The Right and Labor in America
Politics, Ideology, and Imagination

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Chapter 11

"Compulsory Unionism": Sylvester Petro and the Career of an Anti-Union Idea, 1957–1987

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In 1959, a forty-two-year-old labor law professor from New York University traveled to Washington, D.C., to testify in the McClellan Committee hearings. Sylvester Petro had caught the attention of conservative policymakers two years earlier by publishing The Labor Policy of a Free Society, a scathing critique of the New Deal labor relations regime, which he had concluded with a detailed analysis of the Taft-Hartley Act as interpreted by the National Labor Relations Board (NLRB). Petro had made a name for himself as an expert on labor unions under Taft-Hartley, particularly on their financial contributions to the electoral process, but for the committee's purposes, it was no doubt an added bonus that he had been a steelworker and a union activist in the 1930s before attending law school at the University of Chicago and adopting libertarian, anti-union views.¹

That conservative policymakers such as Senator Barry Goldwater were able to draw on the expertise of a former union activist sheds considerable light on the post-New Deal relationship between the Right and labor. For Petro's rise as a union critic in the late 1950s occurred at a decisive moment in the history of American labor relations, when the pluralist, pro-union framework championed by a generation of liberal politicians, jurists, and academics had just begun to falter.² Then or now, Petro achieved none of the recognition that came to the Ivy League theorists of the American system of postwar industrial pluralism, but his appearance in a Capitol hearing room in 1959 nonetheless symbolized the growing vitality of ideological anti-unionism in the United States. Indeed, Petro's school of economic and constitutional analysis played a crucial role in legitimizing a libertarian outlook in the 1970s and 1980s that would effectively challenge much that had once been considered hegemonic and progressive within the world of industrial relations law and scholarship.

Yet the contribution of this former steelworker to the growth of the anti-union idea is still largely unknown. Scholars rarely mention his books, and he is mostly remembered for his denunciation of labor racketeering. While labor historiography is rich with accounts demonstrating the sobering effects of industrial pluralism on the American union movement, so far there are almost no studies of the intellectual movement that gave the New Right its anti-union agenda. In this field, conservatism is still somewhat of an "orphan," its existence usually acknowledged only in studies of businessmen and business associations.³

Tracing Petro's long career, one catches a glimpse of the complex intellectual and political dynamics that nourished a libertarian conservative critique of the New Deal labor relations regime in the postwar era. This critique, we argue, was not merely a refurbished expression of American individualism. It linked the ideas of the Austrian school of economics to the venerable American antimonopoly tradition, drew on the midcentury debate over union violence and corruption, and ultimately forged a form of rights talk that challenged the class-based, collective logic of the Wagner Act and asserted the worker's right to be free of union "coercion" based on the First Amendment. This critique, which developed in conjunction with the right-to-work struggle in the 1950s and 1960s, generated a series of crucial legal battles in the next decade that weakened union protections and continues to provide a powerful intellectual resource in anti-union struggles down to the present day.

Theory: "Every Union Man Is a Serf"

"Questioning the virtues of the organized labor movement is like attacking religion, motherhood, monogamy, or the home. Among the intelligentsia, any doubts about collective bargaining admit of explanations only in terms
of insanity, knavery, or 'subservience to the interests.' Discussion of skeptical views runs almost entirely in terms of how one came into such persuasions, as though they were symptoms of a disease.⁴ With these words, the University of Chicago economist and free marketeer Henry C. Simons pitilessly summarized the isolation and political impotence of anti-union ideas in the United States in 1944. Like other conservatives, Simons watched with anxiety as World War II drew to a close, leaving in its wake an expanding labor movement and a set of near hegemonic liberal ideals best exemplified by President Franklin Roosevelt's determination to use government power to ensure "freedom from want" and "economic citizenship." To conservatives, these were no more than shibboleths, "fools' gold words," as John Chamberlain dubbed them.⁵ But there was no denying the reality of the unions' newfound legitimacy. Indeed, Simons thought of himself as a lonely voice, a producer of heterodox ideas whose role was to challenge common wisdom.

A former machine shop worker who was once steeped in the liberal culture bewailed by Simons, Sylvester Petro was in his origins a most unlikely libertarian. Born in 1917 to an immigrant working-class family of steelworkers on Chicago's South Side, Petro took part in the political awakening that led many white ethnic workers during the 1930s to join the ranks of unions and support the New Deal. At Republic Steel, Petro contributed to the union impulse at the very moment when the assistance of the federal government helped the Steel Workers Organizing Committee (SWOC) overcome the deeply entrenched anti-unionism in this bastion of the open shop.⁶

Given the violent anti-unionism of so many "Little Steel" executives, Petro's organizing work was the kind of social experience that might well have built faith in industrial democracy and the power of collective action in the service of social justice. But unlike the hundreds of thousands who lent their allegiance to SWOC and the new Congress of Industrial Organizations, Petro gradually grew disenchanted with unionism as it operated under the Wagner Act. A government-enforced model of exclusive representation that countenanced the closed shop was dangerous in his view: "further experience, education and reflection led me to believe that unions, whatever their capacity for good, had to be watched and subjected to the same laws and rules of conduct that apply to others," he explained.⁷

To be sure, at midcentury there was no dearth of defectors from the proletarian Left: men like John Burnham, Max Eastman, or Whitaker Chambers exemplified the importance of converts to the resurgence of the Right. Petro, however, was no born-again intellectual fleeing a youthful radicalism. His was an estrangement from the culture of unionism as it was lived and practiced on the shop-floor—one that arose from the conflict he perceived between the collective logic of unionism and the constitutional rights of the individual. So far there is no accessible archival material to trace precisely the events that led to Petro's move away from unionism. But one thing is clear: he drew on his "personal experience in unions and in industry" to frame his repeated denunciation of "compulsory unionism" and "union violence," and his defense of workers' individual rights.⁸

Petro's uneasiness with union strategies need not surprise us. Lizabeth Cohen reminds us that some workers resented the rise of industrial unionism and the forceful persuasion of their activists: "They approached you, kept after you, hounded you. To get them off my neck I joined," recalled an irritated worker at Chicago Inland Steel. And as David Witwer has shown, a similar resentment informed the rise of the anti-union columnist Westbrook Pegler, who had once belonged to the Newspaper Guild.⁹ More intriguing, however, is the social process whereby Petro slowly morphed into a recognized libertarian expert on labor relations.

