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The Union Problem

MURRAY N. ROTHBARD

Labor unions are flexing their muscles again. Last year, a strike against the *New York Daily News* succeeded in inflicting such losses upon the company that it was forced to sell cheap to British tycoon Robert Maxwell, who was willing to accept union terms. Earlier, the bus drivers' union struck Greyhound and managed to win a long and bloody strike. How were the unions able to win these strikes, even though unions have been declining in numbers and popularity since the end of World War II? The answer is simple: in both cases, management hired replacement workers and tried to keep producing. In both cases, systematic violence was employed against the product and against the replacement workers.

In the *Daily News* strike, the Chicago Tribune Company, which owned the *News*, apparently did not realize that the New York drivers' union had traditionally been in the hands of thugs and goons; what the union apparently did was commit continuing violence against the newsstands—injuring the newsdealers and destroying their stands, until none would



carry the *News*. The police, as is typical almost everywhere outside the South, were instructed to remain "neutral" in labor disputes, that is, look the other way when unions employ gangster tactics against employers and non-striking workers. In fact, the only copies of the *News* visible during the long strike where those sold directly to the homeless, who peddled them in subways. Apparently, the union felt that

beating up or killing the homeless would not do much for its public relations image. In the Greyhound strike, snipers repeatedly shot at the buses, injuring drivers and passengers. In short, the use of violence is the key to the winning of strikes.

Union history in America is filled with romanticized and overblown stories about violent strikes: the Pullman strike, the

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Civil Rights Strike Again

GEORGE C. LEEF

The 1964 Civil Rights Act declares that businesses cannot discriminate in employment because of sex, among other group characteristics. That sounds innocent enough, but it has caused immeasurable economic and social harm.

Johnson Controls is a leading manufacturer of, among other products, automobile batteries, which means significant exposure to lead.

Prolonged exposure to this metal can cause health problems, especially for the young, so the company began in the late 1970s warning women of child-bearing age that jobs requiring lead exposure could be detrimental to any children they might conceive. Most of the women moved into other areas of the firm, but some continued to work in battery manufacturing.

Between 1979 and 1982,

eight of the women working in these jobs became pregnant, and were found to have troubling lead levels in their blood, by OSHA and other standards. When one of the children born to these women showed an elevated level of lead in his blood, the company ruled that no fertile women could hold these jobs.

Several women who wanted to stay in the higher-paying

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The Imperious Executive

From the President



LLEWELLYN H. ROCKWELL, JR.

Respect for Congress is at an all-time low, and no wonder: check bouncing, pay raises, unpaid restaurant bills, Clarence Thomas hearings. But I'm not celebrating just yet. Our national media normally lick the government's shoes. When they expose part of that government for what it is, I want to know: who benefits?

As usual, it is the executive branch, which has far more influence with the media than Congress, and which is far more dangerous to our liberties.

We laugh when Senators make fools of themselves on national television. But just once I'd like to see a panel of bureaucrats in the same position. We'd see the Senate hailed as a bastion of relative brilliance and good sense.

Congressmen pass out subsidies when they can, and do what they can to get reelected. But for all the bumbling, fumbling, and special-interest favoritism, their concerns are

mostly parochial. They aren't designing New World Orders, pushing anti-free-market treaties through the United Nations, or issuing administrative law commands through the *Federal Register*. That's the president. Nor can Congress compare to the executive in number of employees, budget, or power.

In 1816, the legislature employed 243 people. Today, it employs 40,183. (And the judicial branch grew at about the same rate during this period.) That's a lot, but legislative employment hasn't grown at all in the last ten years, and only half of the legislative branch employees actually work for Congress.

Compare this to the executive. In 1816, this branch, including the military and the post office, employed 4,500 people. (The military had 190 [the troops being state militia], the post office 3,341, and the rest of the government 938.) By 1890, the executive employed as many people as

the legislature does now. In 1990, the executive employed *three million* people. Excluding the military, there are still two million executive branch workers on our payroll.

If legislative growth had kept pace with non-military executive growth, Congress would employ 145,800 people—more than three and a half times its current number.

The executive branch has grown so much that the relatively tiny Railroad Retirement Board, an executive agency, employs as many people as the entire original executive department (*excluding* the military and post office).

The legislative branch has nine agencies, the judicial ten, and the executive 281. These are not co-equal branches of government. (See the List from Hell.)

