

THE SPIRAL OF THE AMERICAN LABOR MOVEMENT

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ABSTRACT

Individual employment rights emerge from a legal context dependent on political and cultural change. An understanding of these rights is served by an understanding of their evolution. Historian Eric Voegelin attempted to trace changes in American labor policy from the dawn of the industrial revolution, from a dominant "frontier ethos" toward the prevailing "New Deal ethos." In so doing, he suggested the direction that American policy has since taken toward governmental regulation, centralized bureaucracy, and the increasing role of experts and intellectuals. The purpose of this brief essay is to describe the trajectory of American labor policy in order to explain existing rights and predict those trends that will shape the individual employment rights of tomorrow.

Practitioners in the field of individual employment rights operate within a mental framework about the meaning and scope of American labor policy. Most of us understand that existing rights emerge from a legal context dependent on political and cultural change. Accordingly, our understanding of individual employment rights is served by an understanding of their historical evolution. This is not to say that all practitioners agree on the meaning and scope of existing rights, and this is largely due to competing images of their evolution.

In order to structure our thoughts clearly, it should help to consider the imagery we often take for granted. This little exercise has the additional benefit of revealing trends; perhaps there is a direction to American labor policy. If there is, practitioners interested in the cutting-edge might want to know what to anticipate as the future of individual employment rights. We would all like to peek over the far horizon.

The following essay offers one image of the evolution of individual employment rights based on the research of historian Eric Voegelin and on the familiar form of a spiral. After describing the trajectory of American labor policy from a frontier ethos toward the prevailing “New Deal Ethos,” the essay concludes by suggesting the direction of that spiral toward greater governmental regulation, centralized bureaucracy, and involvement on the part of experts and intellectuals.

The images with which one thinks are tools, useful to the extent they reflect reality. To the extent an image fails to reflect reality, it becomes a prison for the mind. Part of the purpose of any education is to exchange clumsy images for better images, to exchange crude tools for more sophisticated ones. What then is your image of historical change?

To describe change, Aristotle wrote of simple alternation (either/or, black/white, yes/no, here/there, all in one dimension) and more perfectly of circles (in two dimensions). By the time of Hegel (1770-1831), philosophers had added a third dimension to reflect historical progress. The same essential process of change occurred over and over, and yet after each cycle the world was left in a different condition, as though history were more of a spiral.

Hegel is credited (wrongly) [1] with describing this change process as a sequence of thesis—antithesis—synthesis, in which one claim or position prevails, only to be challenged by its opposite or contrary. In the resulting struggle, the adversaries arrive at some reconciliation of their apparent contradiction. This synthesis resolves the conflict and becomes the new thesis, until a new antithesis starts the whole thing all over again. Thus, we do not return to the original thesis, but rather to a new one, even though the process is always the same.

And the end of all history, in Hegel’s view, is consciousness of freedom [2]. This will be important to remember in our brief survey of labor relations.

Now, despite the fact that I have grossly oversimplified Hegel’s philosophy, we do have an image to use in beginning to understand the history of the American labor movement, for in its broad development there is a thesis-antithesis-synthesis cycle to help organize our thoughts. (A more thorough study of either Hegel or the American labor movement should lead to a more sophisticated image.)

The prevailing thesis, the dominant worldview at the time of the emergence of a labor movement in America, was rooted in certain beliefs favoring individual freedom in matters of employment. The capitalist needed to operate within a sphere of freedom to generate wealth and help to expand the economy. This principle was applied to workers as well, since they were to be encouraged to negotiate their own terms of employment and learn to adapt when conditions changed—as they invariably would in the robust years of early nationhood; the first days of industrialization and westward conquest were highly volatile. Central to this thesis is a commitment to freedom for the individual actor [3]. And as long as everyone enjoyed the same latitude (it was thought), nothing could be more fair.

I am free to hire you. I am free to fire you. You are free to work for me. You are free to quit. We are free to negotiate between ourselves your wages, benefits, duties, and all other terms and conditions of employment. And so forth.

