

The Right to Work

Mises Daily: Tuesday, December 29, 2009 by [Cecil B. DeMille](#)

[Speaking before the Committee on Education and Labor of the House of Representatives, 1948]



Since I am both an employer and a union officer, I might claim to be well acquainted with the virtues and the sins of both management and unions; but I do not speak for either.

My concern is for the individual. He has been battered from both sides. Business management has treated him like a commodity or a tool. Union management has lorded it over him as if he were a serf or a slave whose rights depended on the whim of a master.

Through the [Wagner Act](#), the [Taft-Hartley Act](#), and other legislation, Congress has given the individual some measure of protection from his management bosses and union bosses.

But bosses never take kindly to restraint. You have heard reactionary businessmen urging the total repeal of the Wagner Act. Now you are hearing the clamor of reactionary union leaders for the repeal of the Taft-Hartley Act.

But millions of workers are looking to Congress to keep this nation face forward on the road charted by our forefathers — the road of liberty under laws that protect and expand individual freedom, not restrict it.

The touchstone for any law — or any government, anywhere in the world — is the question: How does individual freedom fare? In many parts of the world, the freedom of the individual has been set back by centuries.

Mussolini is dead, but his fascist idea lives — the idea that the individual is the creature of the state, that he exists for the state, that he has no rights except what the state gives him and can take away.

America has been a living revolt against that pagan idea, ever since the founders of America declared that "all men ... are endowed by their creator with certain unalienable rights" and "that among these rights are life, liberty, and the pursuit of happiness."

I ask the Congress to apply that touchstone to whatever proposals are made in the crucial field of labor legislation.

The Declaration of Independence specified "life, liberty, and the pursuit of happiness" as inalienable rights. The Constitution goes further. The Bill of Rights mentions freedom of speech, press, assembly, worship, and other rights which the state may not invade.

But neither the Declaration nor the Constitution pretends to exhaust the list of man's God-given and inalienable rights.

One of the most fundamental of those rights is the right to work. I submit that the time has come for Congress to declare it to be the public policy of the United States that every individual should have the right to work, when he pleases, where he pleases, for himself or for whoever wants to hire him — and that the full protection of the government should be put behind this right to work.

Need I point out how basic the right to work is? It is the same as the right to life, for it is by work that men live. Deny the right to work, and you have cut off the right to life.

The government itself does not claim the power to take away a man's right to work, unless he has been convicted of crime, after fair trial and due process of law.

No one else — certainly no private business or private organization — should have the right to convict or condemn a man to this extreme penalty.

A man or woman can enjoy no freedom if denied the right to earn a living. Alexander Hamilton said, "A power over a man's subsistence amounts to a power over his will."

If any private individual or group usurps the right to say who shall work and who shall not, then any citizen, even if he stands entirely alone, should be able to look to his government for full, speedy, and effective justice.

It is the boast of American democracy that all the might and majesty of government exist for one purpose: to secure the rights of the individual.

That is an empty boast if one American can be denied the right to work.

Let me remind the Committee that this insistence upon the right to work is not a notion of my own. Again and again, the courts have declared that the right to work is a constitutional right.

In [Truax vs. Raich](#) (239 U.S. 33, 41), discussing the Fourteenth Amendment, Mr. Justice Hughes declared, for the Supreme Court

It requires no argument to show that the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the Amendment to secure.

In [Allgeyer vs. Louisiana](#) (165 U.S. 589, 590), discussing the same amendment, the Supreme Court said

The liberty mentioned in that amendment means, not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties:

"To be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary, and essential to his carrying out to a successful conclusion the purposes above mentioned."

In [Meyer vs. Nebraska](#) (262 U.S. 390, 399), again discussing the Fourteenth Amendment's guarantee of liberty, the Supreme Court declared

While this court has not attempted to define with exactness the liberty thus guaranteed, the term has received much consideration and some of the included things have been definitely stated.

"Without doubt, it denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men."

What privilege — I would prefer to say what right — could be more essential to the orderly pursuit of happiness than the right of a man to earn bread for himself and his family — the right to work?

Yet in practice, as this committee knows, the right to work has been violated in a multitude of instances, of which my own case — denial of the right to work because I refused to pay a political assessment to a union — is only one.

What is the reason for this strange inconsistency — for the fact that a clearly established constitutional right has been and can be challenged with impunity?

One reason may be that the courts have never been given a clear mandate by federal law to protect the right to work absolutely and at all events. In fact, nowhere in federal statute law is the positive right to work stated in unqualified terms.

This lack and this need become glaringly noteworthy when we examine the present legal protection for the right not to work, the right to strike.