Imagine Thomas Jefferson and James Madison being handed a copy of this list and told that *this* is the executive branch in 1992. They might speculate that the British had

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THE LEVIATHAN

Legislative Branch

Congress
Architect of the Capitol
Congressional Budget Office
Copyright Royalty Tribunal
General Accounting Office
Government Printing Office
Library of Congress
Office of Technology Assessment
United States Botanic Garden

Judicial Branch

The Supreme Court of the United States
Administrative Office of the United States Courts
Federal Judicial Center
Lower Courts
United States Claims Court
United States Court of International Trade
United States Court of Military Appeals
United States Court of Veterans Appeals
United States Tax Court
Temporary Emergency Court of Appeals

Executive Branch

The President of the United States
Executive Office of the President
The White House Office
ACTION (for voluntary service)
Administrative Committee of the Federal Register
Administrative Conference of the United States
Advisory Committee on Federal Pay
Advisory Council on Historic Preservation
African Development Foundation
Agency for International Development
Agricultural Marketing Service
Agricultural Research Service
Agricultural Stabilization and Conservation Service
Alaska Natural Gas Transportation System
Animal and Plant Health Inspection Service
American Battle Monuments Commission
Appalachian Regional Commission
Architectural and Transportation Barriers Compliance
Armed Forces Staff College
Benefits Review Board
Bicentennial of the United States Constitution Commission
Board for International Broadcasting
Board of Contract Appeals
Board of Service Mining and Reclamation Appeals
Bureau of Alcohol, Tobacco and Firearms
Bureau of Economic Analysis

Bureau of Engraving and Printing
Bureau of Indian Affairs
Bureau of Land Management
Bureau of Mines
Central Intelligence Agency
Census Bureau
Christopher Columbus Quincentenary Jubilee Commission
Civil Rights Commission
Coast Guard
Committee for Purchase from Blind and Other Severely Handicapped
Commodity Credit Corporation
Commodity Futures Trading Commission
Comptroller of the Currency
Consumer Product Safety Commission
Construction Industry Collective Bargaining Commission
Cooperative State Research Service
Cost Accounting Standards Board
Council on Environmental Quality
Council of Economic Advisers
Defense Advanced Research Projects Agency
Defense Commissary Agency
Defense Contract Audit Agency
Defense Finance and Accounting Service
Defense Information Systems Agency
Defense Intelligence Agency
Defense Intelligence College
Defense Investigative Service
Defense Legal Services Agency
Defense Logistics Agency
Defense Mapping Agency
Defense Nuclear Agency
Defense Security Assistance Agency
Defense Systems Management College
Delaware River Basin Commission
Department of Agriculture
Department of the Air Force
Department of the Army
Department of Commerce
Department of Defense
Department of Education
Department of Energy
Department of Health and Human Services
Department of Housing and Urban Development
Department of the Interior
Department of Justice
Department of Labor
Department of the Navy
Department of State
Department of Transportation
Department of the Treasury
Department of Veterans Affairs

Drug Enforcement Administration
East-West Foreign Trade Board
Economic Development Administration
Economic Research Service
Employees' Compensation Appeals Board
Employees Loyalty Board
Employment and Training Administration
Employment Standards Administration
Endangered Species Committee
Environmental Protection Agency
Equal Employment Opportunity Commission
Export Administration Bureau
Export-Import Bank of the United States
Family Support Administration
Farm Credit Administration
Farm Credit System Assistance Board
Farm Credit System Insurance Corporation
Farmers Home Administration
Federal Acquisition Regulation
Federal Aviation Administration
Federal Claims Collections Standards
Federal Communications Commission
Federal Crop Insurance Corporation
Federal Deposit Insurance Corporation
Federal Election Commission
Federal Emergency Management Agency
Federal Energy Regulatory Commission
Federal Financial Institutions Examination Council
Federal Financing Bank
Federal Grain Inspection Service
Federal Highway Administration
Federal Home Loan Mortgage Corporation
Federal Housing Finance Board
Federal Information Resources Management Regulations
Federal Labor Relations Authority
Federal Law Enforcement Training Center
Federal Maritime Commission
Federal Mediation and Conciliation Service
Federal Mine Safety and Health Review Commission
Federal Prisons Industries
Federal Property Management Regulations System
Federal Railroad Administration
Federal Reserve System
Federal Retirement Thrift Investment Board
Federal Service Impasses Panel
Federal Trade Commission
Federal Travel Regulation System
Fine Arts Commission
Fishery Conservation and Management
Food and Drug Administration
Food and Nutrition Service

reconquered us, and thrown out our Constitution.

