procedure" ([1968] 1978). No one can know what activities voluntary and peaceful unions might discover to be beneficial to their voluntary members and others. Unions have never had to embark on that journey of discovery.

Hayek was forthright in his endorsement of voluntary unionism in his *1980s Unemployment and the Unions.*

> I do not, of course, deny the trade unions their historical merits or question their right to exist as voluntary organizations. Indeed, I believe that everybody, unless he has voluntarily renounced it, ought to have the right to join a

> trade union. But neither ought anyone to have the right to force others to do so ([1980] 1984, p. 51).

The phrase "unless he has voluntarily renounced it" raises another question. In America prior to the Norris LaGuardia Act (1932) it was legal for an employer to include a union-free (unionists called it "yellow dog") provision in his offer of employment. Any worker who accepted such an offer of employment would thereby consent to abstain from any sort of union activity. As I have argued elsewhere, such agreements are perfectly consistent with the doctrine of freedom of contract (1995). I infer from the quote above that Hayek would agree with me. However, in *The Constitution of Liberty* Hayek unequivocally condemned the "yellow dog contracts" as agreements in restraint of trade (1960, p. 278). I return to this issue below.

Freedom of Association

Unions claim that they are based on workers' freedom of association. The International Labour Organization (ILO) proclaims that freedom of association is the most basic right upon which union legitimacy rests. Hayek didn't see it that way. The unions and the ILO have a warped understanding of freedom of association. Correctly understood, freedom of association has both a positive and a negative dimension. The former is the principle that each person is free to associate (for legal purposes) with any other person or persons who are willing to associate with him. The latter is the principle that each person has a right to refuse to associate with any person or persons who want to associate with him. If there is no effective right to abstain from unwanted association the right to choose one's associations is meaningless. The unions and the ILO do not recognize the right of workers to abstain from association with unions. Their appeal to freedom of association as justification for coercive unionism is pure hypocrisy.

> The unions have of course now become the open enemies of the ideal of freedom of association by which they once gained the sympathy of the true liberals. Freedom of association means the freedom to decide whether one wants to join an association or not. Such freedom no longer exists for most workers. The present unions offer to a skilled worker only the choice between joining and starving, and it is solely by keeping non-members out of jobs that they can raise the wages of particular groups of workers above the level they would reach in a free market ([1978] 1984, p. 61).

Hayek began Chapter 18 in *The Constitution of Liberty* with a section titled "Freedom of Association." In it he argues that unions have transformed that principle into a right to coerce.

> Most people ... have so little realization of what has happened that they still support the aspirations of the unions in the belief that they are struggling for 'freedom of association,' when this term has in fact lost its meaning and the real issue has become the freedom of the individual to join or not join a union. The existing confusion is due in part to the rapidity with which the character of the problem has changed; in many countries voluntary associations of workers had only just become legal when they began to use coercion to force unwilling workers into membership and to keep non-members out of employment. Most people probably still believe that a 'labor dispute' normally means a disagreement about remuneration and the conditions of employment, while as often as not its sole cause is an attempt on the part of the unions to force unwilling workers to join (1960, p. 268).

In a later section of the same chapter, titled "Constraining Coercion," Hayek argued that to do so, "The essential requirement is that true freedom of association be assured and that coercion be

treated as equally illegitimate whether employed for or against organization, by the employer or by the employees" (ibid. p. 278).

In sum, according to Hayek, just as appeal to freedom of association was the means by which unions made their claim to legitimacy, appeal to freedom of association correctly understood is the essential means by which unions can be transformed from involuntary into voluntary (and therefore legitimate) organizations.

Freedom of Contract

Then, later in the same section, Hayek gets into what I consider to be a bit of logical trouble. He was so adamantly opposed to the closed shop as it evolved under the unions' illegitimate privileges and immunities granted by the Trades Disputes Act in Britain and the National Labor Relations Act in the U.S. that he failed to recognize that closed shop agreements between a truly voluntary union and a willing employer would be consistent with true freedom of association. Here is Hayek's argument:

> [T]he unions should not be permitted to keep non-members out of any employment. This means that closed- and union-shop contracts ... must be treated as contracts in restraint of trade and denied the protection of the law. They differ in no respect from the 'yellow-dog contract' which prohibits the individual worker from joining a union and which is commonly prohibited by the law (ibid.).