**Petro's Libertarian Conversion**

Discontented with the jobs he held in the steel industry, Petro worked his way through the University of Chicago Law School, from which he graduated in 1942. He earned an LLM degree from the University of Michigan three years later. These were remarkable achievements, but such educational triumphs did not necessarily put a young working-class student on a path toward the legal and political Right. The law school itself was not yet a libertarian stronghold. It had briefly been home to Roscoe Pound, one of the fathers of legal realism, and Chicago had trained its share of New Dealers, like Harold Ickes and Jerome Frank. While the school would later become a bastion for the followers of Friedrich A. Hayek and Ludwig von Mises, in the early 1940s Chicago taught law very much within the legal realist tradition, a commitment signified by the school's recruitment of Karl Llewellyn in 1951.¹⁰

At Chicago, however, Petro attended the classes of William Winslow Crosskey, an iconoclast whose work roiled the waters of constitutional scholarship in the 1950s. Crosskey contended that it was possible to demonstrate how Americans understood the Constitution in 1787. In his rendition of their designs, the framers had meant to create a strong, central
government—one capable of regulating commerce—and had left the states with no real autonomy. However, he maintained that the fathers of the Constitution expected the Congress, not the presidency, to be the preeminent institution in this strong central government, and that this legislative domination was to be strictly protected by the separation of powers. Crosskey’s teaching made a strong impression on Petro, who embraced the idea that separation of powers and a strong legislative branch were the only safeguards against tyranny. Unlike many conservatives who fretted over the rising imperial presidency, however, Petro identified federal agencies as the sources of tyranny—reading Crosskey, he later argued, one could only come to the conclusion that the “quasi-judicial” agencies created during the Progressive Era and the New Deal were both unconstitutional and dangerous. Indeed, Petro would come to contend in the Labor Policy of a Free Society that the role of Congress was to intervene in the economic sphere by prescribing a rule of law that would uniformly protect the free exchange of goods, while the task of arbitrating labor relations should devolve to the courts—federal or otherwise.

Petro’s libertarian conservatism deepened after his graduation from law school, especially with regard to labor issues. Admitted to the Illinois bar, he practiced law but also took a job with the Commerce Clearing House (CCH), a Chicago-based company that published guides to commercial and tax regulations. Founded by William KixMiller, a famous exponent of American business civilization who opposed the statist approach of the New Deal, the CCH was firmly rooted in Chicago’s conservative corporate circles, an environment that fed Petro’s anti-union views. While at CCH, Petro also served as editor of the Labor Law Reports, authoring a guide on the Taft-Hartley Act that served as the basis for a study published in 1958 under the aegis of the Labor Policy Association. In How the NLRB Repealed Taft-Hartley, he explained that the board had constantly violated congressional intent, which, since the passage of the 1947 law, was no longer intended to promote unionism. Petro’s critique of the board gained little traction at first, but in time it found a wider audience and by 1970 Petro was back in front of Congress, testifying in favor of the Tower Bill, a failed effort to strip the NLRB of the power to adjudicate unfair labor practices.

In 1950, the year that John Chamberlain and Henry Hazlitt revived the publication of The Freeman, which would soon become the leading vehicle for the articulation of libertarian conservatism, Petro took a post at the New York University (NYU) School of Law. At the time of Petro’s arrival, NYU had already attracted a nucleus of committed libertarians, including one of the leading figures from the Austrian school of economics, Ludwig von Mises, who had emigrated to the United States in 1940. The tenets of the Austrian school contradicted the Keynesian approach that had swept through the polities of most Western countries in the course of the 1930s. Indeed, the followers of the Austrian school were heirs to the older neoclassical strand of economic theory, which viewed economic relations apart from social relations. Preaching a methodological individualism (an agent-based approach to economics), they argued that the market was a harmonious space in which economic phenomena necessarily reflect the decisions made by rational individuals exemplifying universal and predetermined rules of behavior exempted from time and history. According to this vision of the market, producers or consumers simply tried to maximize their satisfaction given their constraints in a self-contained system that the intervention of the state could only disrupt. Mises and Hayek had devoted much time in the 1920s and 1930s to demonstrate that socialism was inefficient, using the theory of marginal utility to argue that to rationally allocate resources in an economy, it was necessary to rely on market-based prices because they reflect both the amount of resources and their desirability. Hence the two most important tenets of the Austrian school: the sovereignty of the consumer and the necessity of economic freedom to buttress political freedom.

After Crosskey, Mises would be the most important intellectual influence on Petro, and an important connection as well. In 1958, Petro was invited to join the Mont Pelerin Society (MPS), the international group founded by Hayek to promote free-market ideas. Petro earned this invitation with his 1957 The Labor Policy of a Free Society, but his new membership reflected the broader impact of the Austrians’ ideas on the growing infrastructure of the New Right. Thanks to funding from the former DuPont executive Jasper Crane, the MPS annual conference that year was held in the United States for the first time, and a number of American businessmen traveled to Princeton to join the elitist intellectual group. As Kim Phillips-Fein has recently argued, libertarian intellectuals, particularly Hayek and Mises, provided corporate America with an intellectual and conceptual framework to fight the emerging welfare state. Petro’s own contribution was to apply Mises’s theories to labor relations, arguing that unions were inimical to the spontaneous and unpredictable order that consumers generated and that unions corrupted the political system that made the free
market possible.” In using the concept of “compulsory unionism” in his critique of the New Deal labor relations regime, he provided a useful link between the intellectuals agitating for the free market and the emerging “right-to-work” movement.

Anatomy of a “Free Collective Bargaining Rule”

Like many Americans at midcentury, Petro defined liberty and civilization through the prism of consumption, celebrating the American standard of living and contrasting it to that of the Soviets. Because they were a relatively new phenomenon, he argued, unions could not be credited for helping to produce the highest standard of living in the world. Rather, what made America exceptional was first and foremost the amount of capital invested per worker, and the economic system that had made such investment possible. “Our nation-wide free market, based on private property and freedom of contract, is the institution which most clearly distinguishes the United States from other societies,” he asserted.

Unlike many conservatives, however, Petro had no use for religion and had no qualms about defending the materialism that many lamented in America, claiming that it was the very evidence of American superiority over European nations. Like Ayn Rand, Petro departed from the fusionism expounded by William Buckley and Frank Meyer in the pages of the National Review. He placed himself on the libertarian side of the conservative debate—he never mentioned religious concerns in his writing, arguing instead that the two pillars of American civilization were the free market and the rule of law, both of which were jeopardized by Keynesian economics and the government’s empowerment of unions.

Reaffirming the virtues of the free market in the 1950s, however, was no easy task once one left the confines of specific academic campuses and seminar rooms. The world of rugged individualism that prevailed before the Great Depression had been supplanted. Petro himself acknowledged as much in The Labor Policy of Free Society, which opened with an endorsement of the notions that had animated much of New Deal reform—security, stability, freedom, and well-being—which he saw as the motives animating people’s lives: “The worker turns out to be a human being, even as you and I, with the same instincts, desires and habits. The worker wants more money, meaning more things, usually; but he would also like to work fewer hours and have better and longer vacations. He would like to have a secured income. . . . Workers tend to prefer stability and security to instability and insecurity. . . . Here we are, all of us, wishing material goods plus freedom, plus opportunity; and at the same time strongly desiring personal security and stability.”

To Petro, the “great society” (a phrase he borrowed from Mises) would be a society in which these aspirations were fulfilled, but this could be done only in an unregulated market, because whatever form they might take (food, leisure, or even medical services), the quests for well-being and security were necessarily expressed through the act of consumption. True to the reductionist logic of the Austrian school, Petro argued that the market was a democratic space where individuals harmoniously realized their private choices through consumption—as consumers voted for or against the products offered by companies, they generated a “spontaneous order” based on subjective motives for which there could be no planning. Only an economic system in which entrepreneurs were free to respond to the fluctuating desires of consumers could ensure the liberty of people to improve their well-being. The mainstay of this democratic system was the sanctity of property rights, which alone ensured a citizen’s ability to compete in the marketplace and to enjoy its fruits. According to Petro, property rights were indispensable to American civilization because they acted as a Durkheimian social bond mediating relationships between people and coordinating private goals and collective aspirations.