In fact, we were conquered, but by Washington, D.C. Roosevelt II doubled the number of civilian employees in his first five years, and executive growth hasn't looked back since.

Why do we hear so much about the evils of the legislature, and virtually nothing about the gargantuan executive? In part, because it is so much more visible and vulnerable. It is easy to ridicule congressional pandering, and scholars study Congress incessantly. But who is making fun of, or even studying, the FCA, FHFB, FLRA, FMC, FMCS, FMSHRC, or FRTIB? Who even knows what they are?

We are all told about Congress's \$100,000 for the Lawrence Welk Museum in Nebraska, but the latest \$100 million Education Department boondoggle isn't even noticed—*it's too small*.

Congress is also far more subject to popular pressure.

When the public found out about the bounced checks, and protested, Congress immediately closed the House bank.

The executive is different. Outside of a handful of top appointees, the gang of two million is neither seen nor heard as it throttles our freedoms and prosperity.

These days, Congress doesn't even write the key bills. They are drafted by, and lobbied for, the executive agencies and departments themselves, with the help of their special interests. The Treasury, the Federal Reserve, and the bank lobbyists wrote the banking bill now being considered. The EPA and environmental lobbyists wrote the Clean Air Act. HUD and the public housing builders wrote the housing bill. In these proceedings, the legislature concentrates on privileges and subsidies for its interests, of course.

Presidents have long attacked special interests that flock around the legislature, but not because they're

opposed to such relationships: they want a monopoly for the White House. A huge executive branch depends on a mixed economy, which Garett Garrett defined as "one in which private enterprise does what it can and government does the rest."

Congress is a problem, a pain in the neck, a racket. It is corrupt, but on a relatively small scale: petty theft as compared with Al Capone. In every vice, it is small potatoes as compared to the executive.

Today there are efforts, some in the name of conservatism and free enterprise, to make the president immune from congressional checks on his power. This has been the goal of every imperial president since Lincoln: a plebiscatory dictatorship.

Whenever such a man is in power, there is a concerted effort to weaken and discredit the institutions that stand in his way, including state and local governments, and the Congress.

