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A View from Labor

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CHAPTER 16

A View from Labor

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Introduction

It will come as no surprise that our attitude, as union spokesmen, toward further extension of the antitrust laws over the activities of American labor organizations is much like the attitude of Calvin Coolidge's minister toward sin: we're against it. We feel our attitude is justified. But in contributing to a volume graced by so distinguished a company of scholars, it may be best that we do not confine ourselves merely to developing our own case in support of a conclusion which some might accuse us of having harbored all along.

We therefore shall take two different approaches. First, we believe there has been enough discussion of labor and antitrust over the past decade to enable us now to state flatly that, except among certain popular publicists and certain ax-grinders, a large part of the argument has come to an end. A growing consensus exists among disinterested legal experts and labor economists on one simple but fundamental proposition. The antitrust laws as they now stand are not the appropriate vehicle for dealing generally with union economic power, and at least in the absence of much more proof of practical need they are probably not even the appropriate vehicle for dealing with certain alleged specific "abuses" of union economic power. The first portion of this paper will show why that proposition has

properly come to command the assent of most nonpartisan labor specialists.

As our second contribution we shall submit data indicating that, whatever theoretical avenues for union economic abuses have been left open by current interpretations of the antitrust laws, in actual practice such abuses simply have not occurred on a scale sufficient to justify further legislative regulation. This does not necessarily mean that unions have a more sensitive social conscience than corporations, much as we might like to persuade ourselves that this was the fact. It may just mean that some old economic laws are proving even harder to repeal or amend than the laws of Congress. But in any event we take it that no sensible person will insist on tinkering with such complex mechanisms as the antitrust laws or established labor relations procedures merely to satisfy a passion for eliminating some theoretical possibility of wrongdoing. If real, substantial, unremedied abuses cannot be pinpointed, proposals for altering the status quo should be rejected.

In the course of our discussion we will also make a few passing remarks regarding labor's attitude toward the antitrust laws in their application outside the labor field.

The Appropriateness of Antitrust Regulation of Organized Labor

Present Status of the Law. Herbert Northrup and Gordon Bloom have supplied an excellent historical outline of how the doctrine of restraint of trade, backed up by the antitrust arsenal of injunctions, treble damages, and criminal penalties, was formerly applied to organized labor, and of how Congress and the Supreme Court eventually repudiated a broad antitrust

approach in this area.[1] The temptation to take advantage of their hard work and to avoid a restatement of that history is entirely too much for us. We shall content ourselves with a couple of brief comments. First, no one can fully appreciate organized labor's deep hostility toward any suggestion of regulation via the antitrust route without recalling this painful demonstration of judicial ineptitude, as the courts' performance in dealing with unions under antitrust procedures has been characterized by numerous observers.[2] Secondly, we have some reservations about the Northrup and Bloom interpretation of current Supreme Court doctrine on the status of union activity under the antitrust laws, and so we shall say a few words setting forth our own understanding of the present state of the law.

The landmark decision is *United States* v. *Hutcheson.*[3] The Supreme Court there held that labor union boycotting activity which was immunized against injunctions by the Clayton and Norris–La Guardia Acts was likewise to be immunized against prosecution under the Sherman Act. In effect, this meant that peaceful conduct by a labor organization in the course of a labor dispute is generally no longer subject to regulation through the antitrust laws. There are some impor-

1. See Chapter 13, above, by Herbert R. Northrup and Gordon F. Bloom. See also Felix Frankfurter and Nathan Greene, *The Labor Injunction* (New York, 1930); Edwin E. Witte, *The Government in Labor Disputes* (New York, 1932); Charles O. Gregory, *Labor and the Law,* 2d rev. ed. (New York, 1961), especially pp. 95-104, 205-209.

2. In addition to references in fn. 1, see also Archibald Cox, "Labor and the Antitrust Laws – A Preliminary Analysis," *University of Pennsylvania Law Review,* vol. 104 (1955), pp. 252, 265; M. I. Sovern, "Some Ruminations on Labor, the Antitrust Laws and *Allen-Bradley,*" *Labor Law Journal,* vol. 13 (November, 1962), p. 958.

3. 312 U.S. 219 (1941).

tant qualifications to this principle. In *Allen-Bradley*[4] the Supreme Court held that unions could not "aid nonlabor groups to create business monopolies and to control the marketing of goods and services" without running afoul of the Sherman Act. This exception in situations where unions join in the unlawful combinations or conspiracies of employers is a highly significant one, as we shall see later. In addition, since fraud and violence are not absolutely protected against injunctions by the Clayton and Norris–La Guardia Acts, to the extent a labor organization engages in such conduct it may lose its antitrust immunity. It might thus become subject to the earlier *Apex Hosiery*[5] rule that a union violates the antitrust laws if its concerted activity has the object of restraining "commercial competition."

So long as a genuine labor organization is acting in its capacity as a representative of employees,[6] and is acting peaceably, we do not think there is any less of a "labor dispute" involved or any less insulation from antitrust coverage merely because the union is said to be aiming at "direct commercial restraints." Nor do we think that antitrust immunity may be lost by a union's negotiation of a typical "restrictive" contract with a single employer, or even necessarily by its negotiation of parallel restrictive contracts with several employers. But both these conclusions are subject to dispute under existing law.[7] We shall discuss the practical implica-

4. *Allen-Bradley Co.* v. *International Brotherhood of Electrical Workers, Local 3*, 325 U.S. 797, 808 (1945).

5. *Apex Hosiery Co.* v. *Leader*, 310 U.S. 469, 495-501 (1940).

6. Persons who are essentially independent contractors or entrepreneurs cannot cloak themselves with immunity from the antitrust laws by banding together and calling themselves a "union." *Columbia River Packers Assn.* v. *Hinton*, 315 U.S. 143 (1942); cf. *Teamsters Local 626* v. *U.S.*, 371 U.S. 94 (1962).

7. Our positions are supported by former Professor Cox, *op.cit.*, pp. 267, 271, but the Attorney General's National Committee to Study the Antitrust Laws leaned the other way. See *Report of*

tions of these fine points when we consider proposals to outlaw union activities supposedly aimed at direct market control.

Proposals to Extend Antitrust Regulation of Organized Labor. What is meant by proposals to subject unions to further regulation under the antitrust laws? Assuming that the proponent knows what he is talking about — and commentators less partisan than ourselves have suggested that this may often be too charitable an assumption[8] — the proposal at least means that whatever conduct is substantively proscribed shall be liable to the stiff antitrust sanctions of injunctions, treble damages, and criminal penalties. The critical question is what conduct shall be substantively proscribed. Here the proposals span the horizon, from the vague but emotionally charged outpourings of the congenital antiunionist to the precise prescriptions of those sincerely concerned about maintaining a proper power balance among the various competing interests in the economy. We shall try to deal with the most prominent among these diverse proposals.