He implies that "yellow dog" contracts (which I prefer to call "union-free" contracts) are properly prohibited by the law. I disagree. A job offer made by an employer to an employee has several components. The compensation package stipulates a direct wage or salary along with a set of other benefits of various descriptions. Hayek certainly would not argue that an employer should be prohibited from offering any compensation package he chooses. He certainly would argue that the prospective employee has the right to accept or reject the

compensation package. Similarly, the job description itself (the stipulation of the time, place and manner of the employee's expected actions on the job) is another part of the job offer. Hayek certainly would not argue that an employer should not be able to make such stipulations. Again, he would argue that the prospective employee must be free to accept or reject the offer. It seems to me that if an employer wants to include a union-free agreement in the job offer, that is his right. The prospective employee would have a corresponding right to accept or reject the job offer. Any job offer will consist of some things a prospective employee likes and other things he doesn't like. He must settle the tradeoffs in his own mind before he exercises his right to accept or reject the job offer.

Now, in the absence of any special privileges or immunities for unions or employers, I think the principle of freedom of contract (which is part of the freedom of association), implies that a willing employer has a right to agree with a truly voluntary union to hire only union members as employees. I wouldn't expect many truly free employers to do so, but I think they should be free to do so. If such agreements work in a free market setting, other employers and other unions will adopt them. If they don't work, they will not be adopted. The market will sort it all out. Hayek endorsed the principle of letting the market sort things out in other settings. He was not logically consistent when he advocated government interference in market arrangements in this setting.

I will go even further. The problem with exclusive representation in American labor law is not exclusive representation itself. It is that the law compels exclusive representation. In the absence of the National Labor Relations Act, I see no reason why an employer should not be free to agree with a voluntary union that the question of union representation will be decided by majority vote among the employees. Certainly in the case of a brand new enterprise, where all prospective employees know that there will be such a vote, such an arrangement should not be prohibited. In an established enterprise the terms of each individual worker's hiring

contract would determine whether he could be bound by any post-hiring vote among his colleagues on the issue of union representation. Again, I would not expect that many truly free employers would choose to enter such agreements.

My position on this issue is, of course, that taken by Milton Friedman (1962, pp. 115-6). Friedman argued that American right-to-work laws (which, in the twenty-two states that have adopted them, prohibit a union from agreeing with an employer to require union membership or the payment of union dues as a condition of continued employment) were, by themselves, illicit interferences by government in the freedom of contract. He went on to state that the problem that should be remedied is the monopoly power that the National Labor Relations Act grants to certified unions. Friedman did not explicitly say that without such monopoly power, the right-to-work laws would be moot, but they certainly would be. If unions represented only their voluntary members, they would have no argument to justify any sort of compulsory membership or support. In any case, there is no place for right-to-work laws in a truly free labor market.

Hayek goes on, in the same section, to claim that his position on closed shop and union-free contracts (that both should be prohibited) is consistent with the principle of freedom of contract correctly understood.

> It would not be a valid objection to maintain that any legislation making certain types of contracts invalid would be contrary to the principle of freedom of contract. We have seen before (in chap. xv) that this principle can never mean that all contracts will be legally binding and enforcible [sic]. It means merely that all contracts must be judged according to the same general rules and that no authority should be given discretionary power to allow or disallow particular contracts. Among the contracts to which the law ought to deny validity

> are contracts in restraint of trade. Closed- and union-shop contracts fall clearly into this category (1960, pp. 278-9).

Here, again, I disagree. Closed- and union-shop contracts in the context of special privileges and immunities for unions clearly are illicit. But the best solution is to eliminate those special privileges and immunities. If that cannot be done, then, as a second best, measures like American right-to-work laws could be used to protect individual worker rights.

The term "contracts in restraint of trade" is a work of art. It means different things to different people. In particular that term has played a mischievous role in the sad history of antitrust regulations. One person's contract in restraint of trade is another's innovative arrangement to cope with market realities. As Dominick Armentano (1982) has shown, American antitrust laws have more often been used to protect particular competitors than to protect the process of competition and consumers. I infer from Hayek's condemnation of contracts in restraint of trade in the context of unions that he would support the application of antitrust laws to unions. Again, I disagree. As I have argued elsewhere (Baird 2000), antitrust laws should be repealed. That together with repeal of the monopoly-granting privileges of the National Labor Relations Act would allow the market to sort out efficient from inefficient organizational architectures.

Finally, Hayek agreed with the position I have taken above concerning right-to-work laws as second-best alternatives.

> Though there ought to be no need for special 'right-to-work laws,' it is difficult to deny that the situation created in the United States by legislation and by decisions of the Supreme Court may make special legislation the only practicable way of restoring the principles of freedom (1960, p. 279).

Of course right-to-work laws do not really restore principles of freedom. They are actually an infringement on the freedom of contract made necessary to partially offset even greater infringements on freedom of association and contract. What we ought to do is abolish all such infringements.