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Food Safety and Inspection Service	National Labor Relations Board	Office of Workers' Compensation Programs
Foreign Agricultural Service	National Marine Fisheries Service	On-Site Inspection Agency
Foreign Claims Settlement Commission of United States	National Mediation Board	Overseas Private Investment Corporation
Foreign Economic Development Service	National Oceanic and Atmospheric Administration	Oversight Board for the Resolution Trust Corporation
Foreign Service Grievance Board	National Park Service	Packers and Stockyards Administration
Foreign Service Impasse Disputes Panel	National Railroad Adjustment Board	Panama Canal Commission
Foreign Service Labor Relations Board	National Railroad Passenger Corporation (Amtrak)	Patent and Trademark Office
Foreign-Trade Zones Board	National Science Foundation	Peace Corps
Forest Service	National Security Agency/Central Security Service	Pennsylvania Avenue Development Corporation
General Services Administration	National Security Council	Pension and Welfare Benefits Administration
Government National Mortgage Association	National Telecommunications and Information Administration	Pension Benefit Guaranty Corporation
Harry S. Truman Scholarship Foundation	National Transportation Safety Board	Postal Rate Commission
Health Care Financing Administration	National War College	President's Commission on White House Fellowships
Human Development Services Office	Navajo and Hopi Indian Relocation Commission	Public Health Service
Immigration and Naturalization Service	Neighborhood Reinvestment Corporation	Railroad Retirement Board
Indian Arts and Crafts Board	Nuclear Regulatory Commission	Reclamation Bureau
Industrial College of the Armed Forces	Occupation Safety and Health Administration	Refugee Resettlement Office
Information Resources Management College	Occupational Safety and Health Review Commission	Regional Action Planning Commissions
Information Security Oversight Office	Office of Administration	Research and Special Programs Administration
Inter-American Foundation	Office of Bilingual Education and Minority Languages Affairs	Resolution Trust Corporation
Internal Revenue Service	Office of Child Support Enforcement	Rural Electrification Administration
International Boundary and Water Commission	Office of Commercial Space Transportation	Rural Telephone Bank
International Cooperation and Development Office	Office of Educational Research and Improvement	Saint Lawrence Seaway Development Corporation
International Trade Commission	Office of Elementary and Secondary Education	Secret Service
International Trade Administration	Office of Energy	Securities and Exchange Commission
Interstate Commerce Commission	Office of Environmental Quality	Selective Service System
Japan-United States Friendship Commission	Office of Family Assistance	Small Business Administration
Joint Board for the Enrollment of Actuaries	Office of Federal Inspector for the Alaska Natural Gas Transportation System	Smithsonian Institution
Joint Chiefs of Staff	Office of Federal Register	Solar Energy and Energy Conservation Bank
Land Management Bureau	Office of Foreign Assets Control	Social Security Administration
Legal Services Corporation	Office of Finance and Management	Soil Conservation Service
Marine Mammal Commission	Office of General Inspector	State Justice Institute
Maritime Administration	Office of General Sales Manager	Strategic Defense Initiative Organization
Merit Systems Protection Board	Office of Government Ethics	Susquehanna River Basin Commission
Mine Safety and Health Administration	Office of Grants and Program Systems	Technology Administration
Minerals Management Service	Office of Independent Counsel	Tennessee Valley Authority
Minority Business Development Agency	Office of Information Resources Management	Uniformed Services University of the Health Sciences
National Aeronautics and Space Administration	Office of Labor-Management Standards	United States Arms Control and Disarmament Agency
National Agricultural Library	Office of Management and Budget	United States Customs Service
National Agricultural Statistics Service	Office of Micronesian Status Negotiations	United States Fish and Wildlife Service
National Archives and Records Administration	Office of National Drug Control Policy	United States Information Agency
National Bureau of Standards	Office of Personnel Management	United States Institute of Peace
National Capital Planning Commission	Office of Policy Development	United States International Development Cooperation Agency
National Commission for Employment Policy	Office of Science and Technology Policy	United States International Trade Commission
National Commission for Libraries and Information Science	Office of Special Education and Rehabilitative Services	United States Office of Special Counsel
National Credit Union Administration	Office of the Secretary of Defense	United States Postal Service
National Critical Materials Council	Office of Thrift Supervision	United States Soldiers' and Airmen's Home
National Defense University	Office of the United States Trade Representative	United States Travel and Tourism Administration
National Foundation on the Arts and Humanities	Office of the Vice President of the United States	Urban Mass Transportation Administration
National Highway Traffic Safety Administration	Office of Vocational and Adult Education	Water Resources Council
National Institute of Standards and Technology		World Agricultural Outlook Board

The Most Lethal Agency

JAMES OSTROWSKI

Quick: Which federal agency causes the most deaths every year? The Army? The Navy? The Air Force? The Marines? The CIA? The DEA? The answer is none of the above. That dubious distinction belongs to the Food and Drug Administration. However, the FDA's victims, unlike those killed in war or a drug war raid, never know what hit them. Their graves do not state "killed in action." Their eulogizers do not recall a brave battle with the enemy. Tens of thousands of FDA victims die in agony and anonymity each year, never knowing the identity of their killer.

In the 1970s, the FDA kept the beta blockers off the market. At least 45,000 people died without these cardiac drugs, according to researcher Dale Gieringer. More recently, thousands of AIDS patients have died while the FDA sifts through mounds of paperwork on hundreds of new drugs for the magic words "safe and effective."

The FDA supposedly decides whether a drug is "safe." But since safety involves defining risks and benefits, and these subjective concepts differ from person to person, and even from circumstance to circumstance for the same person, the FDA does not and cannot judge what is safe for the individual. So instead, it decides which drugs are "safe and effective" for the FDA!

What is safe and effective for the FDA is what protects the interests of the bureaucrats who work there, and that means, most importantly, that no one ever die from a drug it approves. The body count would be trumpeted on the front page of the *New York Times*, with demagogic pronouncements from Kennedy, Metzenbaum, and Nader about the need for more government regulations. The other and much larger body count—those who die because the

FDA hasn't approved a useful drug—will only be mentioned in the pages of academic journals.

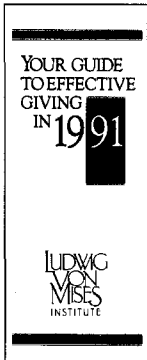
The curse of free-market theory—to paraphrase Henry Hazlitt—is that the benefits of intervention into the market are visible and short-term, while the costs are often invisible and long-term. But the present is the past's long-term, and the present condition of the pharmaceutical market is dismal.