Union Monopoly Over Labor. We feel we beat a dead horse when we take up the argument that unions should be subject to the antitrust laws because they maintain a monopoly over the supply of labor. Of

the Attorney General's National Committee to Study the Antitrust Laws (Washington, 1955), pp. 297-299. On the question of "labor dispute," compare *Allen-Bradley Co.* v. *IBEW Local 3*, 325 U.S. 797, 807, n. 12 (1945), with *Hawaiian Tuna Packers* v. *Longshoremen*, 72 F. Supp. 562 (D.C. Hawaii, 1947). On the negotiation of restrictive contracts with one or more employers, see Roberts, J., concurring in *Allen-Bradley*, 325 U.S. at 814-815; Sovern, *op.cit.*, p. 961. As to the need for the participation of more than one employer, might it not make a difference whether the violation charged was a monopoly rather than a combination in restraint of trade?

8. See, e.g., Sovern, *op.cit.*, pp. 957-958.

course they do, whenever they can, which happens to be far less often than they would like. That is the very nature of labor organizations. The whole question of exclusive bargaining authority, of the union shop, and of all the other accoutrements of union "monopoly" is properly regarded as a problem in labor relations, not antitrust, policy. As Justice Stone said in *Apex Hosiery:* "A combination of employees necessarily restrains competition among themselves in the sale of their services to the employer; yet such a combination was not considered an illegal restraint of trade at common law when the Sherman Act was adopted."[9] Sar Levitan put the matter in economists' terms when he said: "While labor may be a commodity, it is definitely a most heterogeneous product, and the concepts of monopoly cannot be rightly applied to unions, who perform a vital function in reconciling the differences of the pluralistic labor interests."[10]

We know of no responsible student of labor relations who suggests that antitrust concepts should have anything to do with union control over the supply of labor *per se,* and we know of numerous writers who have said any such notion was unworthy of serious consideration.[11] The proper domain of antitrust law is the product market, and the labor market is something entirely different. True, union monopoly in the labor market might indirectly, with employer connivance, affect the product market. That is a separate question, and we shall deal with it later. But so long as the labor market is considered by itself, anyone who argues the appropriateness of antitrust regulation is doing no more

9. *Apex Hosiery Co.* v. *Leader,* 310 U.S. 469, 502 (1940).

10. Sar Levitan, "An Appraisal of the Antitrust Approach," *Annals of the American Academy of Political and Social Science,* vol. 333 (1961), p. 114.

11. See, e.g., Chapter 13 above, by Northrup and Bloom; Cox, *op.cit.,* p. 254; Gregory, *op.cit.,* pp. 525-526; Sovern, *op.cit.,* p. 963.

than revealing his own misconceptions about both the fields of labor and of antitrust.

Perhaps much of the rather inarticulate feeling in the United States against union "monopoly" power is attributable to what has previously been described by Thomas Austern and Donald Dewey as a sentimental bias toward rugged individualism, carried over from the days of the Old Frontier.[12] If so, this is one provincialism which we in the labor movement like to think we have transcended. But ill-founded or not, that sort of thinking is often decisive when legislation is enacted. It is one of the great merits of a book such as the present one that it can call to account such undisciplined feelings parading in the guise of thought.

Boycotts, Featherbedding, and Jurisdictional Disputes. Three specific types of union activities often became the target of attack in the heyday of antitrust regulation, and they remain today among the examples of union conduct most often cited as justifying a restoration of antitrust control. Those activities are boycotts, featherbedding, and jurisdictional disputes. A short answer can be made covering all three of them: they are already subject to as much regulation under the National Labor Relations Act as is possible without an intolerable intrusion of governmental authority into the processes of free collective bargaining.

Boycotts are regulated in great detail by sections 8(b)(4) and 8(e) of the NLRA,[13] which make most

12. See above Chapter 1, by H. Thomas Austern, and Chapter 4, by Donald J. Dewey.

13. 61 Stat. 141 (1947), as amended by 73 Stat. 542-44 (1959), 29 U.S.C. Section 158 (b)(4) and (e) (Supp. III, 1962). In our view federal labor legislation has already deprived labor unions of much-needed economic weapons. But that is a theme for another day. See, e.g., Theodore J. St. Antoine, "Secondary Boycotts and Hot Cargo: A Study in Balance of Power," *University of Detroit Law Journal*, vol. 40 (1962), p. 189.

traditional employee boycott activities and "hot cargo" arrangements unfair labor practices, and by section 303 of the Taft-Hartley Act, which provides a damage remedy for anyone suffering a business or property loss as a result of a prohibited boycott.[14] Jurisdictional strikes are declared an unfair labor practice by section 8(b)(4)(D) of the NLRA, and section 10(k) of the Act prescribes a special procedure whereby the National Labor Relations Board is in effect required to arbitrate unresolved jurisdictional disputes.[15] In these areas, at least, the superimposing of antitrust remedies is unnecessary, and would undoubtedly be the source of much administrative confusion.[16]

Featherbedding is a somewhat knottier issue. Section 8(b)(6) of the NLRA[17] makes it an unfair labor practice for a union to require an employer to pay for services which are not performed. The Supreme Court, however, has interpreted this to mean that there is no violation if the services are actually performed, even though they are unwanted by the employer, as in the setting of "bogus" type in the printing industry.[18]

On the face of it this situation may call for further relief. But what relief? If a statute is written to forbid a union to demand work "unnecessary" to an employer, who is to judge what is necessary? Is the employer to have unfettered say, regardless of the employees' in-

14. 61 Stat. 158 (1947), as amended, 29 U. S. C. Section 187 (Supp. III, 1962).

15. 61 Stat. 149 (1947), 29 U.S.C. Section 160(k) (1958); *NLRB* v. *IBEW Local 1212*, 364 U.S. 573 (1961).

16. See Sovern, *op.cit.*, pp. 958-959; Cox, *op.cit.*, pp. 263-265; Levitan, *op.cit.*, p. 112. Senator McClellan's antitrust proposal, S. 287, 88th Cong., 1st Sess., would make "hot cargo" agreements in the transportation industry violations of the Sherman Act, even though they are already outlawed by the amended NLRA.

17. 61 Stat. 142 (1947), 29 U.S.C. Section 158 (b)(6) (1958).

