

States Court of Military Appeals has just overturned the long-standing rule that a "prolonged" absence is sufficient to prove an intention to desert.¹

The reviewer believes that Mr. Avins' book is a substantial contribution to the literature of military justice and that it should be read not only by the armed services but also by those civilians who are interested in understanding military law.

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¹United States v. Cothorn, 8 U.S.C.M.A. 158, 23 C.M.R. 382 (1957).

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The Labor Policy of the Free Society. By Sylvester Petro. New York: The Ronald Press Company, 1957. Pp. x, 339. \$5.

This is a hard-hitting, provocative book, one that will arouse its share of controversy. The author, a professor of law at New York University, believes that the union movement is built upon coercion; that unions are typically lawless in behavior and anti-social in effect; that the history of labor relations law for the past generation has been "tortured, frustrated, destructive, chaotic, senseless" (p. 282); and that its present state is characterized by "deviousness and an unutterable confusion" (p. 281). Petro clearly is given to the use of unambiguous language, and he does not spare the feelings of labor leaders, Supreme Court justices, President Truman, members of Congress, or others with whom he disagrees. Most works written from such an extremist point of view and with such sharpness of language do not merit serious attention. This is not the case, however, with Petro's work, which presents a carefully worked out argument buttressed with references to large numbers of cases and to many scholarly works. This book should be read carefully, particularly by those who disagree with the author's value orientation and who dissent most sharply from his policy conclusions.

The author starts with the free, competitive market and the rights of private property and freedom of contract. By strict adherence to these rights and principles, he believes, the free society can be built, with freedom, well-being, and security assured. Government intervention, by way of contrast, destroys all personal freedoms it can reach, reduces net social productivity, and leads to totalitarianism (pp. 29, 56, 61). Consequently, he would abolish every form of intervention by the state, restricting its function to that of keeping the peace—domestic tranquility, defense, and justice. With the conditions of peace and freedom thus established, the function of advancing the interests of the citizens is best left to them, acting individually or in voluntary associations. The sole restrictions are that they may not invade the property rights of others, that they must avoid violent, coercive, or fraudulent conduct.

In keeping with this thesis, Petro would retrace every step of intervention

taken by the state. He would abolish steeply progressive income taxes—"No single measure would do more to promote productivity, employment, general well-being, and personal freedom in the United States" (p. 29); he would likewise abolish unemployment insurance and old age pensions based on a compulsory payroll tax as an inroad on personal freedom and a limitation on social productivity (pp. 22-23). Similarly, he has no use for estate taxation, the TVA, farm subsidies, or protective tariffs. He argues, in a rather curious reading of history, that the long depression of the 1930's was due to government intervention, which prevented the quick rebound of the economy that had occurred in earlier depressions (p. 181). Because compulsion and coercion characterize the state, he believes it is well fitted to keep the peace, but poorly designed to perform other functions. Using the power of the state to promote the general welfare means "maintaining the dynamic equilibrium of property rights"—resisting all pressures that would negate the rights of the private property (p. 87). It is an austere world, if a consistent one, that he advocates.

If the state's performance is bad, in Petro's view, that of the trade union is worse. "[Trade unions], rather than the state directly, are for us the greatest threat to personal freedom at the moment" (p. 26). Trade unions are thus characterized because they seek to control various productive social functions; because they are violent, lawless, monopolistic; because they coerce through picketing, secondary boycotts, and compulsory unionism. "No other species of private association has displayed as much corruption and arrogance as some trade unions have. No other private association has so habitually terrorized and exploited both members and non-members" (p. 109). Fashioned largely by what the author calls coercive methods, in his view, trade unions habitually use coercion—compulsory unionism, strikes, picketing, boycotts, intimidation, and violence; once built up by these methods to the point of controlling hiring in an industry, the union bars membership arbitrarily (p. 112).

The above picture is achieved, not by falsification of detail, but by a process of selectivity that focuses on the abuses of unions while ignoring their constructive achievements. Distortion is the inevitable result. The union security clause is treated solely in terms of coercion, without any hint of the widespread desire on the part of rank-and-file workers for the union shop. One will not learn from Petro's book that in the 46,000 union security elections held under the Taft-Hartley Act, covering six and a half million employees, the workers voted to authorize a union shop clause in 97 per cent of the cases, 91 per cent of the ballots being cast in favor of such a clause. There was coercion of the remaining 9 per cent, to be sure, in the sense that their alternative to joining the union was to seek other employment; but Petro does not object when a similar choice must be made because of unattractive wage levels or other conditions of employment established by management. Nor does he show any interest in efforts to assure democratic rights within the union, which would prevent abuses that the union security clause might make possible.

Petro, citing low union meeting attendance figures, assumes the reason to be intimidation of unwilling members. "Strong-arm methods at every stage are to be expected of such unions [those that coerce members], and they do not often disappoint expectations" (p. 113). Yet union meeting attendance is at much the same level in Britain, where union security clauses are seldom found; in both countries those who do not attend are probably willing to entrust the handling of routine business to the officers and active members. Nor is this different from other types of private associations, which usually experience low levels of membership participation. Petro's assumption of unwilling and intimidated members, kept from the meetings by strong-arm methods, may be true of an occasional local; it tells more about Petro's state of mind, however, than it does about union members or union practices.

