

CONTEMPT OF COURT IN LABOR  
INJUNCTION CASES

BY

CLEON OLIPHANT SWAYZEE, A. M.

*Assistant Professor in the  
University of Nebraska*

SUBMITTED IN PARTIAL FULFILMENT OF THE REQUIREMENTS  
FOR THE DEGREE OF DOCTOR OF PHILOSOPHY  
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## PREFACE

THE tendency toward highly specialized studies in the field of economics in the last few years has been met with some criticism. For the most part, this criticism has been based upon the belief that (1) detailed analysis of material of limited scope is of interest to a small number of specialists only, and that (2) such highly specialized studies have no direct and practical bearing upon the general body of economic theory. To these objections the writer would dissent vigorously, and while the argument will be stated in terms of the relationship of labor-contempt analysis to general economic theory and problems, it is believed that it will furnish a significant key to the generalized objections.

Experience in most of our industries where labor is highly organized seems definitely to point to the desirability of greatly extending worker-organized labor unions. This experience reflects two important advantages which flow from unionization. In the first place, through collective bargaining, labor organizations furnish our most satisfactory means of preventing industrial disputes, the costs of which if considered only in terms of increased expense of production and lost wages are tremendous. It is only where there is ably led and recognized organization on both sides of a dispute that effective machinery for prevention and peaceful settlement of controversies can be set up. In those disputes where the workers are poorly organized, or where their leadership is bad through inexperience, or again, where employers refuse to recognize and deal with legiti-

mate worker organizations, it is to be expected that conflicting rights will result in costly stoppage of work. In the absence of collective bargaining machinery issues become clouded and distorted from the growing fears and mutual distrust which inevitably develop between contending parties who are either unable or unwilling to meet for joint conference. On the other hand, in those disputes where employers recognize and deal with the selected representatives of a completely organized and competently led working force, provision for joint discussion promotes clarification of issues and encourages mutual confidence and respect. Without this, it goes without saying, there can be no agreement, and this is true even though a governmental agency forces arbitration upon the disputants.

In the second place, a high degree of labor organization assures greater equality of bargaining power between employers and employees, without which wages, hours and conditions of work will become burdensome not only to the wage-earning population but to society as a whole. It is doubtless true, as some will maintain, that many employers of labor would, even in the absence of trade-union pressure, maintain satisfactory levels of wages, hours and conditions of work. But unfortunately, the pace is set by the meanest employer whose power enables him to drive hard bargains with individual workers, and whose sharp competition forces other less greedy employers to depress their labor and other costs as much as possible.

That low wage levels are detrimental to the social structure is easily demonstrated. For the great bulk of our lower-paid wage earners and the labor-supply curve is negatively inclined,—that is, lower wages oblige wage earners to offer an increased supply of labor. When the earnings of the chief breadwinner are barely sufficient to maintain a family at an accustomed standard, any diminution in his

earnings is necessarily followed either by an offer of more hours of work by the chief breadwinner or by an attempt of other members of the family to sell their labor, or both. In either event, the supply of labor being increased, wages are further depressed, and the cumulative low wage — increased supply — lower wage sequence is set in motion. Under such conditions, it is not inconceivable, indeed it is probable, that in time we would find ourselves developing a new industrial serfdom even more undesirable than the agricultural serfdom of the late middle ages. While it is difficult, if not impossible, to say what these minimum wages should be, it does seem clear that there is a minimum below which wages should not be allowed to go. In our present economic system, extensive trade-unionism would stand as a desirable form of insurance against unhealthy wage depression.

Moreover, if these considerations are supplemented with knowledge of the close relationship existing between wage and living standards on the one hand and the efficiency of labor as a production factor on the other, and if we recognize also the importance of increased purchasing power in the hands of wage-earners, the case for more complete organization becomes clearer.

Since, then, the functioning of labor organizations in our economic society is accompanied by such far-reaching social and economic repercussions, any process which vitally affects the development of the trade-union movement is worthy of the most careful and detailed scrutiny. The use of the injunction in labor disputes and the power of the courts to punish for violation of a restraining order do vitally affect labor organization. Trade unions are wholly ineffective in their attempt to improve living and working standards if the courts are allowed either to deprive them of the only instruments of industrial warfare at their disposal or render

them innocuous by limiting their use. In other words, laborers may attain a high degree of organization but if they are restrained from or punished for striking, picketing or the other means of prosecuting a dispute their organization is of no advantage either to themselves or to society. The situation is very much like that found in employee representation plans under which discussion is limited to the choice of a site for a company picnic, the style and color of uniforms for the company baseball team, and so on.

A study of contempt proceedings in labor injunction cases is further justified by the light which it throws upon the intimate relationship existing between economic and the other social sciences. As is demonstrated by the evolution of college curricula, there has been for a great many years a tendency toward specialization which has served to conceal the fundamental unity of the social sciences. This study will not have been entirely fruitless if it adds something to the ever-growing collection of evidence that economics is not a body of laws originating and culminating in economic relationships, but that it is instead only one of the sciences of social behavior—a behavior which is conditioned quite as much by our legal and other non-economic institutions as it is by the alleged effect of an increase in price on demand. In other words, this study should support the belief that economic behavior is a reflection of all of the institutional environment within which it operates.

Finally, the importance of detailed contempt analysis is attested by the attention which both our federal congress and state legislatures have given it in the last few years. In the short period of three years the federal government and no less than eight states have written laws into their statute books modifying contempt procedure in labor injunction cases. Whether this legislation has resulted from the pressure of labor leaders or from pressure wholly out-

side the labor movement is of little importance. The fact remains that it represents a significant movement which is deserving of most careful study.

Several people, not all of whom can be mentioned here, have contributed to whatever merits this monograph may have. I am indebted to Professor Leo Wolman and Dr. E. M. Burns of the Economics department and to Dr. Robert Hale of the School of Law, Columbia University, for many helpful suggestions. I owe an especial debt to Professor Paul Brissenden of the School of Business, Columbia University, who was largely responsible for my undertaking the study in the first place, and whose tireless counsel has been of immeasurable value. To Wanda Birch Swayzee must go the credit for assuming much of the burdensome and monotonous mechanics of manuscript preparation.

C. O. S.

APRIL 20, 1935.



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## V I T A

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CLEON OLIPHANT SWAYZEE was born in Indiana, June 3, 1903, in which state he received his secondary education. After taking the A.B. degree at Wabash College, Crawfordsville, Indiana, he entered the Graduate School of Political Economy in the University of Chicago. He taught in Indiana and Ohio high schools for two and one-half years, and matriculated at Columbia University in 1928. Here he finished the Master's degree and engaged in research in industrial relations for the Council for Research in the Social Sciences. In 1930 he went to the University of Nebraska where he was given the rank of assistant professor. In the fall of 1934 he returned to Columbia University to give courses in University Classes and to become a candidate for the Doctor's degree.

In addition to special studies on unemployment, published in the Nebraska Business Studies, he has contributed to the Political Science Quarterly, the Personnel Journal, and the American Federationist.