18. *American Newspaper Publishers Assn.* v. *NLRB*, 345 U.S. 100 (1953).

terest in health and safety? And even if the employer is enabled to eliminate half his jobs, what is to be done when the remaining employees then ask for double their previous wages? Are the employees bilking their employer, or merely demanding their fair share of the increased productivity of the enterprise? The only way to answer these questions would seem to be by an unprecedented interjection of some governmental agency into the process of determining the substantive terms of union contracts. The practical objections to this undermining of collective barganing as we know it have led impartial observers to shy away from advocating any further effort to regulate featherbedding through legislation.[19]

Furthermore, featherbedding is only a symptom, not the disease. The root problem is the displacement of workers' skills by advancing technology, and the threatened consignment of more employees to the growing ranks of the unemployed. In the end society always gets the new techniques, usually with the unions' "willing acceptance."[20] In the meantime there would seem small economic loss and much humane gain in leaving unions free to negotiate, within the relatively narrow limits allowed them by competitive pressures, on such measures as layoff schedules, severance pay, retraining allowances, and similar methods for cushioning the blow on the employees affected.

Industry-wide Bargaining. A common proposal is to outlaw practices often lumped together under the term "industry-wide bargaining."[21] This is actually a mis-

19. See Chapter 13 above, by Northrup and Bloom; Cox, *op. cit.*, pp. 274-275; Gregory, *op. cit.*, pp. 529-530; Levitan, *op. cit.*, p. 116.

20. Sumner H. Slichter, James J. Healy, and E. Robert Livernash, *The Impact of Collective Bargaining on Management* (Washington, 1960), pp. 348-349, 371.

21. See, e.g., H.R. 333, 88th Cong., 1st Sess., introduced by Representative Martin of Nebraska.

leading phrase because it is used to cover quite different types of activities. One type can more accurately be labeled "area-wide" or "market-wide" bargaining. In the construction industry, for example, it is customary for all or most of the contractors in a city or similar geographical area to join together in an association and to bargain jointly with the union representing the employees of a particular craft. The keynote of this kind of bargaining is voluntariness on the part of the employers. Employers do not have to join these associations or engage in joint bargaining, and the National Labor Relations Board stands ready to enforce their right to refrain. Contractors combine because it is in their best economic interest.[22] By securing uniform union contracts they eliminate wage differentials as a source of price competition among themselves. At the same time they assure themselves of a supply of labor at a known rate prior to the time when they must estimate costs in preparing bids on a job. This kind of "industry-wide" bargaining concededly serves so valuable a function in volatile industries like construction that it seldom comes under serious attack.

More often the object of criticism is a situation best described as "industry-wide unionization." This refers to the fact that in certain industries, such as steel, automobiles, rubber, clothing, and coal-mining, a single large international union has organized practically all the employees of the major producers. The unions in several of these industries bargain separately rather than jointly with employers, but there tends to be a pattern in the settlements. The opponents of industry-wide unionization would in effect confine a union to representing the employees of a single employer, and would minimize the role of the international union.

22. See Chapter 13 above, by Northrup and Bloom; Cox, *op.cit.*, p. 275ff.

This is the kind of proposal which smacks of armchair reasoning, not analysis of the real world. Theoretically, it might be supposed that a union "monopolizing" the employees of all the employers in an industry could withhold employee services until the employers succumbed to whatever terms the union demanded. This of course overlooks the fact that the "commodity" withheld is not inanimate, but a highly perishable product having limited means for surviving without current earnings. Apart from that, the effects of industry-wide unionization in actual practice do not bear out the apprehensions of *a priori* speculation.

Two widely varying classes of industries have been the subject of most single-union organization. One class, embracing steel, automobiles, and rubber, is oligopolistic, with little classical competition in basic prices. Scholars have found no evidence that the presence of a single union produces a markedly different pattern of wage determinations and price levels from that in other oligopolistic industries, like meat-packing, where rival unions exist.[23] We shall return for a closer look at the impact of unionization on wage levels when we deal with the statistical material in the second part of our study.

On the other hand, another class of industry characteristically organized by one union is at the opposite end of the spectrum, and is intensely competitive. The garment industry is representative of this type. Here numerous commentators have applauded the stabilizing effect of a strong union policing the industry to prevent cutthroat competition based on wage-slashing,

23. See Cox, *op. cit.*, p. 278; Richard A. Lester, "Reflections on the 'Labor Monopoly' Issue," *Journal of Political Economy*, vol. 55 (November, 1947), p. 529; cf. Sam Peltzman, "The Relative Importance of Unionization and Productivity in Increasing Wages," *Labor Law Journal*, vol. 12 (August, 1961), p. 725.

which would be injurious to employers and employees alike.[24]

Symptomatic of the unrealistic attitude of the foes of industry-wide bargaining is their obsession with that bogeyman, the international union. Somehow they feel that individual employees would all be reasonable men if it weren't for the union, and that even local unions wouldn't be so bad if it weren't for the international. This is really just another manifestation of parochial prejudice against bigness. Seasoned observers of the labor scene have consistently noted that in a labor dispute where feeling runs high, it is almost invariably the more mature, experienced officials of the international union who can be counted on to exercise a moderate, restraining influence on the local union officers and members.[25] For this and other reasons the whole notion of breaking up large unions is dismissed by knowledgeable critics.[26]

Price-Fixing and Market Controls. There is one area of union conduct which some well-informed, sober thinkers consider may be suitable for the application of antitrust concepts. Broadly speaking it may be summed up in the phrase Justice Stone popularized in *Apex Hosiery,* namely, restraints on "commercial competition." More precisely, it consists of union activity aimed at preventing competition in the marketing of goods and services through restraints on the kind or

24. See, e.g., Chapter 13 above, by Northrup and Bloom; Richard Lester and Edward A. Robie, *Wages Under National and Regional Collective Bargaining* (Princeton, 1946), pp. 93-95; Levitan, *op.cit.,* p. 115; Malcolm Cohen, "Unions and the Antitrust Strawman," *Labor Law Journal,* vol. 14 (February, 1963), pp. 211-212.

25. Lester, "Reflections. . . ," *op. cit.,* p. 533; Carroll R. Daugherty and John B. Parrish, *The Labor Problems of American Society* (Boston, 1952), p. 307; Cox, *op.cit.,* p. 279.

26. See Chapter 13 above, by Northrup and Bloom; Gregory, *op.cit.,* p. 527; Levitan, *op.cit.,* p. 115.

quantity which may be used or sold, the prices at which they may be offered, and the firms which may have access to the market. In the past there has been some sentiment supporting Justice Stone's broadly worded test,[27] but serious students now tend to regard it as too vague and indefinite for practical use.[28] Attention has therefore shifted to the possible proscription of specific union practices having as their object price-fixing and market controls.

