by Peter Kellman*

The goals of the 1830s labor movement -- the ten-hour day and public education -- were focused on democracy. Labor people argued that, to build a democracy, they had to be educated, and to be educated they needed time to go to school. So they fought for the ten-hour day and free public education not as benefits in and of themselves but as conditions necessary to bring about a republican form of government. The labor movement of the 1830s had picked up the ball left by the New Hampshire legislature in 1816, a ball declared foul by the U.S. Supreme Court in the Dartmouth case of 1819. (See REHW #699.) Private education, the Governor of New Hampshire had said in promoting legislation to make Dartmouth College a public university, "emanated from royalty and contained principles... hostile to the spirit and genius of free government," and in support of the New Hampshire legislature the state supreme court stated "...because it is a matter of too great moment, too intimately connected with the public welfare and prosperity, to be thus entrusted in the hands of a few. The education of the rising generation is a matter of the highest public concerns, and is worthy of the best attention of every legislature."

Democracy Day

If the thinking of the 1830s labor movement was applied today, we would link hours of work to the present lack of democracy and call for a work week composed of four eight-hour days and a fifth day to participate in the functioning of government. So one day a week would be set aside, in the language of the 1830s, for the COMMON people to study and participate in the functioning of a democratic government -- one day every week to sit on local boards and participate in public meetings and seminars. The corporate lobby would have a heart attack if thousands of working class people had the time to actually participate in the legislative process -- time to, as the union people said, "perfect our organization."

While the working class, the common people, has been struggling to perfect our organization, the propertied class has found a vehicle to perfect its organization. Its vehicle of choice: the corporation.

Corporations

The corporations chartered just after the Revolution were few in number and their activities were narrowly defined by the legislatures that chartered them. For example, a corporation chartered to build a turnpike couldn't make textiles. A corporation chartered to make textiles couldn't build a turnpike; nor could a turnpike or textile corporation own other companies. Furthermore, the stockholders of corporations were not insulated from the liabilities of the corporation the way managers and stockholders are today. That is, the stockholders of a corporation chartered in 1800 were individually responsible for the corporation's debts and liable for its acts. Translated to today's world this would mean that corporate managers would be personally responsible for corporate violations of law, and the stockholders would pay the debts of a corporation that declared bankruptcy. If an individual today violates a serious labor or environmental law they go to jail. But how do you put a corporation in jail? In 1800 the charter would be revoked. There was no corporate shield then. Now THAT is corporate responsibility!

In 1800 the rich held their property primarily as individuals who owned so many acres of land, slaves or businesses. By the end of the Civil War, the propertied class had shifted its way of exercising power from individual to corporate. The railroad corporations cleared the economic, political and judicial way for oil, steel, banking and the other major corporate concerns that followed. By 1876 the railroad corporations were literally running the country. In the presidential election that year, the outcome was disputed. The decision was left to a special commission composed of five Supreme Court justices and 10 Congressmen to determine if the Democrat, Samuel J. Tilden, or the Republican, Rutherford B. Hayes, would become President of the United States. Labor historian Philip Foner describes the outcome: "The actual determination was made by Thomas A. Scott, president of the Pennsylvania Railroad, who, in return for assurances of support for a Texas Pacific Railroad, obtained the votes of the southern Congressmen for Hayes. It is hardly an accident that on March 2, 1877, when Hayes received the telegram confirming his election, he was en route to Washington in Tom Scott's own luxurious private car."[1]

For our purposes it matters little that the election was bought by a railroad CEO. What matters is the impact that the Hayes administration had on the lives of freed slaves, union labor and the generations of Americans that followed. In fact, much of the present-day status of African Americans and the labor movement was determined by two actions that Hayes took as president. First he ended reconstruction by pulling the last of the federal troops from the South who were there to insure equal rights and a new start for freed slaves. Second he used federal troops to end the great labor uprising of 1877 in which over 100 strikers were killed. Jeremy Brecher in his book STRIKE! begins the story: "In the centers of many American cities are positioned huge armories, grim nineteenth-century edifices of brick and stone. They are fortresses, complete with massive walls and loopholes for guns. You may have wondered why they are there, but it never occurred to you that they were built to protect America not against invasion from abroad but against popular revolt at home. Their erection was a monument to the Great Upheaval of 1877."[2]