The idea that the market produced a harmony of social interests naturally led Petro to ignore the idea of the “working class” and to dispute the contention that industrial society was inherently violent. In a line of thinking going back to David Ricardo’s law of association, Petro argued that society was by essence “cooperative,” by which he meant that the division of labor was the very source of the material progress of the United States, and was necessary to provide the most adequate answer to men’s and women’s desires. More, this perspective on the economy allowed Petro to deny as illogical the very premise of the Wagner Act—that it was necessary for the state to redress the imbalance in the bargaining power of employers and workers: “Workers and their employers share the same bargaining position vis à vis the consumers and other producers,” he argued. Drawing on the recent research of conservative economists such as Milton Friedman and Edward Chamberlin, who denied that unions could help workers increase their share of the national income, he concluded that to improve
their lot, workers should try to improve the position of their employer in the market.24

Here lay the very foundation of Petro’s fight against “compulsory unionism” and his struggle for “free employee choice”: unions took advantage of majority rule and the union shop to “impose” a collective bargaining contract on all workers, thereby depriving them of the freedom to pursue their own ends in the marketplace. Having placed workers under their control, labor organizations then pursued interests of their own. He made this point at length in The Kingsport Strike, in which he took the union of the printers working for the Kingsport Press to task for agreeing to a “sweetheart deal” that brought no real benefits to the printers. As for the long and bitter strike called by the union in 1963, Petro argued that it was undertaken only to reduce the company’s competitive advantage, not to promote the workers’ immediate interests. Hence to Petro making unions more democratic was pointless—what was needed was to reduce them to their marketplace voluntaristic and individualistic dimension, that is, allow workers to join them and leave them at will.25

Reading Petro’s analysis of the free market, one is struck by the abstract character of his thought. But we must remember that he was heir to an intellectual tradition—the Austrian school—that rejected empirical analysis and instead held that for a theory to be valid, it had to be intellectually coherent.26 This theoretical perspective, which was at odds with the mathematical models developed by neo-classical scholars such as William Stanley Jevons, harkened back to the influence of Karl Popper (another member of the Mont Pelerin Society), and largely fit in the midcentury American context, for in the 1950s empirical research was often associated—particularly within the social sciences—with “totalitarian” science.27

This theoretical background matters enormously to understanding Petro’s work, for he developed his critique of labor relations during an intense period of anti-Communism. In the 1950s, the conservatives whose voices mattered most dealt with the threat of Communism. This feature of American political life was illustrated by the success of Robert Welch’s “May God Forgive Us,” a speech that sold over two hundred thousand copies in the aftermath of the debate over President Harry Truman’s dismissal of General Douglas MacArthur during the Korean War. Reading Petro, however, we see that he was unimpressed with the achievements of the anti-Communist crusade at home. He understood that many on the left as well as the right embraced anti-Communism. This was particularly true of unions, for the Taft-Hartley clause mandating their signing affidavits that they were not Communists had received strong backing from many liberal union leaders.28 As Petro noted, many union leaders, such as George Meany or John L. Lewis, were genuinely anti-Communist, and others, like Walter Reuther, at least publicly embraced anti-Communism. There was nothing surprising in that, Petro argued, because unions exist only in free societies. The American Federation of Labor (AFL) and the Congress of Industrial Organizations (CIO) thus had a vested interest in the anti-Communist battle.29 But trade union anti-Communism gave Petro little comfort. He believed that “what counts is the real effect of present trade union thinking and action upon the real events and real life of America.” And he was convinced that government-supported union power would gradually erode the foundations of American freedom.30

One cannot understand Petro’s depiction of American society and its economy if one does not view it as distinct from the anti-Communist struggle led by Senator Joseph McCarthy and other conservatives. Petro’s work represented a different kind of conservatism, one that stemmed from a conservative transatlantic crossing and came to the fore of American politics in the late 1950s precisely because McCarthyism had run its course, leaving the American Left debilitated, but statist liberalism intact and the free market none the better for it, or so it seemed from the libertarian standpoint. It is not surprising that Petro was active, along with William F. Buckley and Frank S. Meyer, in the foundation of the New York Conservative Party in 1962, which challenged the liberal wing of the GOP in that state and was in many ways the forerunner of the Draft Goldwater movement in New York. Still, more than Buckley’s or Meyer’s, Petro’s support of that effort was primarily nourished by the influence of the Austrians, Mises and Hayek.31

It bears emphasizing that the libertarian-managerial network in which Petro began to play a significant role did not simply agitate for a return to rugged individualism. Beyond the tenets of the Austrian school of economics, what gave their effort to restore managerial rights a distinctive postwar tone was their ability to link it to America’s long-standing antimonopoly tradition. Historically, the antimonopoly tradition was strongly linked to the American Left, particularly to the Progressive movement, but as Alan Brinkley demonstrated, the antimonopoly impulse gradually lost its impetus over the 1930s, making way for a Keynesian political economy. By the latter years of the 1950s, that order was under attack from the right. Petro’s
books came out in the midst of a rising gale of anti-union books and articles by conservative economists, jurists, and managers, who waged a campaign urging the public to see that labor organizations were inimical to the public good. On one point Petro and the conservatives who now marshaled the antimonopoly argument agreed with the Progressives who had once controlled that agenda: monopolies led to corruption and threatened democracy.

The Fight Against Labor Monopolies and "Compulsory Unionism"

Unlike the conservative economists who focused on the impact of unions on general wages and argued that unions could only improve their share of the national income at the expense of the general public, Petro insisted that labor unions enjoyed no power that was not political in its origins. Indeed, it was the support of the state that made a monopoly unacceptable from the standpoint of the free market—Petro did not share Burnham's concern for large-scale organizations, because businessmen had no way of imposing their will on consumers who, by nature, are bent on resisting what others try to force on them. Hence he would not have challenged "natural" monopolies stemming from consumer choices, arguing that companies have no power to force consumers to buy a product, or even to prevent a businessman from setting up shop and competing for the consumers' choices. In the same fashion, Petro contended that should all the employees in an industry freely elect to join a union, they should in no way be prevented from doing so.

Yet Petro argued that the unions that dominated the American industrial scene were not the product of "employee free choice." Claiming to speak in the name of the "silent" labor movement, he argued that "every union member was a serf"—not only did unions rely on the compulsory practices of the closed shop and stranger picketing (picketing by nonemployees), but they were top-down organizations in which the rank and file hardly expected to make decisions. For Petro, a long, bitter strike launched in 1954 by the United Auto Workers (UAW) against a Wisconsin-based plumbing fixture manufacturer, the Kohler Company, perfectly exemplified the problem. The strike began after two years of negotiations failed to produce a contract and it lasted eight years. The Kohler strike, Petro asserted, exemplified the authoritarian leadership of unions—since in that case, Walter Reuther, president of the UAW, claimed to have spent close to $10 million in a struggle in which no automobile worker was directly affected, turning the conflict into a war of attrition between unions and management. To Petro, the UAW's expenditure in no way reflected the wishes of the union's rank and file, and suggested that labor solidarity was not a social fact but a creation of undemocratic laws that allowed unions to politicize the workplace.