This approach has been suggested by the Attorney General's National Committee to Study the Antitrust Laws, by former Professor Cox of Harvard Law School, by Virginia's Professor Gregory, and by a study group of labor specialists headed by Clark Kerr of California.[29] But several comments are in order. First of all, not one of these experts affirmatively recommended that regulation of organized labor's activities should be effected by amendment of the antitrust laws as such. Professor Gregory and Clark Kerr's panel took the tack that the regulation should be accomplished through changes in existing laws governing labor-management relations. Laws developed to deal with business behavior simply do not provide the right framework for dealing with union behavior. Furthermore, Professor Cox cautioned that because of the

27. The House of Delegates of the American Bar Association once voted in favor of a return to the *Apex* test. *American Bar Association Reporter,* vol. 77 (1952), p. 479.

28. "Restraining commercial competition" is not a term of art. It could easily be construed as covering all secondary boycotts. See Chapter 13, above, by Northrup and Bloom; Cox, *op.cit.,* p. 263.

29. *Report of the Attorney General's National Committee to Study the Antitrust Laws, loc.cit.,* discussed in Russell A. Smith, "Antitrust and Labor," *Michigan Law Review,* vol. 53 (June, 1955), p. 1119; Cox, *op. cit.,* pp. 272ff.; Gregory, *op. cit.,* p. 527; Independent Study Group, *The Public Interest in National Labor Policy* (Committee for Economic Development, 1961), pp. 138-139.

grave danger of interference with free collective bargaining, any reduction of labor's immunity from antitrust policies should be considered only "if the theoretical abuses have practical importance," and he emphasized that "there is no reliable information on the extent or economic importance of union efforts to shelter employers from competition in the product market."[30] The "practical importance" of any "theoretical abuses" still remains to be demonstrated. Indeed, mounting evidence indicates that it is nil.

One reason is that the tightening up of the secondary boycott and hot cargo provisions of the National Labor Relations Act, as previously discussed, has effectively eliminated some of the principal weapons which unions would have to rely on in any effort to enforce controls over the product market. Another reason flows from the practical implications of the *Allen-Bradley* exception to the general doctrine of union immunity from the antitrust laws.

Unions are subject to the antitrust laws, according to *Allen-Bradley*, if they join a combination of nonlabor groups to restrain trade. How would a union in a competitive industry go about arranging to fix prices or otherwise institute market controls? Obviously by getting employer agreement, and hardly by getting the agreement of only a single employer. So parallel restrictive agreements with numerous employers are ordinarily required. Now we have said earlier that we do not think such parallel arrangements with individual employers necessarily constitute an antitrust violation. But it is hard to deny that employer knowledge that all the other employers in the market are signing identical restrictive agreements with a union may be strong evidence of an illegal combination among the employers, adherence to which would constitute a violation by the union as well.

30. Cox, *op.cit.*, pp. 272, 280.

When there is added the factor that joint bargaining through employer associations is the rule in most industries in which unions have been accused of market-rigging, one can see how little room is actually left even today for union immunity in situations where the so-called "theoretical abuses" might otherwise occur. Professor Sovern of Columbia Law School, in disputing the need for further antitrust regulation of organized labor, underscored this particular point when he said: "Indeed, no reported decision since *Allen-Bradley* has upheld a clear sheltered market arrangement on the ground that the union brought the scheme off by itself and without employer connivance."[31] The practical case for added antitrust prohibitions thus collapses.

Still and all, some persons' sense of symmetry will be disturbed by the notion that a particular arrangement will violate the antitrust laws if effectuated by two or more employers acting in combination, but not necessarily if the selfsame arrangement is effectuated at the instigation of a labor organization. To this we have two answers.

The first is highly pragmatic. Sorting out the licit from the illicit among union activities has long proved a formidable task for the courts, and the results have not been happy ones. At least if a court can concentrate first on determining whether a restrictive agreement is union-inspired rather than employer-inspired, this gives it something more solid on which to fasten its evidentiary apparatus. In this sense the conclusion that a particular arrangement has resulted from union importuning of employers, rather than from an employ-

31. Sovern, *op.cit.*, p. 962. See also Cox, *op.cit.*, p. 271. Examples of the cases are *U.S.* v. *Employing Plasterers Assn.*, 347 U.S. 186 (1954); *U.S.* v. *Employing Lathers Assn.*, 347 U.S. 198 (1954); *IBEW Local 175* v. *U.S.*, 219 F. 2d 431 (6th Cir. 1955), *cert. den.* 349 U.S. 917 (1955); *Westlab, Inc.* v. *Freedomland, Inc.*, 198 F. Supp. 701 (S.D. N.Y., 1961) (no employer association involved).

er combination in which a union has joined, provides a sort of "badge of authenticity" that the object of the arrangement is to improve employees' working conditions rather than to restrain trade. Surely Justice Black had something like this is mind when he said in *Allen-Bradley:*

> "The difficulty of drawing legislation primarily aimed at trusts and monopolies so that it could also be applied to labor organizations without impairing the collective bargaining and related rights of those organizations has been emphasized both by congressional and judicial attempts to draw lines between permissible and prohibited union activities. There is, however, one line which we can draw with assurance that we follow the congressional purpose. . . . A business monopoly is no less such because a union participates, and such participation is a violation of the Act."[32]

32. *Allen-Bradley Co.* v. *IBEW Local 3*, 325 U.S. 797, 811 (1945). Where joint bargaining is carried on between a union and an employer association, the element of employer combination may automatically be supplied. In such circumstances the courts would still face the vexing problem of sifting out agreements lawfully concerned with the employees' working conditions from agreements unlawfully concerned with restricting competition among the employers. For an illustration of a judicial assay, see *Jewel Tea Co.* v. limitation on hours for sale of fresh meat), *rev'd.*, 331 F. 2d 547 (7th Cir. 1964), *cert. filed* July 2, 1964, U.S. Sup. Ct. No. 240, Oct. Term, 1964. See also Sovern, *op. cit.*, pp. 961-962, fn. 40, and cases cited.

In *Pennington* v. *United Mine Workers*, 325 F. 2d (6th Cir. 1963), *cert. granted* May 18, 1964, U.S. Sup. Ct. No. 48, Oct. Term, 1964 a court took the extreme position that a jury could infer a conspiracy on the part of a union and the major coal producers to eliminate smaller and weaker companies from such evidence as the union's insistence that all employers meet the same standards of employee compensation. Possibly this holding is of limited applicability, turning on the peculiar history and economics of the coal industry. But if upheld and extended broadly, the decision could have a shattering impact on activities at the very core of the labor movement. Union antitrust violations might be found, not on the basis of agreements dealing with prices or other elements of the product market, but on the basis of agreements, dealing with that most central of union concerns — wages.