According to attorney Sam Kazman, FDA regulations have doubled development costs and total development time, and cut in half the number of new drugs introduced. The United States—usually criticized for lagging behind European countries in regulatory tyranny—now lags behind Britain in new drugs. Researchers report that the greatest drug lag is where we can least afford it—in cardiovascular, central nervous system, and cancer drugs. While many valuable drugs are therefore unobtainable, those that are available are often extremely expensive. The cost of prescription drugs is becoming a major element in the current campaign for more socialized medicine. Rising drug prices are related to FDA regulation in some obvious and some less obvious ways. FDA regulations raise production

costs, act as barriers to entry, grant cartel licenses to single producers, and delay the marketing of drugs, all with resulting lost sales. Increased production costs lead companies to forgo investing in new drugs and instead to simply jack up the prices of their existing drugs with the help of our governmentalized third-party payer system.

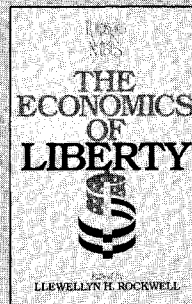
FDA advertising restrictions not only prevent people from learning about new drugs, but also reduce competition in drug pricing. Increased production costs and marketing delays deter new companies from entering the pharmaceutical market and have killed off many small and innovative companies such as Damon, Bio Response, Inviron, and Helix Biocore.

Reduced competition in the pharmaceutical market naturally leads to higher prices and higher profits for government-approved producers and distributors. Perhaps that is why John C. Petricciani of the Pharmaceutical Manufacturers Association wrote recently in *Clinical Research* that "the pharmaceutical industry *strongly supports* the current statutory scheme in which the FDA plays the key role in the process of getting safe and effective drugs onto the market where they can do the most good for the



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Book of the Month



The *Economics of Liberty*—recently praised in *Chronicles* and *Human Events*—covers the hot economic issues as no other publication does. Its 400 pages feature Murray Rothbard, Joe Sobran, Walter Block, Bob Higgs, Tom Bethell, Doug Bandow, Jim Bovard, Bill Kauffman, Pat Buchanan, Lew Rockwell, and others. \$17, including postage and handling. For full time students it's \$3, provided a copy of the student ID is enclosed. ♦

most people." Of course, the FDA, by withholding drugs from medical use, also contributes to human suffering and the medical-financial crisis by greatly increasing disease and death.

Nor is the FDA a fine idea that went haywire. The central undertaking of the FDA—to certify the "safety" of drugs—was flawed from the start. Not only did established producers play a key role from the beginning, to benefit no one but themselves, but there is a theoretical problem.

The idea that drugs can be found "safe" is one that can only have originated in the brain of a politician. The term "safe drug" is an oxymoron. There is no such entity. Every drug which can alter the functions of the body can have adverse side effects. The most widely used drug in the world—caffeine—has a long list of proven adverse effects.

But the mission of the FDA—*explicitly supported by the large pharmaceutical companies*—is to convince the public that safe drugs can exist, and that the FDA will weed out the unsafe ones. As industry

spokesman Petricciani writes, "the public needs *assurance* through the Government that new drugs are both safe and effective."

But a GAO study found that most of the drugs the FDA approved caused "serious" adverse reactions. In other words, the public is assured about something that cannot be assured. Thus the public has been lulled into a false sense of security about the safety of prescription and non-prescription drugs. The myth of FDA as insurer of drug safety has hindered the development of an informed and skeptical public able to make responsible decisions about drug use.

With the bulk of cost-benefit data against it, with a GAO report condemning its management practices, and with normally liberal AIDS-activists and feminists fed up with it, you might think that the FDA would be in serious political trouble. *The Economist* thinks "the demand for deregulating the drug industry is likely to grow stronger."

But not if the Bush administration can help it, for here comes David A. Kessler to take

over and rejuvenate the FDA, the University of Chicago-trained lawyer, Harvard-trained doctor, hospital administrator, regulatory superman, "the best and the brightest," an incorruptible Elliot Ness-type. Calling FDA a "policeman," he seeks to rehabilitate FDA's sagging image by promising tough law enforcement. In one of his first speeches, Kessler began:

"I place a high priority on enforcing the law. This is not the idle talk of a new commissioner. Today the U.S. Attorney's office in Minneapolis is filing on FDA's behalf a seizure action against Procter & Gamble's Citrus Hill Fresh Choice orange juice. The use of the word 'fresh' is false and misleading, and it is confusing to consumers."