Petro became involved in this protracted and violent conflict at the behest of Kohler officials. Having suffered several setbacks at the hands of the NLRB, they were looking for someone willing to expose the deficiencies of administrative law (as opposed to civil law). Kohler asked Petro to write about the Kohler struggle and promised to print two hundred thousand copies of Petro's resulting book for distribution by like-minded companies. Kohler managers—who saw themselves as ethical employers—had already spent vast sums of money in their campaign against the UAW. In engaging Petro they hoped for the support of an independent expert who could speak with authority about the broader issues involved in the conflict. The Henry Regnery Company, which was close to the John Birch Society, was a fitting publisher for the book—it was about to publish Barry Goldwater's *Conscience of a Conservative* as it became the leading conservative publishing house of the period.

Published as *The Kohler Strike: Union Violence and Administrative Law*, and as summarized in various articles, Petro's effort was a relentless critique of the NLRB and administrative law—he heretofore its obscure and inconsistent procedures, and most importantly, its lack of fairness. Providing his own version of the theory of agency capture, he emphasized the corrupting nature of administrative law, arguing that the NLRB members were short-term appointees bowing to political pressure, even condoning violence and property violations. The NLRB's policy was so partial, Petro contended, that it might be summarized as the idea that unions—whatever may happen on the picket line—should never lose a strike. Making this argument, Petro's book provided an important counterpoint to the 1959 McClellan investigation into the dispute. While Senator Goldwater's inquiry had yielded no evidence that the UAW was responsible for the wave of violence that swept through the town of Sheboygan, Wisconsin, Petro sought to demonstrate that the strike was ill fated in the first place and that only the NLRB's intervention in the struggle had rescued the union leaders from their mistake. Hence Petro's forceful conclusion: the violence of union members against reluctant workers resulted from the undemocratic character of the strike and the support that the union received from the government.
As he put it in his 1959 book *Power Unlimited*—an account of the McClellan hearings—“Power grabbed by force and exercised subject to no pervasive structural or functional check is bound to corrupt.”

Petro's contention then was that Congress had forsaken constitutional principles, first by permitting labor contracts that made union membership compulsory through the closed shop, then by requiring companies to negotiate and sign collective bargaining contracts with unions, and finally by depriving the courts of their jurisdiction in labor disputes, which were now the province of administrative agencies such as the NLRB. To be sure, Congress had tried to reconcile the New Deal labor relations regime with the principles of the free market by outlawing many union compulsory practices in the Taft-Hartley Act, but as Petro argued in his *How the NLRB Repealed the Taft-Hartley Act*, the board had flouted congressional will in its interpretation of the law on issues such as stranger picketing or hot cargo contracts—clauses allowing employees not to handle goods that either came from a company dealing with a strike or were manufactured by a company placed on a union unfair list.

Yet Petro did not argue that unions had no place in a free society. In Hartzian fashion, he argued that while workers had once been deprived of the right to organize in Great Britain, they had always enjoyed this right in America, “which became a nation at just that point in history when liberalism was most vigorously stimulating the minds of men.” In a liberal economy, he added, collective actions aimed at raising wages are indispensable to the free market, where labor is bought and sold. But the kind of unionism to which Petro was attracted bore no resemblance to the New Deal collective bargaining regime. Reviewing the nineteenth-century labor record, Petro found none of the judicial bias against unions that Felix Frankfurter and Nathan Greene had denounced in *The Labor Injunction*. Rather he pointed to *Commonwealth v. Hunt* (1842) as the model of labor relations that was compatible with the unregulated economy he was calling for. In his famous opinion, Judge Lemuel Shaw had rested his defense of the right of journeymen to combine on the premise that unions were thoroughly compatible with the principles of the free market, and that associations of consumers or workers might play a role in maintaining a healthy, competitive economy. Accordingly, Shaw ruled that workers had the right to organize as long as they did not combine to break a law. Following Shaw, Petro proposed to see unions as purely voluntary associations created to further the economic interests of their members in the marketplace, a notion thoroughly in tune with the rebirth of the Tocquevillian associative ideal in postwar America. Naturally, this endorsement of the right to organize left unions with little power—since all forms of compulsion were unacceptable to Petro. Free collective bargaining then would be no more than a modern version of an early nineteenth-century New England town hall meeting.

**The Rise of a Libertarian Rights Talk**

To understand the allure of *Commonwealth v. Hunt* to Petro, however, it is necessary to outline the legal battle that gradually developed out of this antimonopoly perspective. By invoking *Commonwealth*, Petro mostly wanted to recast the debate over unions in terms of freedom of association, as nineteenth century journeymen had done. But to Petro the overall framework of freedom of association was promising because it would allow conservatives to make a case for the freedom of individuals to dissent from or avoid membership in labor organizations, and more generally, it would make it easier to protect a number of “first class citizenship” rights deriving from property rights—the right to work, the right not to join a union and to remain free from union pressure, the right to set up alternative unions. It is important to note that Petro began to assemble his rights-based argument against union coercion at precisely the moment when the civil rights revolution was beginning to make “rights talk” more central than ever to American political discourse. Petro and his colleagues hoped to capitalize on this moment to drive their attack on government-supported union power.

**Praxis: Ideas Have Consequences**

By the 1960s, Petro had earned an authoritative voice in the libertarian community. He was cited by men like Hayek, and linked to efforts to propagate libertarian ideas. Beyond his role in the creation of the New York Conservative Party, Petro was active in the Philadelphia-based Intercollegiate Society of Individualists (ISI), an organization created in 1953 by Frank Chodorov after the model of the Intercollegiate Socialist Society to provide college students with the access to conservative literature and ideas that was necessary to challenge the reign of liberalism. The ISI organized
seminars and lecturing tours where Petro rubbed shoulders with Meyer, Richard Weaver, and other leading conservative activists. 

Still, it remained difficult for Petro to determine how influential his ideas were. In 1961, back from a trip to Argentina where he had given lectures to and met with the anti-Peron forces, Petro commented to his publisher, Henry Regnery: “I’ve been working like a horse, traveling a lot, and trying to strike some blows for liberty. Whether the aforesaid liberty is gaining from all this is difficult to tell, but I know I’m pretty beat.” Four years later, he expressed the same doubts in a letter to Friedrich Hayek, saying that in the United States, as in England, the “prospects for liberty” were “not very promising.” Not surprisingly, Petro viewed the Great Society as an enormous mistake. In his 1967 book *The Kingsport Strike*—which dealt with a publishing company located in a poor area of southern Appalachia in Tennessee—he lamented that people were oblivious to the fact that the Kingsport Press, the second largest employer in town, had been fighting a successful war on poverty for years and was about to fall prey to vicious union practices. Like Henry Simons two decades earlier, libertarians had to be content with producing heterodox ideas in the 1960s, hoping that one day they might find practical application, yet uncertain as to when that day might come.