Our second answer raises larger questions. Throughout this book has run an undercurrent of discontent with the whole mechanism of antitrust as it currently operates. Donald Dewey, for example, wound up suggesting that the traditional economic case for antitrust was no longer persuasive, and that the major virtue of antitrust was its preservation of consumer choice and its dispersal of decision-making.[33] American labor probably shares an instinctive attachment for, but no vested interest in, the antitrust concept as applied to business. If antitrust cannot withstand analysis in the light of present day knowledge, adjustments may be in order. In view of the political realities, however, legislative adjustments may not readily be forthcoming. This being so, existing exemptions, such as those for labor organizations, provide us all with at least a certain measure of relief in a less than ideal situation. As long as this particular exemption is beneficial rather than harmful to society, therefore, it should not be eliminated merely to satisfy a vague yearning on the part of business that labor be made to share the same bed of misery. This naturally invites a closer inquiry into the role of organized labor in our society, and its actual impact on the American economy. Before accepting that invitation, let us pause briefly to see just where we have arrived.

We set out to demonstrate that a consensus has been reached among objective experts that the antitrust laws are not the proper instrument for dealing with supposed abuses of economic power by organized labor. We have shown that only in the area of union-imposed

33. See Chapter 4 above, by Donald J. Dewey. Certainly if the justification for antitrust is reduced to the preservation of consumer choice this reinforces the view that antitrust tools are unsuited for the labor market. Consumer choice has meaning when it comes to buying a Chevrolet or a Studebaker, but not when it comes to hiring one fully qualified building tradesman or another.

market controls does the concept of restraint of trade have significant appeal to serious students. Even there the remedy ordinarily proposed is not amendment of the antitrust laws. The current trend, of which Messrs. Northrup and Bloom seem to be the latest exponents,[34] is to suggest amendments to existing labor laws. Yet, as we have indicated, the whole notion that unions can impose effective controls over the product market, as such, without facing antitrust sanctions now appears to be a theoretical possibility having no practical importance. Especially when the subject is something as sticky as labor legislation, prudence dictates that if no action is necessary as a practical matter, no action should be taken.

The Role and Effect of Organized Labor in the American Economy

Even scholars as careful as Professor Northrup, Mr. Bloom and Professor Gregory are sometimes carried away in their contemplation of union economic "power."[35] A look at the actual structure, function, and effect of labor organizations in this country will readily refute any suggestion that union power must be curbed lest it inflict grave injury upon the economy.

Structure and Function of Unions. Organized labor in the United States is an aggregation of diverse institutions, structures, and collective bargaining systems — far different from the monolith that antilabor propagandists attempt to paint. To obtain an adequate view of trade unionism in America, we must attempt to place organized labor in proper perspective.

34. See Chapter 13, above, by Northrup and Bloom.
35. *Ibid.;* Gregory, *op. cit.,* pp. 228, 526-527.

A View from Labor

According to the Department of Labor,[36] there were, in 1960, 14 million members of AFL-CIO affiliated unions within the United States, and 2.9 million members of nonaffiliated organizations. Reported union membership represented 23.3 percent of the total labor force and 32.1 percent of the number of employees in nonfarm establishments, or an estimated 35 percent to 40 percent of all persons eligible for union membership. In some types of economic activities, such as railroading, contract construction, and transportation equipment, union membership represents approximately 75 percent or more of total employment. In others, union membership represents smaller, and in some instances infinitesimal, percentages of the total number of employees in the industry.

There are 131 national and international unions affiliated with the AFL-CIO, and in addition about 50 unaffiliated organizations. The AFL-CIO itself is a voluntary association of independent affiliates. Each AFL-CIO affiliated national or international union is an autonomous institution, with its own rules and regulations, its own structure, and its own collective bargaining policies and practices.

Unlike the organized labor structures of some other countries, such as Sweden, the labor federation in the United States has only very limited authority and power. The locus of power in organized labor in the United States resides mainly in the diverse national and inter-

36. Figures in this section are drawn from *Directory of National and International Labor Unions in the United States, 1961*, Department of Labor Bulletin No. 1320, Bureau of Labor Statistics (Washington, 1962), esp. pp. 46-47 (1962). Over the past decade union growth has not been keeping pace with the growth of the labor force. Indeed, proportionate union membership is now less than the 23.9 percent of the work force where it stood in 1947, the year the Taft-Hartley Act was passed.

national unions and, to some extent, in the even more diverse local unions.

In 1960 there were 71,210 local unions in the United States, about 57,000 in AFL-CIO affiliated national and international unions. These local organizations are semi-autonomous bodies, with their own rules, regulations, and structures. Traditionally, the local union has been the foundation on which organized labor in this country is based. Despite the tendency in the postwar period for the locus of authority to shift from the local union to the national or international organization — a tendency which has been fostered by economic changes, as well as by the adoption of the Taft-Hartley and Landrum-Griffin Acts — the local unions remain the base of American organized labor. In this regard, too, trade unionism in the United States differs significantly from the much more centralized organized labor movements of Western Europe and most other parts of the world.

The diversity of trade union institutions and structures is a reflection, in large part, of the diversity of collective bargaining policies and practices. In contrast with the undustry-wide type of bargaining that prevails in many other countries, there is very little genuine industry-wise bargaining in this country. The men's outer garment industry and the Pacific Northwest pulp and paper industry are among the few exceptions to the general pattern. All told, the Labor Department estimates that there were approximately 150,000 separate collective bargaining agreements between unions and employers in 1960.

Typically, the collective bargaining relationship in the United States is between a local union, assisted by its national or international union, and a single firm or plant, or between a local union and a group of employers within a local labor market, or between several

locals and their national or international union, on the one hand, and a multi-plant firm, on the other hand.

The diversity of collective bargaining policies and practices is in turn a mirror of the diversity of industrial structures in the nation. In each case, the union obviously has developed after the establishment of the industry and it has adapted its structure and collective bargaining methods to the facts of life within the particular economic environment in which it functions. In addition to industrial and regional differences, variables in the conditioning forces include diverse traditions of union evolution that range from 100 years of development, in the case of some crafts, to a mere three decades, in the case of some of the unions in mass production industries.

The old unions of skilled craftsmen in the building and printing trades follow bargaining patterns that are in contrast to the unions in the mass production industries. The construction industry operates essentially in local markets. Employment is usually seasonal and the employment relationship between a worker and a particular employer is frequently casual. Labor is mobile within the market and tends to be based on craft skills. A large number of firms, including contractors and subcontractors, exist in the market. Products of the industry are usually sold in the same local market in which they are produced.

Collective bargaining relations in the building and construction industry, as a result, are typically between local unions and local employers' associations. In the same local market, each particular trade is usually covered by a separate agreement with the corresponding employers' association and there may be as many as 20 or more collective bargaining agreements in the market's industry; there also may be a market-wide agreement between the local council of building trades un-

ions and the local employers' association covering general industrial relations for all crafts.