A few days later, as federal marshals zeroed in on the armed and dangerous orange juice cartons, thousands of Americans reached deep into their pockets to pay for prohibitively expensive prescription drugs, and a number paid with their lives because their miracle drug was not available at any price. ♦



James Ostrowski

The Imperious Executive

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The House Committee on UnAmerican Activities (HCUA) warned about this in 1938, noting that the "effort to obliterate the Congress of the United States as a co-equal and independent branch of our government does not as a rule take the form of bold and direct assault. We seldom hear a demand that the powers with which Congress is vested by the Constitution be transferred in toto to the executive branch of our government, and that Congress be adjourned in perpetuity. The creeping totalitarianism by which we are menaced proceeds with subtler methods."

The supporters of presidential power, said the HCUA, seem to assume "that the sole remaining function of Congress is to ratify by unanimous vote whatever wish is born anywhere

at any time in the whole vast structure of the executive branch of Government down to the last whim of any and every administrative official."

"The essence of totalitarianism," said the committee, "is the destruction of the parliamentary or legislative branch of government."

Although the Founding Fathers gave the preponderant power to Congress, they knew the dangers posed by the executive. That's why they gave Congress a blunt instrument to discipline it: the power of impeachment and conviction, and they meant for it to be a constant threat. As George Mason told the Constitutional Convention, "No point is of more importance than that the right of impeachment should be continued. Shall any man be

above Justice? Above all, shall that man be above it, who can commit the most extensive injustice?" Benjamin Franklin pointed out that without impeachment, the only way to get rid of bad presidents was assassination.

Presidents should be impeached and convicted when they govern unconstitutionally. By that rule, FDR should have been tossed out in 1934. What a different country this would be today.

Not that we should send Congress a dozen roses; we should vote them all out, and elect people who would take their oath of office to the Constitution seriously. The first act of such a constitutional Congress would be pruning the executive branch, with a chainsaw. ♦

The Prosperity Haters

JONATHAN H. ADLER

In 1940, when you got a cup of coffee "to go," you might scald your hand if you weren't careful. The same will be true in 1992. In the intervening period, a styrofoam cup held the coffee, keeping it hot and your hand cool. But environmentalists have deemed that cup immoral; they want us to use paper.

This is only one example of the Green assault on American consumers. From the daily paper and the evening news, to blockbuster movies and the Sunday funnies, Americans are under a constant barrage of environmental misinformation aimed at killing our prosperity and the economic freedoms that made it possible.

We are told: "plastic is bad." Plastic has become a symbol of America's insidious consumer mentality. The reduction of waste and consumer costs that plastic made possible are ignored. Such important innovations as styrofoam, shrink wrap, and aseptic packaging (juice boxes) are condemned despite the material benefits they bring to society and their ability to increase the efficiency of resource use, something environmentalists are supposed to believe in.

Another eco-mandate is "recycling should be universal." Irrespective of the product or how expensive it is to process, recycling is presented as the necessary alternative to the

imminent exhaustion of the world's resources. As a result, mandatory recycling has been bankrupting municipalities nationwide despite the fact that in many cases, it actually increases pollution from such processes as the de-inking of newspapers.

Environmentalists apparently don't realize that the lower price of raw materials reflects their lesser need for energy or material inputs. High recycling costs reflect a greater input of scarce resources.

While styrofoam is a great consumer convenience, environmentalists have declared it an ecological nightmare and crusaded for its annihilation. First, they said it wasn't recyclable, and therefore wasteful. But not only is it recyclable, a styro cup is more easily recycled than its paper counterpart. What is more, the production of a styrofoam cup consumes far fewer resources: one-sixth the physical material, one-twelfth the steam, and one-thirty-sixth the electricity. It is no wonder that styrofoam is typically 60% less expensive.

Next, the environmentalists claimed styrofoam isn't biodegradable. If thrown into a landfill it would not decompose for hundreds of years. While this is true, it is not clear why it is a problem.

The biggest problem with landfills is potential contamination of groundwater from waste

seepage. Styrofoam doesn't cause this. Nor are we running out of landfill space. All the garbage since the Pilgrims would fit in a landfill covering way less than one tenth of one percent of our land area, with ample room for the garbage of the next several hundred years.