Thus, by the end of the 1960s, Petro turned his attention increasingly to trying to influence policy and the law. Although Petro’s influence on the course of labor relations in the United States was marginal in the years before 1970, his greatest success, as a legal and policy entrepreneur, would come during the next two decades, when he became one of the nation’s most vocal and effective critics of public sector unionism. By the 1960s, public sector unions had emerged as the fastest growing segment of the labor movement. Following the enactment of the first state law by Wisconsin in 1959 and the introduction of limited collective bargaining to the federal workforce in the 1960s, union membership and labor militancy spread on the local, state, and federal levels. For Petro, public sector union power epitomized all of the worst aspects of the state-union alliance that had emerged under the New Deal. The growth of collective bargaining in government, he feared, would accelerate Americans’ loss of freedom, as public sector bargaining policies “brought to the public sector what national labor legislation previously brought to the private sector,” a tragic triad of “conflict, disharmony, and waste.” If the new power of public sector unions was not repulsed, he believed, it would in time destroy constitutional government.

**Moving South**

Through a fortuitous set of circumstances, Petro had an opportunity to create his own labor research center just when an opening was emerging for the application of his ideas to the question of public sector unionism. In 1970, a former student of Petro’s at the NYU Law School, Pasco M. Bowman II, was named dean of the Wake Forest University Law School. Bowman, a native Virginian who graduated from Bridgewater College in 1955, was a conservative libertarian whose inclinations were deeply influenced by Petro. Bowman soon recruited Petro, who arrived in Winston-Salem, North Carolina, in 1973 and there established a new center, the Institute for Labor Policy Analysis. The move to the more conservative Wake Forest, a university whose trustees were elected by the North Carolina Baptist State Convention, gave Petro a suitable institutional platform, and a more conducive political environment from which to advance his ideas in the 1970s. Petro soon recruited a newly minted Harvard Law School graduate, Edwin Vieira Jr., to serve as research director for his institute.

It was a propitious time to establish a conservative legal redoubt in North Carolina. In 1972, Jesse Helms, the conservative gadfly made famous by his editorials on WRAL-TV in Raleigh, won election to the U.S. Senate from North Carolina. As a staunch “right-to-work” advocate, Helms proved a reliable ally in Petro’s battle against the rise of public sector unions. North Carolina law banned collective bargaining by state or local government workers, and Helms championed this approach. Legislation to “compel sovereign governments to ‘bargain’ with unions as *equals,*” Helms argued, would “compel public servants to accept unwanted unions as their only voice in dealing with their own government,” would “permit crippling strikes,” and “make public employees, administrators, and the public interest pawns of union organizers.”

For the National Right to Work Committee (NRTWC), 1973, the year that Petro arrived at Wake Forest, proved to be a watershed. Founded in 1955, the NRTWC had paid little attention to public sector unions before the late 1960s. But by 1973, this had changed. Right-to-work advocates viewed the rise of public sector labor militancy with alarm, and they had little faith in the Nixon administration’s willingness to beat back this surging movement. They accused Nixon’s secretary of labor, Peter J. Brennan,
the former head of the New York City Building Trades Council, of “converting the Department of Labor into a Department of Labor Bosses,” and charged the director of the Federal Mediation and Conciliation Service, William Usery, with “prostituting his post” to “assist union organizers.” Yet what most concerned the right-to-work movement was the National Public Employee Relations Act (NPERA), introduced by Congressman William L. Clay on June 14, 1973. Clay’s bill promised to extend to state and local government workers the same sort of labor protections that private sector workers had received under the Wagner Act: the right to organize and bargain collectively through exclusive union representation. The Clay bill would also set up a federal board to oversee government workers’ rights, and would permit most state and local workers to strike. The NRTWC saw Clay’s bill as “federal legislation that would authorize the forced unionization of public employees.” If successful, the bill would usher in “a new spoils system—with workers compelled to buy their jobs and other favors from union officials,” fretted the NRTWC Newsletter. Reed Larson of the NRTWC sounded a call to arms. “I want to call on all those who are truly concerned with the preservation of individual liberty in American to abandon the dangerous courtship with so-called ‘political realities,’” he announced. As it happened, Petro’s Institute for Labor Policy Analysis was perfectly positioned to answer Larson’s call. Over the next crucial decade, Petro’s ideas would enable the opponents of public sector union power to argue that they were defending the very integrity of democracy itself.

Taking on Public Sector Unions

In response to the growing threat, the NRTWC sponsored a conference in Washington on the issue of public sector unions in 1973. At the conference Petro presented an early version of a lengthy law review article that would appear a year later in the Wake Forest Law Review as “ Sovereignty and Compulsory Public Sector Bargaining.” According to David Denholm, a right-to-work activist from California who attended the gathering, Petro’s paper was “very controversial.” Most right-to-work activists opposed “compulsory unionism” but in the case of public sector workers Petro took the anti-union logic a step further. He attacked the existence of collective bargaining in any form in the public sector. When unions bargained with the government, he argued, government sovereignty was inevitably compromised. This view was controversial, even among the NRTWC crowd. According to Denholm, many said, “no, no, no. It’s compulsory unionism that’s the problem. Collective bargaining is not a problem.” But Denholm and others soon came around to Petro’s way of thinking. The growing popularity of Petro’s argument on the anti-union right in the years after 1973 represented an important departure.

Following the conference, the NRTWC increasingly incorporated Petro’s arguments into its attacks on the Clay bill. NRTWC head Reed Larson echoed Petro’s main theme. Those who supported collective bargaining in government “have declared that a sovereign government must negotiate, as an equal, with a labor union.” Larson told a group of Indianapolis business owners. Mainstream commentators like mediator Benjamin Aaron, who served as chair of a California legislative commission on public sector labor law, dismissed the sovereignty critique as “anachronistic.” But among conservatives the argument attracted a following.

In the aftermath of the NRTWC conference, a group of activists inspired by Petro’s presentation decided to form a new organization specifically dedicated to combating public sector unionism, the Public Service Research Council (PSRC). In 1974, David Denholm moved to Washington to take charge of the PSRC. Within a year the new organization established an astonishing level of visibility. Its calling card was a widely circulated pamphlet published in 1974 and revised and reissued regularly thereafter. That pamphlet, Public Sector Bargaining and Strikes, dramatized a central contention of Petro’s: that public sector collective bargaining itself, not just the threat of “compulsory unionism” in the public sector, was beginning to undermine government. The pamphlet, which prominently cited Petro’s work, argued that the very extension of collective bargaining to state and local workers through legislation increased both unionization and strikes, rather than bringing labor peace as the advocates of such legislation promised. “In the overwhelming majority of cases,” the pamphlet argued, “strike activity was notably higher in the period following legislation.” The PSRC also pointed out that political leaders rarely enforced the full range of penalties provided by laws outlawing government workers’ strikes. Thus the pamphlet advanced themes central to Petro’s thinking since the 1950s: union monopolies bred strikes; and union power corrupted government.