In the mass production industries, such as basic steel and automobiles, collective bargaining takes a form that is considerably different from the general pattern of the building and construction industry. These mass production industries are generally oligopolistic and are dominated by giant multi-plant firms that produce in various parts of the country and sell in the national market. The dominant companies employ tens of thousands of wage and salary earners. Business investment in plant and equipment is great in these industries and the total number of firms is relatively small. Price leadership by the dominant firm or firms is usual and administered prices predominate. The presence of competition arises mainly from other industries – as in the competition between aluminum and steel for construction purposes – and from quality, style, and trade-in value, as in the auto industry.

The unions in the mass production industry generally emphasize standard wage movements throughout the industry, in contrast to the emphasis on local market standard wage scales in the building and construction industry. The typical bargaining in the basic steel and auto industries is between the international union and its locals, on the one hand, and one of the dominant companies on the other hand. This wage movement becomes the standard that the union seeks to apply to the other companies in the industry.

In the steel industry, an oligopoly with an undifferentiated product, the union has tended to follow the policy of bargaining simultaneously with all the major companies in the industry. A settlement, however, is usually made first with only one of them, the dominant United States Steel Corporation. That settlement then sets the pattern for agreements with the other

companies, with the possibility of some slight variation in terms. This procedure in the steel industry follows the traditional pattern of wage and price setting in the industry, with U.S. Steel in the leadership position. The tendency toward rather uniform wage and price movements in the steel industry goes back to the early years of this century, long before the birth of the union, when U.S. Steel was created and the present structure of the industry was established.[37]

In the auto industry, an oligopoly with a differentiated product, the union bargains with one company at a time. When settlement is reached with the "leader," the attempt to conclude similar agreements with the other companies in the industry begins. Some variations above and below the first settlement occur in the agreements with the other companies.

Actually, the diversity in collective bargaining policies and practices is even more pronounced than what is briefly indicated above. On the union side, the details of the collective bargaining agreement in a multiplant company — such details as work rules and wage incentives — are usually negotiated by the local unions and plant managements, as supplements to the company-wide master agreements. Moreover, on the union side, the agreements are administered on a day-to-day basis by the local unions, with great variations in procedures and practices, even within a single international union.

Through collective bargaining, unions seek to influence the economic environment in which they operate, and union pressures constitute a prodding force on management to maintain efficient operations. Union

37. George Seltzer, "Pattern Bargaining and the United Steelworkers," *Journal of Political Economy*, vol. 59 (April, 1951) George W. Taylor, "Introduction," in Robert Tilove, *Collective Bargaining in the Steel Industry* (Philadelphia, 1948).

practices in collective bargaining, however, are not based on any rigid mechanical formulas. The union seeks to obtain the best possible agreement, within the confines of its economic environment, and to maintain and expand employment opportunities in the labor market or industry in which it functions.

Within the organized labor movement in the United States there is thus no uniform collective bargaining pattern or even a closely similar institutional structure. Variations in economic climate, institutional development, and personal leadership have given rise to considerable differences in collective bargaining approaches. An almost infinite variety of strategies, tactics, and attitudes can be found in the collective bargaining behavior of American unions, with their multitude of decision-making centers in international unions, regional bodies, joint boards, and local unions.

What does all this teach us about the exercise of union power? American unions do not dominate the institutional structures or employment practices of American industry; they adjust to them. American unions are not so organized as to enable them to exert massive and coordinated pressure on management; their authority is widely diffused and their interests are atomized and sometimes conflicting. It only remains to consider that most critical of all issues: the impact of unionism on wage and price levels in the economy.

The Effect of Unions on Wages. Most management officials and classical economists emphasize wages as a cost of production, with rather clear-cut implications for employment and prices. Wage-setting, as the pricing of labor, is considered in this view to be comparable to the pricing of commodities. To the trade unionist, ideas about wage determination proceed from somewhat different considerations.

It is generally agreed that labor differs from com-

modities. Labor cannot be separated from the personality of the human worker. The employment of labor implies a continuing relationship, while the purchase of a commodity is a much simpler transaction that takes place at a given time.

Wages are determined unilaterally by the employer in an unorganized firm and by collective bargaining where union organization is recognized. In the commodity markets, the seller commonly determines the price. In most cases, the seller in the commodity market has greater influence upon the price of a product through his influence on production than employees have upon wages, even when collective bargaining prevails. Under collective bargaining the setting of wages and employment conditions is not made unilaterally by the union, but jointly by the union and employer.

From their earliest days, trade unions have maintained that labor is not a commodity and that wage determination should be viewed differently from the pricing of commodities. The Clayton Act of 1914 — with its declaration that "the labor of a human being is not a commodity or article of commerce"[38] — has had some influence on the legality of union conduct, but it seems to have had little influence on public thinking about collective bargaining and wage determination. To the trade unionist, wages are not only a cost item for the employer, but essential sustenance for employees and their families. Ethical and social considerations, as well as economic considerations, properly belong in the area of wage determination.

The results of collective bargaining in recent years fail to reveal the presence or the exercise of monopoly power by organized labor. Indeed, they indicate rather clearly the relative weakness of trade unions during a

38. 38 Stat. 731, Section 6 (1914), 15 U.S.C. Section 17 (1958).

period of rising unemployment and spreading part-time work schedules. In most markets, the slow growth of the economy, along with a generally unfriendly political climate that has accompanied rapid and radical technological change, has substantially increased the economic power of employers, relative to the strength of trade unions.

Let us examine the relationship of real hourly earnings of employee groups to the rise of output per manhour in the total private economy. When real hourly earnings are in parallel movement with productivity, the distribution among the factors of production in the economy remains stable. But when real hourly earnings lag behind the nation's output per manhour, it means that the employee group is receiving a smaller share of the economy's gains in productive efficiency.

An examination of the trends of recent years indicates that most groups of workers, represented by unions, have been receiving a smaller share of the benefits of rising productivity, while a larger share has been going to other income recipients. This shift in income distribution among the factors of production is the reverse of what would be expected from the existence and exercise of trade union monopoly power. Indeed, the recent trend is generally reminiscent of the 1920's, when trade unions were admittedly weak, although the magnitude of the gap between the movements of real hourly earnings and the nation's productivity is smaller than it was in those years, when this economic imbalance was setting the stage for the Great Depression.