An emerging antithesis challenged this worldview, primarily by drawing a contrast between the relative powers of employers and their employees [4]. A doctrine of individual autonomy seemed to favor the employer, who had access to far more resources and whose alternatives in a crisis were more attractive. Whether this perception is accurate is not the point: many workers came to believe that freedom favors the powerful (meaning the less powerful are in truth not very free at all).

For this reason, many workers tried to secure their freedom by correcting this power imbalance, although not so much by attempting to strip the powerful of their advantages [5]. Rather, the labor movement tended to prefer another remedy, which was to increase their own power by means of joining together into collective organizations devoted to the interests of their membership [6]. One argument states that, after all, by the time of the factory system, these workers had witnessed a similar process of collectivization by their employers [7], so it just seemed fair to respond in kind.

The first conflicts in the history of the American labor movement are therefore the product of efforts by these collectives to challenge the status quo, in order for workers to realize more freedom. Obviously, the antithesis I have been describing challenges two premises of the worldview prevailing at that time: first, the collectivist strategy offends the commitment to individualism; and second, the need for these collectives to stay united in their struggles led to acts of coercion against other individual workers who preferred *not* to join. In other words, no collective could afford to let other workers slip in to take their places and proceed as though nothing had happened. The whole point of joining together was to prevent employers from achieving their ends. To do that, the workers had to agree to halt operations. When a simple walkout did not succeed because replacement workers would arrive, then the collective felt the need to halt operations by other means, as for example by intimidation, sabotage, and violence against the replacement workers. As you can imagine, the courts interpreted this behavior as coercive to the point of criminality. The *pursuit* of the group's freedom had impinged the *actual* freedom of these individuals, the so-called "scabs," so the legal system was asked to delineate the freedom of workers, which it did at first by outlawing collectives altogether [8].

Once the legal system finally permitted collectives, as long as they avoided certain kinds of criminal conduct [9], the stage was set for the arrival of the full antithesis, the force of challenge, to coalesce and form a consciousness of itself as a movement. In other words, as these groups of workers banded together, they started to think of themselves as a group with a common purpose. This in turn led to a more balanced conflict as the two sides, management and labor, became

more aware of their opposition to each other and developed more potent (and in many cases more violent) responses to each other.

American society had a problem as it made the transition from pioneer communities toward industrialization. On the frontier, everyone had a role or they simply moved on. But with the exhaustion of space and the influx of immigrants, society started to absorb workers for whom there was no work. The labor pool was too large, setting worker against worker for jobs, which in turn lowered wages. Quite a number of workers were willing to engage in violence to get or keep their jobs, and alternatives such as crime became increasingly attractive. Thoughtful observers realized the problem affected more than the workers themselves, for it spilled over into the larger community. No one wants to live in a society of increasing violence and crime, coupled with decreasing wages. And yet, given the prevailing values of that time, forged by the pioneer spirit, society seemed stuck.

Historian Eric Voegelin listed several of the options being considered before the turn of the century [10]. He explained why Americans were unlikely to adopt Marxism or form their own political party; he also examined the rise of small utopian communities along the Midwest. Then he showed why we were able to create a novel solution, which he did by listing five principles, five shared beliefs that constituted society's concord. By agreeing on these five propositions, labor and capital enjoyed a common heritage. For all the conflict, tension, and unease, there was an astounding consensus at all levels of society. They knew they must measure whatever they did according to the following list summarized from Voegelin's book.

1. Everyone felt **insecure** in the dynamic economy of the time. Every job was at risk. No one went through life with guarantees. A person's circumstance could change abruptly, for the worse. Even politicians had to scramble every so many years to preserve themselves in office! This belief is the mirror image of . . .
2. A faith in **boundless opportunity**. The prospect of change was also an opportunity. Fortunes were being made in unlikely markets. Everyone wanted the chance to break out, to make good. The volatility of men's fortunes led to . . .
3. A dominant **work ethic**: there was no such thing as an honorable life of idleness. Both management and worker despised a leisure class. Success was a product of hard work. But in order to realize these dreams . . .
4. Americans were uniquely **prepared to fight** for what was their's. No one else took care of a *man* if *he* wasn't prepared to take care of *himself*, which meant that each individual acknowledged *his* responsibility to get what *he* could. Whether that meant speech or action, even the lowliest laborer keenly felt *his* rights.