In July of 1877, in the midst of a depression, railroad workers struck in response to very unsafe working conditions and repeated pay cuts. Their strike closed the most powerful industry in the country. As the strike spread along the rail lines, workers in other industries joined and the rail strike became a general strike in a dozen major cities. In April of 1877 President Hayes pulled the last of the federal troops from the South and in July sent them into battle against labor. Then in the full federal troops fought the Sioux. How different a country it would be if the federal government of 1877 had been in the hands of the people instead of the CEO of a railroad corporation. Imagine what the country would be like today if we had shop stewards instead of lawyers on the Supreme Court; if federal troops had been used to PROTECT labor, freed slaves and Native Americans in 1877. After the Great Upheaval of 1877 was put down by federal troops, labor resurfaced as an important force with the rise of the Knights of Labor, whose membership peaked in 1886 at about one million members. In place of corporations and the wage labor system, the Knights advocated "co-operative institutions such as will tend to supersede the wage system, by the introduction of [a] co-operative industrial system." The Knights fought for a shortening of hours of labor by a general refusal to work more than eight hours. They advocated the creation of producer, consumer and distributive cooperatives, the prohibition of child labor, equal pay for equal work between the sexes and races, universal suffrage and the eight-hour day. The Knights opposed the concentration of wealth and power in the hands of a few.

African American workers and communities played an important role in the Knights of Labor. When workers in Richmond, Virginia, hosted the Order's 1886 General Assembly, the racist southern press did not miss the opportunity to castigate the Knights' interracial delegations, pointing, with particular horror, to the mixing in public of white and black men and women... But the organization stood its ground on the race question. The city's African-American workers responded by treating visiting Knights to a huge labor parade.[3] The Knights believed the working class should exercise power through the ballot and the boycott. They urged that labor disputes be settled by arbitration. Employers not willing to settle through arbitration were subjected to massive community boycotts. The American Federation of Labor (AFL) was created by trade unions that split from the Knights in 1886. Soon after, the AFL became the union of unions that it is today.
Intangible Property

Labor's success under the Knights and early AFL was due in part to their use of the boycott. In a boycott people urge other people not to do something like shop at a store, work, or buy a product. A boycott is an example of free speech. But when the boycott began hurting the property rights of the courts, in their role assigned to them by the framers of the Constitution, responded.

If a striker damages physical corporate property the legal remedy is clear, but in a boycott, strike or picket line no physical property is touched. Labor historian Charles Scontras states: "It was perfectly legal for an individual to strike, picket, or boycott, and the employers had no legal recourse for injury suffered from such activities of an individual. It was necessary, therefore, to show that union actions such as strikes, boycotts, and picketing were illegal activities. To achieve this end, courts began to revive the old common law of conspiracy. While the old conspiracy doctrine held that conspiracy was a crime because it threatened the public, the new interpretation of conspiracy held that it was a civil offense because it threatened irreparable damage to intangible property. Thus, it was no longer necessary for employers to show that irreparable damage to tangible property would result if such activities took place, but only to show that irreparable damage would occur against intangible property rights to do business and realize a profit."[4]

Future corporate profits came under the definition of intangible property. But what about wages? When was the last time you heard of an injunction being issued against an employer for refusing to negotiate in good faith?[5] Doesn't that activity interfere with a worker's future earnings? How is that any different from interfering with the future earnings of workers employed by his company? Historically INJUNCTIVE law has been utilized against labor by employers with the help of more-than-willing judges.

The Injunction

John Mitchell, president of the Mine Workers Union, said in 1903: "No weapon has been used with such disastrous effects against trade unions as has the injunction."[6]

Court activity is usually based on some action that has already taken place, and the court rules whether the activity violated an existing law. With an injunction the court forbids, or ENJOINS, a FUTURE activity from taking place. (Between 1880 and 1931, judges issued 1800 injunctions against labor strikes.) To enforce the injunction, the judge will find you in contempt of court. That is, the judge can levy fines and send people to jail. If you violate an injunction, the judge will find you in contempt of court. That is, the judge finds that you violated not a law written by a legislature, but a law created by the judge. What we have here is the court deciding that the liberty of workers to engage in collective activity such as boycotting, striking or picketing to promote their interests is a lesser liberty than the liberty of an employer to engage in business. This means, for example, that the court has the power to put people in jail who ADVOCATE that people should not buy a product.

[To be continued.]

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