The publication of Petro’s “ Sovereignty and Compulsory Public Sector Bargaining” in the Wake Forest Law Review coincided with the formation of the PSRC. This 140-page article represented arguably the most ambitious
critique yet formulated against public sector collective bargaining, and it became a primary reference point for the activist network that David Denholm began building. Petro’s article reviewed the liberalization of labor law since the 1950s, and advanced a detailed critique of public sector unionism that drew on ideas going back to Locke. Petro cleverly reformulated the right-to-work critique of “compulsory unionism,” which had little resonance in the public sector where union security provisions were still uncommon in the early 1970s, into a critique of what he called “compulsory collective bargaining.” In the public sector the problem was not primarily that workers were forced to join unions but that governments were increasingly being forced to negotiate with them. The introduction of “compulsory bargaining,” he argued, represented an unconstitutional conflation of sovereignty from the people and their elected representatives on the nongovernmental entity of the union, and a “fatal threat to popular sovereignty.”

Drawing on the libertarian analysis of Mises and the same style of argument employed by Hayek in The Road to Serfdom (1944), Petro painted a relentlessly dark picture in which an expansive and coercive public sector union power led inevitably to tyranny. If government workers were to bargain with their employers, he argued, they would inevitably ask for and obtain the right to strike, otherwise bargaining would become “a sham.” Strikes would in turn allow unions to press for “compulsory unionism.” Nor would efforts to head off strikes through arbitration work. This approach would only accelerate government’s loss of sovereignty to another group of nongovernmental agents and encourage unions to demand still more power. Petro’s fears were most dramatically revealed in his comments on William Clay’s National Public Employee Relations Act, which was then pending in Congress. If that bill passed, opening the floodgates to union organization at the state and local levels, he warned, it would be time “for us to take to the hills and the fields and the caves once more, as our ancestors have frequently had to do when integral—sovereign—government has broken down.”

Petro’s shrill tone might have consigned him and the PSRC activists whom he inspired to the margins of debate in labor relations in the 1970s had it not been for events made his criticisms seem suddenly plausible beyond the confines of the right-to-work crowd’s true believers. In 1975, the economy contracted, unemployment rose to 8.5 percent, and inflation reached a postwar high of 9.1 percent. Inflation and economic contraction strained government budgets even as unions fought hard to inflation-proof their wages and pensions. Public sector strikes jumped by 24 percent to a record 478 walkouts, the vast majority of which defied laws in the states where they took place. In New York City, Seattle, San Francisco, and the Commonwealth of Pennsylvania, Democratic officials once allied with the union movement came into bitter conflicts with striking unions. In response, union leaders loudly ratted their sabers, and the AFL-CIO called on Congress “to pass legislation to give all public employees the right to strike.” Such militant words worried conservatives all the more because the Watergate–influenced 1974 midterm elections gave Democrats a 291–144 majority in the House and a 61–39 advantage in the Senate, a margin that led one union strategist to predict the “certain passage” of William Clay’s NPRERA bill. These developments galvanized conservatives around Petro’s ideas. In 1975 conservative writer Ralph de Toledano published Let Our Cities Burn, an attack on public sector union power and a warning against the passage of the Clay bill. The book drew inspiration from Sylvester Petro’s “incisive essay on sovereignty,” presenting it in simpler language, buttressed by dozens of lurid examples of alleged union abuses. The book became a bestseller among conservatives. At the same time, the NRTWC increasingly identified itself with Petro’s critique of public sector unions. In May 1975, when the NRTWC marked its twentieth anniversary, Petro was a featured guest along with William B. Ruggles, editor emeritus of the Dallas Morning News, whose famous 1941 Labor Day editorial calling for a constitutional amendment protecting the “right to work” was widely credited with having originated both the term and the movement. By featuring the public sector union threat increasingly in its literature, the NRTWC began recruiting a record fifteen thousand new members per month in 1975, enough to convince its leaders that they would be heading the nation’s “largest single-purpose citizens’ organization” by 1976. Members of Congress also embraced Petro’s arguments. When a group of conservatives took to the floor of the House on July 17, 1975, to attack the Clay bill, they might as well have been quoting from Petro’s works. The question raised by the NPRERA legislation was “shall Government be sovereign or shall there be collective bargaining with Government?” according to Philip Crane (R-III). “If government is to maintain its sovereignty,” echoed John H. Rousselot (R-Cal.), it could not share “responsibility with a handful of professional union men who are not answerable to an electorate.” If Petro had felt like
a voice crying in the wilderness when he testified before Congress in 1959, by 1975 he was hearing his ideas repeated by an increasing number of legislators and activists.

Petro’s influence on the courts was marginal before the mid-1970s. Only twice between 1953 and 1974 did judges reference Petro’s work in their opinions. Yet in the mid-1970s Petro played an important role in two crucial legal battles that ended up before the Supreme Court, each of which brought decisive defeats to labor. The first of these, National League of Cities v. Usery, which declared unconstitutional an effort to extend the wage-and-hours provisions of the Fair Labor Standards Act (FLSA) to state and local employees, marked the most significant legal setback for public sector unions in the 1970s, one that also had a huge negative impact on chances for the passage of Clay’s NPERA bill. In the second, Aboud v. Detroit Board of Education, the Court’s majority embraced Petro’s employee “free choice” logic to rule that unions’ use of compulsory dues to engage in political activity violated the First Amendment and furthermore that it was illegal to withhold from dissenters any union dues that exceeded the cost of collective bargaining.

National League of Cities stemmed from a successful effort by organized labor to get Congress to extend minimum wage and overtime protections to state and local government workers in 1974. Both supporters and opponents saw the FLSA extension as an important prerequisite for the passage of the Clay bill. The extension, if granted by Congress and upheld by the courts, would deal a fatal blow to the arguments of those who contended that the NPERA constituted an unconstitutional breach of federalism that would allow the federal government to dictate to states and localities the terms of their labor relations policies. When Congress passed and President Richard M. Nixon signed the FLSA extension in 1974, NPERA advocates felt they had established an important precedent. If the federal government had the right to set minimum wages for state and local workers, then it should also have the power to protect their right to form unions and bargain collectively. If the Supreme Court upheld this extension, then passage of Clay’s NPERA bill would become feasible. This worry led Petro to join the National League of Cities (NLC) in an effort to persuade the Supreme Court to overturn the FLSA extension, an effort that led to National League of Cities v. Usery.

Petro well understood the importance of this case and prepared an amicus curiae brief on behalf of the PSRC. Petro was concerned that if the PSRC did not submit its own brief, the NLC lawyers’ “natural preoccupation with the issues which interest them most immediately will cause them, and hence this Court, to overlook the deeper, broader, and more ominous issues involved.” Petro wanted the Court to know that at stake was “the survival of the federal system and of representative government in the States and municipalities.” Foremost in Petro’s mind as well was the precedent the case would set for the NPERA. He warned the Court that if the FLSA extension was affirmed, it “would go far toward establishing the constitutionality also of federal laws imposing in the public sector the compulsory collective bargaining regime now prevailing in the private sector.” Petro opened his argument by distinguishing between commerce and government. FLSA rules imposed on states and localities by Washington would amount to an unconstitutional regulation of state and local government, and could not be justified as a regulation of commerce among the several states, he argued. “Affirmance of the decision . . . will disintegrate the substance of constitutional federalism,” he concluded, and lead to “the demise of the States and localities as independent, self-governing communities.”