5. Finally, Voegelin noticed a pervasive **distrust of intellectuals**, theorists who spent their lives thinking rather than doing. Grand designs dreamed up in university libraries were thought to be not only unnecessary, but vaguely suspicious.

One corollary of these five principles was resistance to governmental involvement. Americans didn't want to rely on the coercive power of the state unless absolutely necessary. Thus it was that labor was initially less interested in sweeping legislative reform.

Americans accepted the ubiquity of change and accepted the individual's responsibility to adapt. This was all part of the frontier ethos. In order to adapt, Americans avoided permanent solutions. Who could say what tomorrow might bring? Besides, there is no such thing as one right answer. Ingenuity called for *ad hoc* arrangements, differing deals subject to periodic reassessment. No two situations were alike.

All of this reflects the prevailing thesis I briefly described as the frontier ethos. And it also intimates the nature of the synthesis our system was to reach over time.

Collective bargaining is an attempt to involve everyone in the government of his/her work life. Every so many years, the parties get together to adapt to changes in circumstances and reevaluate what they want from their employment relationship in light of what's possible. For these periodic reassessments to work, however, there must be some reciprocity, some equivalence of power, as Congress seemed to recognize with the Norris-LaGuardia Act of 1932. This came to be known as the "doctrine of mutuality." We don't permit contracts with children or incompetents for much of the same reason: the power differential is so great as to cast doubt on the agreement, whatever its terms. Assuming mutuality, the judicial system would enforce the contract on a case-by-case basis.

Please note: the role of the judiciary, however slight, is government involvement. At one time, labor disputes were none of its business. Gradually, the courts became involved in settling lawsuits, primarily to give meaning to the contracts that the parties were devising for themselves. Thus, it was a modest role, excused for the reason that maximum freedom seemed to require this occasional intervention. Better still (thought those who favored the frontier ethos), governmental commissions involving the participants were established to resolve conflict. Collective bargaining within the purview of commissions made up of representatives of both management and labor had these salutary effects:

1. Kept state involvement to a minimum;
2. Encouraged people to solve their own problems locally first;
3. Reinforced adaptability;
4. Fostered mutual interdependence over time between labor and management; and
5. Enhanced the status of workers to bargain as equals.

Seen in this light, collective bargaining was a uniquely American institution reflecting the conservative genius of freedom-seeking individuals. Thus, a new thesis gained currency in the early twentieth century, as the spiral brought us back to the American concord forged at the frontier, only this new thesis was decidedly different. As the new thesis, it also generated a new antithesis, which I shall try to depict.

Hegel wrote of prevalent change in his *Introduction to The Philosophy of Right*, where he pointed out that we recognize change in what rises and what falls, in what passes away and what comes to be. Throughout the course of events, “whatever went before is the material for what comes after,” as we have been suggesting in this short chapter. Change doesn’t just go back and forth in unending (that is, repetitious) cycles; rather, change “tests itself in any number of directions, exercising and enjoying itself in an inexhaustible variety of ways” [11]. Notwithstanding this plenitude, however, there does seem to be a comprehending direction to change. We can be said to move in a thousand different forms toward a single destiny. This at least is the thinking of a number of historians, whether that destiny is devoutly to be wished or dreadful.

For Hegel, the object of world history and the “objectification” of the spirit of change is the state [11, 40-44]. (By “state” is meant government, not a jurisdiction such as Indiana or New Hampshire.) Everything comes together finally in the state. And the state is the realization of freedom. Keep this in mind as we describe the antithesis that emerges to counter the new thesis known as collective bargaining, for there is evidence to the effect that labor relations as the pursuit of freedom does seem to be spiralling toward complete governmental control.