Yet styrofoam has been banned in Florida, and effectively prohibited in Portland, Oregon, and Newark, New Jersey. In Maine, juice boxes have been banned except for Maine apple juice. In Oregon, environmentalists want to make the use of disposable diapers a criminal offense, and an editor of Garbage magazine has condemned disposable tampons.

The truth is that the development of synthetic packaging, even disposable packaging, has allowed us to use resources with increasing efficiency. While American households may dispose of more packaging than those in Mexico, the average Mexican family throws away 40% more total garbage, much of it wasted food that modern packaging technologies would have preserved. In fact, for every 1% increase in the amount of packaging in America, there is a 1.6% decrease in food waste.

The "ban wagon" may make for good politics, but it does terrible things to our economy and prosperity. ♦

The Union Problem

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Homestead strike, and so on. Since labor historians have almost all been biased in favor of unions, they strongly imply that almost all the violence was committed by the employer's guards, wantonly beating up strikers or union organizers. The facts are quite the opposite. Almost all the violence was committed by union goon squads against the property of the employer, and in particular, against the replacement workers, invariably smeared and dehumanized with the ugly

word "scabs." (Talk about demeaning language!)

The reason unions are to blame is inherent in the situation. Employers don't want violence; all they want is peace and quiet, the unhampered and peaceful production and shipment of goods. Violence is disruptive, and is bound to injure the profits of the company. But the victory of unions depends on making it impossible for the company to continue in production, and therefore they must zero

in on their direct competitors, the workers who are replacing them.

Pro-union apologists often insist that workers have a "right to strike." No one denies that. Few people—except for panicky instances where, for example, President Truman threatened to draft striking steel workers into the army and force them back into the factories—advocate forced labor. Everyone surely has the right to quit. But that's not the issue.

The issue is whether the employer has the right to hire replacement workers and continue in production.

Unions are now flexing their muscle politically as well, to pass legislation in Congress to prohibit employers from hiring permanent replacement workers, that is, from telling the strikers, in effect: "OK, you quit, so long!" Right now, employers are already severely restricted in this right: they cannot hire permanent replacement workers, that is, fire the strikers, in any strikes over "unfair labor" practices.

invasively, take out ads in the local media. But even if there is only one picket, the question then arises: on *whose property* does one have the right to picket, or to convey information? Right now, the courts are confused or inconsistent on the question: do strikers have the right to picket on the property of the struck employer? This is clearly an invasion of the property right of the employer, who is forced to accept a trespasser whose express purpose is to denounce him and injure his business.

What of the question: does

not against violence but against strikes per se. (For a masterful and definitive refutation of Frankfurter, which unfortunately came a half-century too late, see Sylvester Petro, "Unions and the Southern Courts—The Conspiracy and Tort Foundations of Labor Injunction," *The North Carolina Law Review*, [March 1982], pp. 544-629.)

The second vital step is to repeal the sainted "Wagner Act" (National Labor Relations Act) of 1935, which still remains, despite modifications, the fundamental law of labor unions in the United States, and in those states that have patterned themselves after federal law. The Wagner Act is misleadingly referred to in economics texts as the bill that "guarantees labor the right to bargain collectively." Bunk. Labor unions have always had that right. What the Wagner Act did was to force employers to bargain collectively "in good faith" with any union which the federal National Labor Relations Board decides has been chosen in an NLRB election by a majority of the "bargaining unit"—a unit which is defined arbitrarily by the NLRB.

Workers in the unit who voted for another union, or for no union at all, are forced by the law to be "represented" by that union. To establish this compulsory collective bargaining, employers are prevented from firing union organizers, are forced to supply unions with organizing space, and are forbidden to "discriminate" against union organizers.

In other words, we have been suffering from compulsory collective bargaining since 1935. Unions will never meet on a "fair playing field" and we will never have a free economy until the Wagner and Norris-LaGuardia Acts are scrapped as a crucial part of the statism that began to grip this country in the New Deal, and has never been removed. ♦

We have been suffering from compulsory collective bargaining since 1935.

What Congress should do is extend the right to fire to these "unfair labor" cases as well.

In addition to their habitual use of violence, the entire theory of labor unions is deeply flawed. Their view is that the worker somehow "owns" his job, and that therefore it should be illegal for an employer to bid permanent farewell to striking workers. The "ownership of jobs" is of course a clear violation of the property right of the employer to fire or not hire anyone he wants. No one has a "right to a job" in the future; one only has the right to be paid for work contracted and already performed. No one should have the "right" to have his hand in the pocket of his employer forever; that is not a "right" but a systematic theft of other people's property.