Strikes and Picketing

If a strike is defined as a collective withholding of labor services by workers who find the terms and conditions of employment offered by an employer to be unacceptable, then there is a legitimate right to strike. I call this the voluntary exchange right to strike. In the absence of an unexpired fixed-term employment contract, any individual worker has a right to withhold his labor from an employer who doesn't offer satisfactory terms. If every worker has such a right they all can individually choose to exercise the right simultaneously. Even if a worker has an unexpired fixed-term contract with an employer, he cannot be forced to continue on the job. If he walks off the job, the employer's only recourse is to sue him for breach of contract and let other employers know that he is an unreliable employee.

> Neither the right of voluntary agreement between workers nor even their right to withhold their services in concert is in question (1960, p. 269).

> I am even prepared to agree that *everybody* ought to have the *right* to strike, so far as he does not thereby break a contract....But I am convinced that nobody ought to have the right to *force* others to strike ([1980] 1984, p. 51, emphases in original).

When unions (and compliant politicians) claim that there is a right to strike, they mean something very different from the voluntary exchange right to strike. They assert that union leaders, or

union members by majority vote, can force workers who do not want to strike to withhold their labor. In addition, they claim the right to prevent employers from hiring replacement workers during strikes and to prevent suppliers and customers from continuing to do business with struck firms. In other words, they claim the right to prevent people who do not support a strike from exercising their voluntary exchange rights with strike targets. Unions exercise these extraordinary rights claims through picket line intimidation and violence.

> The present coercive powers of unions ... rest chiefly on the use of methods which would not be tolerated for any other purpose and which are opposed to the protection of the individual's private sphere. In the first place, the unions rely – to a much greater extent than is commonly recognized – on the use of the picket line as an instrument of intimidation. That even so-called 'peaceful' picketing in numbers is severely coercive and the condoning of it constitutes a privilege conceded because of its presumed legitimate aim is shown by the fact it can be and is used by persons who themselves are not workers to force others to form a union which they [the non-employee strangers] will control .... (1960, pp. 274-5).
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> [A]ll picketing in numbers should be prohibited, since it is not only the chief and regular cause of violence but even in its most peaceful forms is a means of coercion (ibid, p. 278).

The U.S. Supreme Court addressed these picket line questions in its decision in *American Steel Foundries v. Tri-City Central Trades Council* (257 US 184 [1921]). The Court noted that even peaceful picketing can be intimidating, so it limited the number of pickets to one per entrance. Moreover, the Court ruled that only actual employees could be pickets. No strangers bussed in from union headquarters could participate. Congress overruled both parts

of the decision in 1932 with the enactment of the Norris-LaGuardia Act.

Hayek claimed that even the voluntary exchange right to strike "though a normal right, can hardly be regarded as an inalienable right" (1960, p. 269). There are certain employments (he did not give an example) where "workers should renounce this right" by entering "long-term obligations," and "any concerted attempts to break such contracts should be illegal" (1960, p. 269). Twenty years later Hayek gave an example – enterprises on which the law has "conferred a monopoly" ([1980] 1984, p. 51). He was thinking of private enterprises, but I think his point applies most obviously to the military, the police, and firefighters. In the U.S. the military cannot be unionized, but police and firefighter unions have gone on strike with impunity in several states and localities. Hayek's suggestion that strikes against private firms with government-granted monopoly power are especially harmful because consumers have no alternative sellers to whom to turn, applies to almost all strikes by government employee unions. Government employing agencies almost always have monopoly power. Private sector alternatives are often simply outlawed. Hayek had nothing explicit to say about unionism in the government sector. He probably thought his arguments against private sector unionism applied *a fortiori* to the government sector.

As an aside, most Americans accept the common sense idea that strikes by police and firefighters ought to be prohibited. So unions representing those government employees have argued, often successfully, that strikes should be replaced by compulsory arbitration over the terms and conditions of employment. This is incompatible with a basic democratic value: there should be no taxation without representation. The terms and conditions of government employment are matters of public policy paid for by taxpayers. Unelected arbitrators should not be able unilaterally to determine the taxes that taxpayers must pay.

Conclusion

With the exception of his confusion regarding "contracts in restraint of trade" as they apply to unions, Hayek taught us that unionism, if it is truly voluntary, is consistent with the rule of law. Classical liberalism provides no grounds for being against unions per se. The problem is not unions themselves. The problem is not even with exclusive representation, union security, strikes and yellow dog contracts. The problem emerges from the statutory enactments of the U.S. Congress and the British Parliament (and other benighted legislative bodies) that exempt unions from the rule of law.

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