At one time, freedom meant the absence of rules. With collective bargaining, voluntary agreements enforceable in courts of law set forth rules. Then, in the twentieth century, Congress passed legislation more or less tinkering with the balance, delimiting what each of the sides could do, until there existed quite a body of federal labor law alongside precedents piling up in court and NLRB decisions. To administer this thicket of rules, there emerged an entire bureaucracy of so-called experts—lawyers, economists, politicians, and public relations personnel. They in turn promulgated their own regulations and codes of conduct [12].

In a parallel development, state and national legislatures have been passing laws directly regulating the workplace, as for example wages, safety, leave policy, and plant closures, not to mention various initiatives on behalf of protected classes (most notably women, minorities, the aged, disabled, and Vietnam veterans). These laws create and empower government agencies to enact regulations and investigate violations, which has the effect of snowballing bureaucracy: bureaucrats proliferate not only in the public sector, but also within private firms trying to keep themselves in compliance. This rising class of bureaucratic specialists train one another, buy each other’s books, go to the same conferences, and occasionally exchange jobs.

As I said earlier, the impetus for change was meant to be the realization of freedom. Theorists and pundits since Max Weber have been questioning how bureaucracy can possibly do this. One recent critic of bureaucracy, Ralph Hummel, concedes in *The Bureaucratic Experience* that bureaucracy “is the most powerful instrument yet developed for getting people to work together on monumentally large common tasks” [13]. In the wake of its preeminence, what then is left of that “frontier ethos” comprised of five principles? The state constantly minimizes risk and consequences in its effort to “stabilize” the economy, thereby undermining any work ethic. Some critics add that the state further diminishes the work ethic by sustaining an elaborate welfare system that rewards inactivity. Certainly, the bureaucratic class itself is made up of the sort of educated elite that pioneers found so alien—people who actually make nothing and add no value to processes. Consider the following two lists, cartoonishly contrasting the frontier ethos described by Voegelin and what I call the “New Deal Ethos” that still influences American polity today:

FRONTIER ETHOS ⇔ NEW DEAL ETHOS
 INSECURITY ⇔ GOVERNMENTAL SECURITY
 OPPORTUNITY ⇔ REGULATION
 WORK ETHIC ⇔ ENTITLEMENT
 WILLINGNESS TO FIGHT ⇔ NICENESS/PASSIVITY
 DISTRUST of INTELLECTUALS ⇔ GOVERNMENT by INTELLECTUALS

Perhaps the frontier ethos was never more than a myth, a broad and misleading template subsequently imposed on the historical record by romantics. Perhaps by a thousand turns, the spiral of change has simply revealed a new understanding of freedom in subservience to the state, as Hegel predicted. There are those who would argue that events are spiralling downward, as we accelerate toward totalitarianism. Some of you might want to set aside altogether the pattern I have been weaving, for the sake of another. That would be your prerogative, for as archetypal psychologist James Hillman urges people to step back from their favorite model of “what will happen” to envision possible futures, he has come up with several plausible scenarios: maybe everything comes back around in circles; maybe things will simply wind down pathetically, as the poet said, not with a bang, but a whimper; more abruptly, perhaps we do face catastrophe; on the other hand, some think things are getting better and better, by which they mean unregulated, permissive; and then there are those who think things are getting better because we are managing to regulate more effectively [14, 15].

All I have tried to do in the foregoing remarks is offer one model, one framework for thinking about *the direction of American labor relations*. How we study the topic, and how we eventually choose to respond to events at work, will be influenced by the model we ultimately adopt. My plea is that we be conscious of our models. And from time to time see if we can’t come up with better ones.

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After being graduated from Indiana University School of Law *magna cum laude*, the author practiced law in a small town in southeastern Indiana for five years. Presently, he is an Associate Professor of Organizational Leadership at Purdue University.