With Petro’s brief in their files, the justices of the Supreme Court heard oral arguments in National League of Cities on April 16, 1975. No decision came from this hearing and the case was held over for rehearing in the following term. In the meantime, the upsurge in public sector strikes in 1975 seemed to dramatize some of the points Petro had presented in his brief. By the time the Court heard arguments in the case again on March 2, 1976, Democratic governor Calvin L. Rampton of Utah, who argued on behalf of the National League of Cities, seemed to be channeling Petro’s brief. “Right now there are pending before the Congress bills that would extend all provisions of the National Labor Relations Act to states, including . . . giving employees the right to strike,” he warned, in a reference to Clay’s NPERA bill, and its passage was being held up “only because of the pendency of this case.” Like Petro, Rampton further argued that if the Court let the FLSA extension stand, then there would be “no logical stopping point” for the legislation that would follow. Similarly, Justice Lewis Powell wondered whether affirming the FLSA extension would give Congress permission to tell states “that they have no authority to outlaw strikes against the government.”

When the Court issued a 5–4 opinion overturning the FLSA extension several months later, Petro’s influence seemed evident. The court majority could have overturned the extension merely by holding that the broad regulation of state and local government labor policies was not covered by
the logic of precedents. Instead, the majority took a more aggressive approach, portraying the FLSA extension, in the manner of Petro, as a dangerous threat to federalism. Writing for the majority, Justice William Rehnquist invoked the Tenth Amendment, arguing that the Congress had overstepped its bounds and employed powers not expressly granted in the Constitution and thus "reserved to the States respectively, or to the people."  

Many legal observers were stunned by the Court's embrace of the Tenth Amendment argument in National League of Cities. "It has been 40 years since the Court used concepts of state sovereignty to strike down federal legislation," the editorial writers of the Washington Post observed. Since 1941, when Justice Harlan Fiske Stone had called it "but a truism" stating the obvious, that "all is retained which has not been surrendered," the amendment had seemingly disappeared from Supreme Court discourse. When segregationists had tried to place Jim Crow statutes under the protection of the amendment, the courts rebuffed them. But after years of gathering dust, the amendment was again a viable tool of conservatives. Sylvester Petro and his allies could relish another outcome of the Court's decision: with the federal government's power to regulate the employment practices of state and local governments in constitutional doubt, William Clay's NERA bill was abandoned by most of its backers and never brought to the House floor for a vote.

The second crucial case in which Petro intervened in the mid-1970s was Abood v. Detroit Board of Education. This case saw the NRTWC's Legal Defense Foundation represent six hundred Detroit teachers who refused to join the union that represented their colleagues and who sought to avoid paying agency fees to that union on the grounds that it used their money to engage in political activity to which they objected, thus violating their First Amendment rights to freedom of speech. Since the early 1970s, the NRTWC had singled out teachers unions to emphasize the danger represented by public sector unions in general. Thus, the NRTWC argued that if the Clay bill passed, "union officials would control the . . . professional entrance requirements of school teachers." Because it focused on teachers, right-to-work activists saw Abood as an ideal test case. It was natural that they turned to Petro to argue their case before the Supreme Court.

While in his National League of Cities brief Petro alluded to the threat posed by public sector strikes, in the Abood case Petro focused on the dangers inherent in a weapon even more vital to public sector unions than the strike: their ability to lobby and undertake political campaigns to advance the interests of their members. In making this point Petro joined two central strands of his thinking that dated back more than twenty-five years. He had long held that the role of government and the private sector were in no way analogous. He had also long based his critique of "compulsory unionism" on the First Amendment freedom of expression and association. He believed that no one should be compelled to join or support an organization whose policies one opposed, nor should such an organization wield a government-like taxing power over individuals in its jurisdiction, collecting dues or representation fees. Abood allowed Petro to weave these two strands of his thinking in a powerful synthesis. In the public sector, he argued, union activity was inseparable from politics. Endorsing political candidates, lobbying government employers, demanding a say in the policies of government agencies, virtually all of the things that government workers' unions did were inherently political acts. Thus any money paid to a union would inevitably be put to political uses. If a government worker was forced to pay a fee to a union, even if it was an "agency fee" supposedly paid only for the cost of the union's collective bargaining services, then that worker was inevitably paying the union to conduct political activities that the worker might find objectionable, and therefore such compulsion constituted a violation of the worker's constitutional rights. This was the argument that Petro placed before the Supreme Court in the only appearance he ever made as counsel in that chamber: the State of Michigan could not compel citizens to renounce their First Amendment rights to be eligible for public employment, and then require them to contribute financially to the suppression of their own political views.

In the event, Petro's ideological zeal handicapped him in making an effective case before the Court. He burdened the justices with an overly long, professorial tome of a brief about which he was scolded by Chief Justice Warren Burger. He also overstated elements of Justice Rehnquist's position in the National League of Cities case in an effort to co-opt that decision as a precedent for Abood, much to the consternation of Rehnquist, who sympathized with Petro's thinking in Abood but found his legal reasoning suspect.

Nonetheless, Petro walked away with a qualified victory in Abood. When the Court announced its decision on May 23, 1977, the majority held that it is unconstitutional to require a public employee to join a labor union. This was largely a moot point, however, since no state or locality had
adopted union-shop agreements. Moreover, the Court did not go so far as to hold that the payment of agency fees for collective bargaining services was an infringement on the constitutional right to freedom of association because all activities of public sector unions were inherently political, as Petro had argued. But, importantly, the majority did hold that a union’s use of agency fees to pursue political activities was indeed an infringement on the First Amendment rights of those workers who objected to this use of their money. Furthermore, the Court held that workers who felt so aggrieved had a right to demand an accounting of the use of union funds and to receive a rebate for any portion of their fees that were used in political action.62

In Abood, Petro played a role in establishing an important constitutional principle with respect to freedom of association and collective bargaining, one that would be widened by subsequent decisions stemming from private sector labor law, such as Communications Workers of America v. Beck. In Beck, the Court held that exactions of agency fees or dues beyond those necessary to finance the collective-bargaining activities of unions in the private sector also violated dissenting workers’ First Amendment rights as well as their rights to fair representation. It was no surprise that Petro’s protégé, Edwin Vieira Jr., argued on behalf of the respondents in Beck, continuing the First Amendment attack against “compulsory unionism” that his mentor had begun waging decades earlier.63

As it turned out, the Abood case marked the pinnacle of Petro’s influence. In the years after 1977, he receded from the front lines of the anti-union fight. Petro himself argued no more cases before the Supreme Court. In 1978, Dean Pasco Bowman left Wake Forest in a dispute, and the university severed formal ties with the Institute for Labor Policy Analysis. Yet as his personal prominence receded, Petro’s ideas continued to animate an increasingly well-organized anti-public-employee-union movement. The PSRC, whose organization Petro had inspired, continued to espouse his theories. In 1978, the organization launched a biweekly newsletter, The Government Union Report, and in 1980 it added an academic journal, Government Union Review. The PSRC also created a lobbying organization called Americans Against Union Control of Government, and, with the help of a new breed of conservative direct-mail fund-raisers, such as Richard Viguerie, it built a sizable network of donors. And when President Ronald Reagan delivered a crushing blow to striking air traffic controllers in 1981, Petro had the satisfaction of seeing his arguments repeated by the only former union leader ever to occupy the Oval Office. It was wrong to “compare labor management relations in the private sector with government,” Reagan argued, as he prepared to fire the Professional Air Traffic Controllers Organization (PATCO) strikers. “Government cannot close down the assembly line.” Strikes by federal workers would not be tolerated, Reagan made clear.64 “The President’s stern response to the illegal air-controllers’ strike has caused no outpouring of sympathy for the controllers who have been discharged,” Petro gloated in 1982. “Fortunately, public esteem for all unions in this country is at an historic low.”65

