Union Freedoms: Challenging the Assault

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This recent version of The Assault on Trade Union Freedoms is as timely and important as the earlier edition. There are two parts to the book. The first, published in 1984 as a separate monograph, From Consent to Coercion, examines the period from the mid-forties to 1982. In tracing developments within the state which eroded many of the rights won by workers in the 1940s, Panitch and Swartz focus on the consequences for the labour movement of operating in the terrain mapped out by the “rules” of the post-war accord. These first three chapters examine the transition from consent, as a primary state policy for labour-capital relations during the early phase of the post-war hegemonic project, to the coercion practiced during the phase of “permanent exceptionalism.”

These reforms, however, did not create equality between the contending classes. Rather, they fashioned a new hegemony for capital in Canadian society. Through formal mechanisms for negotiation and redistribution, consent came to play a visibly dominant role in inter-class relations, while coercion, still crucially present, was in the background.

During the two decades following the war, the labour movement registered many gains — improved collective agreements, wages and working conditions, health and safety protection, increased membership and expanded jurisdictions. But at the same time, the movement’s ability to defend itself in times of...
crisis was gradually eroded. Decades of operating within a philosophy of labour relations which emphasized containment and stability led people to forget that reforms were won because of their willingness to work outside that framework, to defy the existing laws:

Bourgeois reforms, however much they are the product of class struggle, are not without their contradictions. Left unchallenged they can undermine the very conditions which called them into existence, opening the way for future defeats... The power of unions lies in the willingness of their numbers (sic) to act collectively, and for that to happen a common purpose must be developed.3

This point is central to the authors’ analysis and is a critical element in their concluding observations on the labour movement. Only in recent years has the significance of this view come to be understood by a broader range of those in union leadership. The myth of the social contract persisted long after capital and the state had abrogated their part of the bargain:

The post-war settlement sought to maintain the dominant position of capital by establishing legal rights for organized labour to protect the workers’ immediate material interests in a capitalist system. The ideology of the new era reversed this earlier logic. It placed the onus on labour to maintain capitalism as a viable economic system by acquiescing to capital’s demand for the restriction or suspension of workers’ previously recognized rights and freedoms, as well as sacrificing their immediate material interests.4

The three chapters comprising part two provide a much needed analysis of the period from 1982 to 1987 in which the state moved to consolidate the transition from consent to coercion in capital-labour relations. The capitalist restructuring of the late seventies required a parallel restructuring of the state involving deregulation, privatization, free trade and the commodification of social services. This entailed a restructuring of the labour process in the firm and the state.5 If the introduction of the Industrial Relations Disputes Investigation Act in 1948 heralded an era in which workers were to enjoy the right to join unions and bargain collectively, recent federal actions and legislative initiatives by various provincial governments suggest that the new policy direction of the state is to ensure the dominance of the non-union sector.

The militancy of the thirties and forties resulted in reforms which permitted gains, yet, at the same time, limited the capacity of unions to achieve further significant changes. But “despite these
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reforms, it still proved no easy task to ‘domesticate’ and
‘housebreak’ the unions...[although] the ground always remained
in place for capital and the state to effect the assault on free
collective bargaining that emerged in the new economic, political
and ideological conditions of the 1970s and 1980s.”

One of the problems associated with commentaries on the
period covered in The Assault on Trade Union Freedoms is that
there is a tendency to forget that the ideological challenges and
militancy of the labour movement in the thirties was preceded by
major setbacks and defeats suffered at the hands of the state and
capital in the twenties. Workers began to fight back, not only in
spite of repression, but because of it.

However, as Panitch and Swartz point out, those challenges did
not cease completely:

[C]lass struggle had continued, and even increased, through the course
of the era of free collective bargaining. Indeed it could be argued that
the fact of ongoing class struggle in a changed economic climate
largely prompted attempts to increase capital’s hegemony through
legalistic coercion ...[T]he labour movement [today] has not simply
lain down and played dead.

The developments upon which the analysis in the final two
chapters is based are still unfolding, and, not surprisingly, there are
a few factual errors. Most are relatively minor and do not affect the
analysis or conclusions. Because of the controversial nature of
some of these recent developments, it is important to be clear
about what actually occurred.

One example concerns the discussion of recent events in British
Columbia. It has become rather commonplace in some quarters to
refer to “the deal Jack Munro struck at Kelowna with Bill
Bennett,” as though Munro himself was personally responsible for
that deal. The authors avoid this by pointing out that he was acting
on behalf of the British Columbia Federation of Labour. What
remains to be examined, however, is the process whereby the deal
was actually made. The day before the British Columbia
Government Employees Union reached a tentative agreement and
Munro went to Kelowna, the Vancouver Sun revealed in a front
page story the specific points of the agreement between the
government and Solidarity which were to be announced after the
Kelowna meeting.

A number of us tried to find out both who negotiated this
arrangement and who had given it to the press while we were still
on the picket line. People I knew on the Federation executive at
the time told me then, and still do today, that the Sun story was the first indication they had that there were even any talks taking place with the government. Someday we will find out the details but as the current study indicates, these events were not simply a matter of individual personalities but a product of many other forces.9

In Part 1 of the book the authors conclude that while unions occasionally defy the law they rarely question the general framework of legal regulation. In Part 2 there is evidence not only that the framework is being challenged but that the post-war hegemonic project itself is being called into question. If there is a weakness in this book, it is not with the overall analysis or the authors’ general conclusions. Rather, it is that it ends with the events of the fall of 1987, just as some of these challenges are developing in British Columbia.