With one vital difference, Petro accepts the neo-classical economists view of the market. These economists, relying upon competition as the regulating principle which safeguards the interests of society, would intervene to destroy monopolistic practices or tendencies. To Petro, however, size and degree of market influence are not disturbing factors, but prove only that particular enterprises serve the wishes of consumers. Thus, since they are devoted to a free market, General Motors and the United Automobile Workers are equally repugnant to the neo-classical economists. Petro, however, would leave GM untouched, while making it virtually impossible for the UAW, or what would remain of it, to exert any significant influence over wages or conditions of employment.

Petro would outlaw picketing, except perhaps for a single union observer at the scene of a legitimate dispute (p. 199); ban all secondary types of pressure and all forms of union security, including maintenance of membership; and restore the full use of the injunction in labor disputes. Even where employers or their agents commit the first act of violence Petro holds the pickets responsible, since no incident would have occurred had union members not congregated at the plant to interfere with production (p. 197). Further, he would even hold the duty to bargain satisfied if the employer merely met with union representatives, listened, and answered each proposal with an unqualified "no" (pp. 254-55). Thus, the employer to Petro bargains in good faith even if he refuses to sign any agreement other than one leaving wages, working conditions, discipline, and all other employment factors under his exclusive control (pp. 215-16). If all this is not enough to endear Petro to employers, he has explicit praise for the National Association of Manufacturers and the United States Chamber of Commerce for serving the cause of freedom and civilization by resisting interventionist legislation (p. 95).

Past use of the yellow dog contract by employers troubles Petro, since requiring a worker to agree not to join a union makes him give up an association

right flowing from the principle of private property. Yet Petro sympathizes with the fears of employers that unionization might prove disastrous to them, and thinks it not unreasonable that they took this precaution against employee sabotage. Once union coercive and other anti-social activities are curbed, in his view, there will be neither justification nor occasion for such contracts (pp. 49-50). Since Petro does not believe that even the Taft-Hartley Act sufficiently prevents coercive action by unions, he is in effect arguing for the use of yellow dog contracts today, and until such time as the changes he proposes are adopted.

If union-management relations were conducted as Petro desires, workers would be equally free to join or not to join a union, with no form of union security permitted. Union officers, under such conditions, would have to devote much of their time and energy to reorganizing the organized, to convincing them afresh each month that the union was of sufficient value to warrant their payment of dues. Under such circumstances they would probably become more aggressive against management, taking the worker's part in every disagreement regardless of merit, and prosecuting every grievance to the limit. In the event of a strike, however, the participants would have to absent themselves from the vicinity, leaving the employer free to seek replacements, who would be equally free to take the vacated jobs. Those replaced, having submitted their judgment to the test of the free market and lost, would then be free to wait for vacancies elsewhere. This is freedom of a sort, though the degree to which it would contribute to workers' well-being and security may be open to question.

Under circumstances such as Petro desires it is conceivable that the workers might win a strike, as during a period of full employment or where wages were so low and conditions so poor that not even the jobless would be attracted. A union of craftsmen that embraced all workers of its skill in the area would have bargaining power, if all of them supported the strike demands and if workers of lesser skill could not perform part of their duties in an emergency. Workers at more moderate levels of skill could always be replaced, however, if there were any other workers available who found the vacated jobs more attractive than unemployment. To strike under such circumstances would be equivalent to quitting. Since the strike provides the sanction that compels concessions and since there would seldom be such a sanction with any effectiveness, collective bargaining would become meaningless, in an economic sense, for all except tightly organized groups of craftsmen. Since it would also be meaningless in a legal sense—the employer need only listen and say “no”—collective bargaining as we understand the term would all but disappear.

Unions, to Petro, are also unnecessary in the area of wages. As he sees the determination of wages, there is a “tendency . . . in the free market for employers to pay workers every cent, or almost every cent, which workers add to the value of the product” (p. 106). But “almost every cent” is less than justice, just as a “tendency” offers little assurance that workers will get their due; and

how is an employer, with the best of will, to know precisely how many cents a particular worker has added to value? Even Petro admits that "[i]f employees are forbidden to strike, it is not quite so certain that all employers will give in wages every last cent which the market would permit" (p. 213).

The free market, assuming that it can exist, does not determine wage rates in any precise way. If a rate is set too low there will be no takers, and if it is too high the resulting goods and services will find few purchasers, with unemployment the result. But how far apart will these two figures be? While no precise answer can be given, all our knowledge suggests that the difference will be substantial. If most employers, in the absence of unionism, would set wage rates near the lower level, then trade unions perform an important service to their members by pushing wages toward the upper level.

What functions, in Petro's view, remain to the union? Union leaders, he suggests, can interpret the free society to the workers, convince them that productivity is the key to the general welfare, and show them that workers and employers have more common than conflicting interests (p. 107). Unions could cooperate with employers in achieving fair working conditions, enforce fair working rules, and check arbitrary and unfair conduct by supervisors. They could also help their members plan savings and investment programs, administer pension and welfare plans (provided unions were run well), conduct training schools for workers anxious to improve their productivity, and serve as a clearing house for employment opportunities (p. 108). A house-broken labor movement of this sort should have the enthusiastic support of employers; whether workers would find its meetings worth attending—or whether they would even belong to it, in the absence of coercion—is another matter.

Petro's book, it should be apparent, is more an advocate's brief than a balanced, objective treatment. His picture of trade unions is a caricature, not a portrait. Just what his free society would be like might be open to question in some respects, but it is evident that it would largely be free both of unionism and collective bargaining. There is little to suggest that Petro would find this prospect displeasing.

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