Petro himself could claim a small bit of credit for this turn, for his ideas had helped lay the groundwork for not only Ronald Reagan’s breaking of the PATCO strike but for an increasingly successful attack on union power in the late twentieth century. While he had been a lonely legal crusader against union power in the 1950s, by the 1980s his views were no longer marginalized: while one protégé, Edwin Vieira, was successfully arguing the Beck case before the Supreme Court, another, Pasco Bowman, was a Reagan appointee to the U.S. Court of Appeals for the Eighth Circuit.66

Petro died in 2007. His influence lived on, however, in the anti-union struggles of the new century, carried on by followers like Howard Dickman, whom Petro had recruited into his intellectual movement in the late 1970s after Dickman received a PhD in history from the University of Michigan. Through the Liberty Fund, Petro provided the funding that brought Dickman’s book Industrial Democracy in America: Ideological Origins of National Labor Relations Policy (1987) into print, where it remains the most intellectually respectable critical history of U.S. labor policy written from a libertarian perspective.67 Dickman went on to a successful career as a popularizer of libertarian conservatism in the pages of Reader’s Digest and as deputy editor of the Wall Street Journal’s editorial page, the most prominent anti-union platform in American journalism. The Journal’s editorials against the Employee Free Choice Act (EFCA), organized labor’s bid to reform American labor law, helped rally enough opposition to the measure to prevent its passage after Barack Obama’s election to the presidency. In those editorials and other critiques of EFCA, Petro’s arguments against “compulsory unionism” continued to resonate. The anti-union movement had come a long way in the half century since Sylvester Petro came to Washington to testify before the McClellan Committee. History, it seemed, had turned his way.

54. L. J. Duffy to Kennedy, Re: Outline and Summary of the Case Relating to Labor Racketeering in Scranton, Pennsylvania, March 8, 1957, 4, serial no. 18–48–9, case file 18–48, Record Group 46, Center for Legislative Archives.


58. Witwer, "The Racketeer Menace.


60. "Labor Racket Probe Will Be Expanded," Fresno Bee, March 28, 1957, 1, RFK Clipping Files.


65. Kennedy to John Siegenthaler, July 29, 1958, box 44, RFK Pre-Administration Working Files.

66. Guthman, We Band of Brothers, 58.

67. Ed Guthman to Kennedy, June 28, 1957, box 40, RFK Pre-Administration Working Files.


70. Duffy to Kennedy, 4–19.


Chapter 11. "Compulsory Unionism"


2. The hearings were held during one of the longest strikes in American history, which pitted the United Auto Workers against the Kohler Company in Wisconsin from 1954 to 1963. See Kim Phillips-Fein, Invisible Hands: The Making of the Modern Conservative Movement from the New Deal to Reagan (New York: W. W. Norton, 2009).


9. Joel Seidman et al., How the Worker Views His Union, quoted in Cohen, Making a New Deal, 319. On Westbrook Pegler, see David Witwer, "Westbrook Pegler and the Anti-Union Movement," Journal of American History 92 (September 2005): 527–552. Too much, of course, should not be made of these individual trajectories. As the
historian Gerald Friedman recently reminded us, strike activity peaks occur infrequently, and union expansion is a phenomenon that occurs only during those peaks, when a communitarian interest arises among workers. See Gerald Friedman, Regaining the Labor Movement (New York: Routledge, 2007).

10. Aaron Director was an erstwhile leftist, who had once taught labor history. At the time, the ideological gap between the law school and the economics department was wide. See E. W. Kitch, "The Fire of Truth: A Remembrance of Law and Economics at Chicago, 1932–1970," Journal of Law and Economics, 26 (1983), 163–234.


12. It bears remembering that these federal agencies were premised on the theory that Congress could delegate some of its powers to them. See the classic analysis offered by Theodore Lowi in The End of Liberalism: The Second Republic of the United States (New York: W. W. Norton, 1963). Petro’s reading of the role of the courts in labor relations was again premised on the work of Crosskey, who argued that the Supreme Court’s preemption doctrine was contrary to the original meanings of the framers of the Constitution.


17. Phillips-Fein, Invisible Hands, 41–51; Petro largely acknowledged the influence of Mises in the introduction to his Labor Policy of a Free Society.


22. Ibid., 11, 12. See also 61: "Government personnel are simply not godlike. They are not omniscient, not omnipotent." Such indeed was the message that Hayek conveyed in The Road to Serfdom, which Max Eastman serially published in his Reader's Digest. See Friedrich Hayek, The Road to Serfdom (Chicago: University of Chicago Press, 1944).


26. By contrast, most neoclassical scholars used mathematical models, and it was in this vein that Jevons created his homo economicus.


30. Petro, Power Unlimited, 276. Petro nonetheless had harsh words for Communists; see 276–277.


32. Edward Chamberlin "Can Union Power Be Curbed?" Atlantic Monthly, June 1959, 46–50; Lemuel Boulware et al., Monopoly Power as Exercised by Labor Unions: A


62. Ibid., 28.


65. De Toledano, Let Our Cities Burn, 216.

66. Other prominent guests included Shelby Collum Davis, then U.S. ambassador to Switzerland; Richard DeMille, son of the famed film director Cecil B. DeMille; and a dozen members of Congress. "Right to Work Committee Marks its 20th Anniversary," National Right to Work Newsletter, May 28, 1975, 4.


69. The two cases were Blue Bear Cafeteria Co. v. Hotel & Restaurant Employees & Bartenders International Union, 254 S.W.2d 335; 1952 Ky.; and Winston-Salem/Forsyth County Unit of North Carolina Assoc. of Educators v. Phillips, 381 F. Supp. 644 (1974).


73. Petro, "Brief of the Public Service Research Council," 4, 5, 12, 113, 22, 23, 32.


75. The Tenth Amendment reads: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." U.S. Const., amend. X.


77. In Garcia v. San Antonio Metropolitan Transit Authority et al., 469 U.S. 528, 531 (1985), 5–4 majority of the court substantially reversed key elements of Usery, admitting in effect that aspects of the 1976 decision had been "inconsistent with established principles of federalism." See 469 U.S. 531 (1985).


86. Interestingly, Pasco Bowman played a key role in the impeachment of President Bill Clinton. His court cleared the way for Special Prosecutor Ken Starr's open-ended investigation and prosecution of Clinton. See Joe Conason and Gene Lyons, Hunting the President: The Ten-Year Campaign to Destroy Bill and Hillary Clinton (New York: Thomas Dunne Books, 2000), 216–218.


Chapter 12. Wal-Mart, John Tate, and Their Anti-Union America


2. Author's interview with Larry English, June 7, 2006, Diamond Head, Ark.