Even when the union does not commit violence directly, it should be clear that the much revered picket line, sanctified in song and story, is nothing but a thuggish attempt to intimidate workers or customers from crossing the line. The idea that picketing is simply a method of "free expression" is ludicrous: if you want to inform a town that there's a strike, you can have just one picket, or still less

the union have the right to picket on the sidewalk in front of a plant or of a struck firm? So far, that right has been accepted readily by the courts. But the sidewalk is usually the responsibility of the owner of the building abutting it, who must maintain it, keep it unclogged, etc. In a sense, then, the building owner also "owns" the sidewalk, and therefore the general ban on picketing on private property should also apply here.

The union problem in the United States boils down to two conditions in crying need of reform. One is the systematic violence used by striking unions. That can be remedied, on the local level, by instructing the cops to defend private property, including that of employers; and, on the federal level by repealing the infamous Norris-LaGuardia Act of 1932, which prohibits the federal courts from issuing injunctions against the use of violence in labor disputes. Before 1932, these injunctions were highly effective in blocking union violence. The act was passed on the basis of much-esteemed but phony research by Felix Frankfurter, who falsely claimed that the injunctions had been issued



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Civil Rights Strike Again

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battery jobs sued through their labor union, contending that the new policy violated Title VII of the Civil Rights Act of 1964.

The federal district and appeals courts found no violation. The only way to prevent fetal harm was to exclude fertile women.

While those decisions fit with common sense, and private property rights, the Civil Rights Act does seem to outlaw such business practices, and the Supreme Court ruled in the union's favor.

Justice Harry Blackmun wrote the Court's opinion, calling the company's policy illegal:

Employment late in pregnancy often imposes risks on the unborn child, but Congress indicated that the employer may take into account only the woman's ability to get her job done. Decisions about the welfare of future children must be left to the parents who conceive, bear, support and raise them rather than to the employers who hire those parents.

Opponents of the free market have always denounced business for being profit-mad and devoid of concern for employees. Here we have a safety-conscious company, acting with concern for future generations, and it is ordered to stop.

What of potential lawsuits by women whose children are born with a possible lead-induced abnormality? Blackmun tells them not to worry. So long as employees are warned, the employer won't be liable—unless he is negligent.

Companies know from bitter experience, however, that what constitutes an "adequate" warning is a slippery legal question that allows a soft-hearted

jury to raid an employer's deep pockets. And "negligence" is legal taffy. It can be pulled, pushed, or twisted to suit any plaintiff's tastes. So many employers are in a "damned if you do, damned if you don't" situation. They may be forced to robotize their operations, or shift them to other countries.

The quarrel, however, should not be with the Court's interpretation of the Civil Rights Act of 1964, but with the law itself. Even properly interpreted, it has done more to undermine the freedom of contract and private decision-making than any other statute in U.S. history. It assumes that there are no cases where discrimination is justified. But in the complexity of modern business life, there are many such occasions.

What of irrational discrimination that doesn't seem to have business relevance? To allow the government to decide that question opens the floodgates to state management, and that is exactly what has happened.

Private choices can please some and anger others, but the quid pro quo for freedom is to let others make choices we don't like. Since 1964, however, the lawsuit has been the preferred means of destroying the people who make decisions the government doesn't like, as in the Johnson Controls case.

To turn someone down for a job, for whatever reason, does not violate authentic rights, any more than not inviting him to a dinner party. No person has a right to a job, to a promotion, or to the use of other people's property. They do have, however, the obligation to respect the private property of others.

To compel Johnson Controls to hire fertile women to work where the company thinks they shouldn't, is an

abrogation of liberty and private property. Such an interference does not enhance justice; it tightens the grip of social planners, bureaucratic managers, and special interest victimologists on our economy and society.

As the 19th-century liberal Sir Henry Sumner Maine held (as summarized by Russell Kirk),

In their early and barbarous states of society, men exist in a condition of status: individual personality manifested only in rudimentary form; property the possession of the group; subsistence, gratification of hopes, marriage, life itself wholly dependent upon the community. Progress consists of a release from this bondage; civilized people exist in a condition of contract, possessing [private] property, and able to develop fully their individual talents.

In the America of today, we are regressing and becoming less civilized. ♦

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