The right to strike is a valuable and necessary right. It is properly emphasized in such statutes as the [Norris-LaGuardia Act](#) and the Wagner Act.

But what man in his right mind would say that the right to strike is more important than the right to work?

Which is more basic? Which is more essential to life and the pursuit of happiness? The questions answer themselves.

Yet nowhere in the federal statutes is the right to work even asserted, much less emphasized or explicitly defended. And this silence of the law has helped to produce an entirely unwarrantable interpretation of the right to strike.

By the right to strike I mean the right of workers to quit their work in concert for lawful purposes, provided public health or safety is not endangered thereby.

Furthermore, strikers have the right, by peaceful picketing and other lawful means, to acquaint the public with their case and to enlist all the public sympathy and support they can muster by the methods of persuasion.

That, I believe, is what Congress had in mind in enacting legal protection of the right to strike. But the right to strike is not so understood in some quarters. Another element has been added.

The right to strike has been stretched to mean not only the right of workers to quit in concert, but to prevent their fellow-workers, who want to work, from going to their jobs, by assault, threats, intimidation, and abuse — a violent method called peaceful picketing.

For what goes on under the cloak of peaceful persuasion, I need only refer to the mass of evidence your files and mine contain. And more is contained in the pent-up minds and hearts of victims whose lips are locked by fear.

None of it is surprising, as long as the federal statutes put more emphasis on the right to strike than they do on the right to work. To pretend that it is constitutional to deprive some people of the right to work because others have the right to strike is a travesty.

To continue to wink at it would be treason. It may be said that there are state laws against violence in labor disputes. There are. But drawing nice distinctions between federal and state authority is small comfort to a man whose home has been bombed — and an injunction makes a poor plaster for a broken head.

There is already on the federal statute books provision for a five thousand dollar fine and a ten-year prison term for any "two or more persons" who "conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States" (R.S. SS 5508; Mar. 4, 1909, c. 321, SS 19, 35 Stat. 1092).

Perhaps this statute is broad enough to be applied to interference with the constitutional right to work.

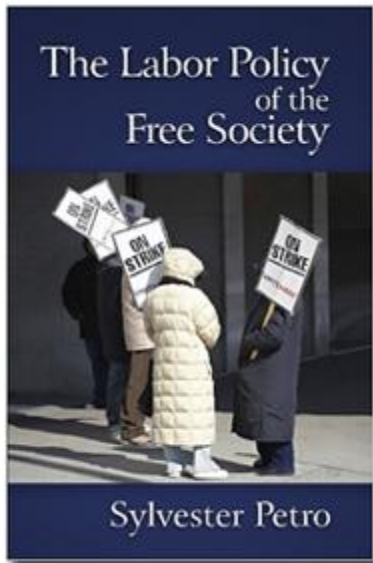
It is certainly an adequate precedent for making such interference a federal offense.

But we should not stop with providing criminal penalties. If we mean to protect the individual's right to work, we should put further means of redress in the individual's own hands. The man or woman whose right to work has been violated should be enabled to recover damages — heavy damages — because the right to work is so basic a human right.

Let the law pin down responsibility where it belongs — on the executive officers and strategy committees of striking groups. Let the penalties and damages be heavy enough. Let there be a few convictions and a few judgments awarded. And you will see men and women, who want to work, going to their work without fear. Please note that I said "going to their work." I am not advocating the revival of professional strikebreakers or urging any support to employers who would use them. Employers' thugs are as bad as union thugs. I am speaking for the man or woman who has a job and is satisfied with it and wants to keep it. That man or woman deserves the protection of the full power of the United States.

The power of government would be better employed in calling out federal troops, if need be, to escort one worker through the gates of his plant than in encouraging plant owners, at the first hint of a labor dispute, to shut down and throw out men and women who want to work.

Fail to protect the right to work — and you may read our epitaph in the words I quote from a Los Angeles newspaper.



If a government cannot or will not protect those who want to work, it eventually succumbs to a Communist dictatorship under which men will not be permitted to strike and will work according to decrees or go to their deaths in concentration camps. (*Hollywood Citizen News*, December 16, 1947.)

[Ana Pauker](#) will not allow my pictures to be seen on the screens of Rumania because I disagree with her politically.

The American Federation of Radio Artists will not allow my voice to be heard over the microphones of America because I would not pay a political assessment.

I see a pattern there — a pattern that can mean slavery for free men everywhere if it is not broken.

Cecil Blount DeMille (1881–1959) was a legendary American film director and Academy Award–winning film producer in both silent and sound films. See Cecil B. DeMille's [article archives](#).

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