The years 1955 and 1956 were the last which saw substantial and widespread wage and fringe benefit gains by most unions. Since then, the pace of improvements in wages and fringe benefits has tended to slow down. In the period from 1956 to 1962, output per man-

hour in the total private economy increased 17.8 percent, using one set of data, and 20.8 percent, using another statistical concept, according to the most recent studies of the Department of Labor.[39] As compared with this 17.8 percent to 20.8 percent rise in productivity in the total private economy between 1956 and 1962, real hourly compensation, including fringe benefits, of all employees in the private economy increased only an estimated 15.2 percent.[40]

Since hourly compensation of all employees in the private economy includes the salaries and fringe benefits of executives and supervisory employees, as well as all others, the small lag behind productivity indicates a shift in income distribution away from employees in private enterprises to other income recipients — such as the cash flow to business and the salaries of government employees. The small lag of aggregate real compensation per employee manhour in the private economy behind the nation's productivity also indicates the probability that there are more substantial lags for many specific groups of employees. Examination of available data reveals that this reasonable probability proves to be the case. The real hourly compensation of many groups of employees has lagged significantly — sometimes substantially — behind advances in the private economy's productivity, indicating important shifts in income distribution, with smaller shares going to certain groups of employees and increased shares to other income recipients.

In the six years between 1956 and 1962, for example, real hourly earnings of production and maintenance

39. See *Economic Report of the President* (January, 1963), p. 209.

40. Estimate by the AFL-CIO for 1962, based on Department of Labor estimates for 1956-1961 and on data of the Department of Commerce and Department of Labor for 1962.

workers in manufacturing industries increased only 10.1 percent.[41] Since real hourly earnings include payroll fringes, such as paid holidays and shift premiums, but exclude nonpayroll fringes, such as pension plans, the 10.1 percent figure would have to be increased somewhat to arrive at a full measure of the advance in real hourly compensation. The addition of two or three percentage points would bring the advance in real hourly compensation of factory production and maintenance workers up to an estimated 12 or 13 percent between 1956 and 1962. In contrast, as we have noted, output per manhour of the total private economy rose 17.8 or 20.8 percent in that period of time. The share of factory production and maintenance workers in the gains of the economy's productivity has thus markedly declined since 1956.

Similar trends prevail for nonsupervisory employees in wholesale trade, where real hourly earnings increased only 10.2 percent between 1956 and 1962, and in retail trade, where the real hourly earnings of nonsupervisory employees increased 12.2 percent. Bituminous coal miners, whose real hourly earnings rose only 3.3 percent in the six years years from 1956 to 1962, have received but a small share of the benefits of the economy's rising productive efficiency.

Real hourly earnings of nonsupervisory employees on Class I railroads went up 14.4 percent in 1956-1962, indicating the probability of a small decline in their share of the economy's gains in output per manhour of work. For construction workers, whose real hourly earnings increased 15 percent in those six years, the trend was roughly similar to that of railroad employees. The income share in the nation's advancing productivity of nonsupervisory employees in electric utilities, whose real hourly earnings rose 17.1 percent in 1956-1962,

41. This and the following data have been derived from Department of Labor sources.

probably remained relatively stable, as did the income share of nonsupervisory employees in telephone companies, whose real hourly earnings increased 19.3 percent.

These figures reveal a general trend of lagging real hourly earnings behind the nation's productivity advances for many key groups of employees in the economy – union-organized employees, as well as nonunion. If the arguments of the labor monopoly advocates were valid, however, there would be no such lag for unionized sectors of the economy. Indeed, the labor monopoly advocates would have us believe that highly unionized groups of employees would actually increase their income shares by pushing up their real hourly earnings, over long periods of time, beyond the advances in the nation's productivity. Such has clearly not been the case in 1956-1962. Moreover, since the pioneering studies of Paul Douglas it has become a much-debated point among labor economists whether the spread of unionism has brought about any substantial long-term shift in the distribution of income in favor of the wage-earning class.[42]

42. See, e.g., Paul H. Douglas, *Real Wages in the United States, 1890-1926* (Boston, 1930); Clark Kerr, "Labor's Income Share and the Labor Movement," in George W. Taylor and Frank C. Pierson, eds. *New Concepts in Wage Determination* (New York, 1957), pp. 260, 280-287; Lloyd G. Reynolds, *Labor Economics and Labor Relations,* 3d ed. (New York, 1959), pp. 467-475; Peltzman, *op.cit.*, p. 725. It has also been noted that "even within the framework of price theory and assuming unions to be monopolies, it is not necessarily true that under unionism wages are higher but employment is less." Frederick Meyers, "Price Theory and Union Monopoly," *Industrial and Labor Relations Review,* vol. 12 (April, 1959), p. 445. Unemployment, in the view of organized labor, is a problem for the whole of society to wrestle with. Consequently, unlike Donald Dewey, unions see no inconsistency in supporting minimum wage legislation or seeking modest wage increases through collective bargaining, even in periods of unemployment. Labor should not have to bear the full brunt of curing depressed employment ills by the process of spreading available work at substantard wage levels. But cf. Chapter 4, above, by Donald J. Dewey.

The power of organized labor in the process of collective bargaining and wage determination has been grossly distorted and exaggerated by the opponents of unionism. The facts reveal that economic and political forces, in recent years, have tended to reduce the relative power of unions, while the power of employers has generally increased. The actual imbalance in the American economy is not one of excessive union power, but, in most cases, of relative weakness.

The Effect of Unions on Prices. It is often claimed that evidence of the monopoly power of trade unions can be found in the inflationary impact of wage increases that emanate from the supposedly powerful union monopolies. The focus of this charge has been on industrial wages and prices, where wage increases, it is claimed, have created serious price pressures. Such assertions are rarely backed by any set of supporting evidence. When facts are presented, they are usually irrelevant or simply distortions.

Facts, however, are available on industrial costs and prices. They do not reveal any general wage pressures on the industrial price level in recent years. They fail to indicate the operation of wide-spread union monopolies that exercise overwhelming power in the economy's industrial sector.

The price pressures of the early postwar years, 1947-1953, are generally interpreted to have been war-related — pressures resulting from shortages and demand-pull connected with the aftermath of World War II and the outbreak of the Korean War. The current charges about union wage pressures usually center on the period since 1953. Actually, the government's Wholesale Price Index for industrial goods rose about 12 percent between 1953 and 1962, a slow increase at an average annual rate of approximately 1.3 percent. Almost all of this price rise, however, occurred before

the end of 1958. The level of industrial prices has been relatively stable in the more than four years since the final months of 1958.[43]

The wages of factory production and maintenance workers are, of course, only one of the many business costs in industry. There are other costs, such as salaries, depreciation of plants and machines, raw materials, advertising, and various overhead costs, in addition to profits. Total direct employment costs of the average company in the United States – wages, salaries, and fringe benefits of all employees – are about 25 percent of the sales dollar, according to Standard and Poor's financial reporting service. In examining the validity of the charge about union wage pressures, it is the wages and fringe benefits of factory production and maintenance workers, alone, that are relevant, since it is this group that is generally represented by trade unions in collective bargaining with industrial employers. In the average industrial company, the wages and fringe benefits of factory production and maintenance workers, alone, are about two-thirds of total employment costs. Factory workers' wages and fringe benefits in the average industrial firm, therefore, are only about 15 percent to 20 percent of the sales price – certainly not the only cost or the major cost, as is sometimes implied.