Although, at this moment, one can only speculate about the way events will evolve, it appears that the momentum of the remarkable June mobilization has been lost; that the new legislation and the Commission will not be rendered inoperative by virtue of the boycott; and the unions will again wait for an NDP victory in the next election, to provide them with the defence they could not muster themselves.10

As those words were being written, two local unions went on strike in defiance of Industrial Relations Commmission (IRC) and Supreme Court orders and remained on strike until acceptable settlements were reached, even though contempt proceedings had been launched. These were important strikes not only because they were the first real test of the boycott but also because they were for first collective agreements and were successful in doubling the workers' wages. There were convictions of union officials for contempt but sentencing has yet to take place. Delegates to the British Columbia Federation of Labour Convention in December 1987 voted unanimously to intensify the boycott and implement programmatic recommendations from the executive that explicitly rejected a policy of waiting for the next election in favour of defying the legislation and rendering it inoperable.11

Panitch and Swartz quote an employer to the effect that the legislation would force parties to try at all costs to avoid arbitrated settlements, and from this conclude that unions are attempting to secure agreements without resorting to job action.12 Notwithstanding the fact that virtually every time a union goes to the table on behalf of its members, it usually attempts first to reach a settlement without a strike, it is inaccurate to conclude that the
practice of British Columbia’s unions has been to avoid illegal strike action at any cost in order to get a collective agreement.

 Strikes by Federation affiliates and the non-affiliated unions participating in the boycott over the past year have either been declared illegal or were potentially illegal. Some lasted for a few days while others carried on for periods from a week to a couple of months. Most involved defiance of court orders and only ended when a settlement acceptable to the membership was reached.

 One incredible strike had been underway for over four months at the time this review was written. During that time the strike was declared illegal, the workers fired, the union faced a million dollar damage suit, court orders were defied, the ability of the IRC to file its orders in court ruled unconstitutional by the Supreme Court, and the IRC was implicitly criticized for its behaviour by both the Supreme Court and the Court of Appeal (the latter in a decision restoring its ability to file orders in Court). Through it all the strike defiantly continued.

 In a surprise move (or lack of one) the government shocked many observers, particularly its capitalist supporters, by refusing to ask the IRC to declare illegal the strike by 30,000 government workers in the British Columbia Government Employees Union. The union had boycotted the IRC and refused to permit it to supervise its strike vote as required by law. The significance of the government’s inaction was not lost on anyone in the province. The government itself was not prepared to go head to head with the labour movement at that time.

 The essence of the boycott of the legislation and the IRC as a tactic is that it calls into question the general framework of the law itself. In a recent interview, a senior IRC official said Bill 19 isn’t working. “If it worked the boycott would be gone... We can’t go on with this boycott. The Bill needs to be amended by the government.”

 The struggle in British Columbia and the strike by the nurses in Alberta are part of what Panitch and Swartz identify as challenges to the ideology of legalism. They are some of the reasons why this book ends on a more hopeful note than the earlier monograph. Another, which is referred to often by the authors, is the rise of feminism within unions and its impact on policies, strategies and the leadership.

 Overall this is an important book which should be read widely within the labour movement. The questions raised are important for all workers and the analysis is insightful. In particular, the
discussion in the closing pages raises issues which must be confronted by labour and the left generally.

Notes

1. By 1945 three quarters of a million workers were organized into unions; they waged over 500 strikes from 1945 to 1947 seeking legislation similar to the Wagner Act in the U.S. When they gained it in 1948 they also lost the right to strike for union recognition, or during the life of a collective agreement. More fundamentally they accepted the right of capital to control all decisions affecting investment and production.


4. Ibid., p. 34.

5. Ibid., p. 68.

6. Ibid., p. 96.

7. Ibid., p. 97.

8. Some of the discussion of the impact of legislation on B.C. teachers on page 79 is misleading. The teachers had always sought to have bargaining rights extended to their existing local bargaining units — one for each school district. The structure was not imposed except insofar as each local had to apply for certification in the same manner as any other union (just like all the CUPE locals representing school board support staff had to do years earlier). In a resounding rebuff of the government, all 75 locals are now certified as unions. Bill 19 does not restrict negotiations on teachers' wages or benefits and the "ability to pay criteria" takes effect only if a contract is settled through binding arbitration, although this is still an unwarranted intrusion. The other points made in the discussion are accurate.


10. Ibid., p. 106

11. Not all trade unionists in B.C. agree completely with the Federation strategy or some of its tactics. The CCU unions, for example, regularly have their strike votes supervised by the IRC and use its mediation and hearing facilities. Their position was characterized by one observer as “total war or total cooperation.” Differing perspectives on the strategies are contained in a series of articles by John Baigent, Gene McGuckin and Cliff Andstein in “Strategies for Labour,” *New Directions*, March-April 1988.

12. Ibid., p. 79.

13. Darwin Benson, Chair, Disputes Resolution Division, Industrial Relations Council, reported in *The Trail Times*, 20 October 1988.