ENDNOTES

1. See Allen W. Wood, "Editor's Introduction," to G. W. F. Hegel *Elements of the philosophy of right* (New York: Cambridge University Press, 1991), pp. vii-xxxii, especially at note 17.
2. See G. W. F. Hegel, *Vorlesungen über die philosophie der geschichte. Einleitung*, translated into English by Leo Rauch as *Introduction to The philosophy of history* (Indianapolis: Hackett Publishing, 1988).
3. None of which is to overlook the problematic condition of women, children, and minorities, especially slaves.
4. See e.g., Beatrice Webb (ed.) *The case for factory acts* (London: Grant Richards, 1901) p. 8f.
5. Don't get me wrong. The labor movement does include a wing or faction that favors stripping the powerful of their advantages, whether by violence or by law.
6. Hegel once wrote that "[i]t is of the utmost importance that people should be organized because only thus do they become mighty and powerful. Otherwise, they are nothing but a heap, an aggregate of atomic units." *The philosophy of right*, T. M. Knox (ed.) (Oxford: Clarendon Press, 1942), p. 292, quoted in Robert Nisbet, *The social philosophers: Community and conflict in Western thought* (New York: Thomas Y. Crowell Co., 1973), p. 417. It is not uncommon for union spokespeople to protest that they are interested in more than the welfare of the membership. Typical is a quote by the AFL's director of organization, John Thomas Murphy, who in 1948 wrote the following: "Labor wants . . . to act with fellow-citizens as democratic equals in promoting and maintaining programs that benefit the entire community." "Labor as a Community Force," *The Survey Midmonthly* 84 (September 1948) 267-270, abridged in Herbert L. Marx, Jr. (ed.) *American labor unions: Organization, aims, and power* (New York: The H. W. Wilson Company, 1950), pp. 197-201, at 198.
7. See e.g. Florence Peterson, *American labor unions: What they are and how they work, revised edition* (New York: Harper & Brothers, 1952), pp. 14, 2f. ("The collective action of capital and management extended beyond the confines of a single corporation and found expression in trade and manufacturers' associations, chambers of commerce, and other permanent and *ad hoc* combinations to promote and protect the interests of the investors and managers of capital. In response, ever seeking a semblance of equality in the bargaining relationship, workers' organizations have expanded. . .").
 Novelist Sinclair Lewis poked fun at employers who railed against collectivism:
 - a. no one should be forced to join a union;
 - b. unions must be resisted;
 - c. the best way to resist unions is for employers to join together; and
 - d. if necessary, employers should force other employers to join.

- See Babbitt* (New York: Harcourt Brace Jovanovich, 1922), p. 44, *quoted in* Arthur Sloane and Fred Witney *Labor relations, sixth edition* (Englewood Cliffs, NJ: Prentice Hall, 1988), p. 2.
8. B. Taylor & F. Witney, *Labor relations law, second edition* (Englewood Cliffs: Prentice-Hall, 1975), p. 18f.
 9. *Commonwealth v. Hunt*, Massachusetts (1842).
 10. Eric Voegelin, *Über die form des amerikanischen geistes*, translated into English by Ruth Hein in *The collected works, volume I* (Baton Rouge: Louisiana State University Press, 1995), chapter 5.
 11. G. W. F. Hegel, *Vorlesungen über die philosophie der Geschichte. Einlectung*, translated into English by Leo Rauch as *Introduction to the Philosophy of History* (Indianapolis: Hackett Publishing 1988), p. 75ff.
 12. On the process of specialization, see José Ortega y Gasset, *La rebelión de las masas, revised edition* (Madrid: Revista de Occidente en Alianza Editorial, 1979), translated into English by Anthony Kerrigan as *The revolt of the masses* (Notre Dame, IN: University of Notre Dame Press, 1985), chapter 12.
 13. Ralph Hummel, *A critique of life in the modern organization, fourth edition* (New York: St. Martin's Press, 1994), p. 37.
 14. *See* James Hillman, *Kinds of power: A guide to its intelligent uses* (New York: Currency Doubleday, 1995), pp. 227ff.
 15. Charles Handy, a fellow at the London Business School, makes much of the so-called Sigmoid Curve. *The age of paradox* (Boston: Harvard Business School Press, 1994), pp. 49-67.

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