Furthermore, the wage cost of an item is not the hourly wages and fringe benefits of factory workers. Industrial companies do not produce hours. They produce and sell goods. As far as wage costs go, the issue is: How much wages and fringe benefits are there in a particular item? The relevant issue is the wage and fringe benefit cost per unit, which is related not only to the hourly earnings and fringe benefits of production and maintenance workers, but also to output

43. Based on data from the Department of Labor.

per manhour of work and to the rate of capacity utilization. The relevant question in examining actual wage pressures is: Have the unit costs of factory workers risen substantially enough, in recent years, to provide significant upward pressures on the level of industrial prices?

The record shows that the unit wage cost of factory production and maintenance workers, including payroll fringe benefits, in 1962, was actually 6.6 percent less than in 1953. With the addition of non-payroll fringe benefits, such as pension plans, the estimated unit cost of factory production and maintenance workers dropped about 3 to 4 percent in the nine years between 1953 and 1962.[44] The unit costs of factory workers, who are largely represented by unions, declined from 1953 to 1955. They rose from the summer of 1955 to the early months of 1958. Since early 1958, unit wage costs have dropped substantially and almost continuously, and by 1962 they had reached the level we just mentioned, approximately 3 to 4 percent below 1953.

The hourly wages and fringe benefits of factory workers increased, of course, in the years between 1953 and 1962. But output per manhour rose more rapidly than the increases in wages and fringe benefits. The result was a decline in wage costs per unit of output. This decline of wage costs, between 1953 and 1962, cannot rationally be claimed as the cause of the 12 percent rise in the level of industrial prices in that period of time. The facts on the unit costs of factory workers are the reverse of what the labor monopoly advocates claim. The actual causes of the rise in industrial prices have to be sought elsewhere.

There is no room here for a detailed study of the

44. Based on data from the Federal Reserve Board, the Department of Labor, and the Department of Commerce.

structure of industrial costs and prices since 1953. But examination of the facts discloses that the actual causes of the pressures on the level of industrial prices since 1953 have been mainly the sharp increases in salary and other overhead costs and depreciation costs per unit, as well as the pricing policies of several key oligopolistic industries in a period when industrial output has increased only slowly and substantial amounts of industrial capacity have been idle.

In any case the actual record of unit wage costs in American industry in recent years does not reveal evidence of any formidable power being wielded by trade unions. As we have shown, the unit costs of factory production and maintenance workers have actually declined, which is hardly the result one would expect from union monopolies in the industrial sector of the economy. This decline of unit wage costs, accompanied by a lag of real hourly compensation of factory production and maintenance workers behind the nation's rising productivity, demonstrates relative weakness rather than the existence and exercise of any overwhelming power on the part of labor unions generally in American industry.

The Value of Unions in Society. At this point we may have succeeded so well in deflating the notion of unions' overwhelming power that we may also have succeeded in raising some questions about their ability to be of much use to their members. This is not the place to embark on an extended survey of the value of labor organizations in our society. But a few words may be appropriate, especially since they will suggest still another reason why antitrust regulation is incompatible with the nature of trade unions.

To say that unions may have done less than is sometimes thought about redistributing national income is certainly not to say that they have been without signi-

ficant economic effect. By pressing for pensions, supplemental unemployment benefits, and similar nonwage forms of compensation, for example, they have obviously played a major and beneficial role in determining the *shape* of the labor slice of the economic pie. Furthermore, union pressures have tended to bring about a greater uniformity in wage levels from firm to firm, from region to region, and from business cycle to business cycle. Richard Lester has thus observed that "the wage structure in American industry now is probably less 'distorted' than it was in all nonunion industry during the 1920's."[45] In addition, the hiking of rates in former low-wage areas has been cited as a frequent spur to increased labor productivity.[46]

The value of the labor movement, however, cannot be assessed solely in economic terms. It is a truism, but one which can easily be overlooked, that unions are not profit-making endeavors, and that they serve their members not only as economic instrumentalities, but also as political, social, and industrial conciliation institutions.[47] They give the laboring class a niche in the power structure of modern society; they assure the individual workingman protection against arbitrary action by management; they provide a quasi-judicial system for the orderly and peaceful disposition of grievances in the work place. In the exercise of these functions unions of course must wield a certain kind of power. But it is incongruous to try to regulate that kind of power under the antitrust laws. One might

45. Lester, "Reflections . . . ," *op.cit.*, p. 523.

46. Sumner H. Slichter, *The Challenge of Industrial Relations: Trade Unions, Management, and the Public Interest* (Ithaca, 1947), pp. 34, 69, 72-73.

47. For development of these points, and of their implications for proposed antitrust regulation, see Lester, "Reflections . . . ," *op.cit.*, p. 517; Levitan, *op.cit.*, pp. 114-115. See also Albert Rees, *The Economics of Trade Unions* (Chicago, 1962).

just as well try to use the antitrust laws to regulate the power of the League of Women Voters, or the Civil Liberties Union, or the American Arbitration Association.

In any event we would all stand to lose if drastic restrictions were imposed on organized labor because, as Sar Levitan says, such restrictions would "be accompanied by sacrificing the positive contributions which unions have made to their members and society."[48] Unions are a natural development in a free society. They are the best means yet devised for bringing democracy into industrial life, and for giving the voice of the individual worker a chance to be heard. Labor organizations should be fostered, not fettered, and especially they should not be fettered by the application of laws wholly at odds with their nature and purposes.

Conclusion

We have talked too much about a subject which has probably come to bore most labor scholars. We should have liked to say more about antitrust policy as it applies to business in the 1960's. We should have liked to say a great deal – if it would not be out of place in a volume on Antitrust – about Professor Northrup's proposals for amending the labor relations laws to strip organized labor of many of its present protections. But we have skirted these areas in order to take advantage of that most rare of opportunities: the chance to signal the end of an intellectual debate. Among serious, knowledgeable thinkers, a consensus has been reached. Whatever may, or may not, be the place of antitrust in the field of business, it has little, if any, place in the field of labor. We have enough serious problems in the separate worlds of antitrust and labor without compounding our tasks by combining them.

48. Levitan, *op.cit.*, p. 115.