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[Review of the Book *From Consent to Coercion: The Assault on Trade Union Freedoms*]

Abstract

[Excerpt] Even in disagreement with some of its policy prescriptions, I find *From Consent to Coercion* a strong, meticulously documented, powerfully argued, thought-provoking work that serious scholars and practitioners of trade unionism and labour law should read and engage. We Americans can still look at Canadian labour law and practice as a model compared with our own, but thanks to Panitch and Swartz's work we can see it with eyes open, not eyes wide

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Comments

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From Consent to Coercion: The Assault on Trade Union Freedoms, 3rd edition

by Leo PANITCH and Donald SWARTZ, Aurora, Ont.: Garamond Press, 2003, 270 pp., ISBN 1-55193-049-8.

American trade union advocates tend to see Canada as the Promised Land they would like to reach at home. Canadian workers have 30 percent union density, a level not seen in the United States since the 1950s. Unions can gain recognition based on signed membership cards, or at worst, through elections held in five days, not through NLRB election campaigns that give companies several weeks of “employer free speech” rights to smash workers’ organizing efforts. Canada’s “Rand Formula” grants dues payments to unions from all represented workers, in contrast to union-weakening “right-to-work” laws in the United States requiring unions to represent non-paying free riders.

The threat of permanent replacement looms over any strike decision by American workers, while permanent replacement of striking workers is unlawful in Canada. In their North American version of European social democracy, Canadians enjoy national health insurance while U.S. workers deal with a patchwork of employer-based health plans that provokes constant strife, strikes, and cuts in benefits.

Leo Panitch and Donald Swartz throw a bucket of cold water on this wide-eyed American view of labour affairs north of the border. Their third edition of *From Consent to Coercion: The Assault on Trade Union Freedoms* carefully details many ways in which Canadian labour law and practice run afoul of international standards on labour rights, and how Canada’s

Supreme Court has interpreted the nation’s Charter of Rights and Freedoms to constrict workers’ freedom of association.

In the time of NAFTA and a looming Free Trade Agreement of the Americas, crafting a social dimension in trade pacts requires critical understanding of labour law and practice among trading partners. This book is an important contribution to labour policy debates for the spotlight it turns on Canada, driving home the insight that no country comes to the labour rights debate with totally clean hands.

The most common breach of workers’ rights in Canada takes the form of back-to-work legislation putting an end to strikes with government-imposed settlements instead of terms negotiated between bargaining parties. What started as exceptional action in the post World War II period (the age of “consent” in the title) has become standard operating procedure for federal and provincial governments. In the quarter-century after 1950, governments ended strikes with back-to-work legislation 32 times. The number rose to 115 imposed strike settlements from 1975 to 2002, reflecting the turn to “coercion.”

Panitch and Swartz analyze the trend not just by looking at the numbers. They tell an important story about political and economic dynamics that drove the move from consent to coercion. The story has ironies, too: Chapter 3 starts with a ringing quote from young Pierre

Elliot Trudeau defending workers' right to strike, then details ways in which Prime Minister Trudeau broke strikes.

Ending strikes by legislative mandate was one coercive measure against workers' freedom of association. Federal and provincial governments also acted to exclude various categories of workers from any collective bargaining rights at all, or from the right to strike. In other instances, governments shoehorned workers into bargaining units of governments' definition rather than workers' choice.

Panitch and Swartz show how the dramatic increase in Canadian back-to-work orders, exclusions, and bargaining unit changes was reflected in the volume of complaints against Canada before the International Labour Organization's Committee on Freedom of Association. In roughly the same quarter-century periods just noted, cases against Canada accounted for less than five percent of all cases against G-7 advanced industrial democracies up to 1975 (only four complaints out of 123 total), but for more than 40 percent of all cases from 1975-2001 (62 out of 142) and a shocking 83 percent of all cases from 1992-2001 (35 complaints against Canada out of 42 total cases against G-7 countries). The ILO committee found Canada guilty of violating workers' rights in many of these cases. But its rulings had no effect. The ILO is an oversight body, not an enforcement body, and Canadian governments chose to ignore its findings and recommendations.

The authors provide a compelling account of landmark Canadian Supreme Court decisions limiting the effect of freedom of association. The Court said that under the Charter of Rights and Freedoms union formation is a basic right, but that collective bargaining and strikes are *not* fundamental rights. They can be restricted and even prohibited by governments. In a famous dissent, Chief Justice Dickson said, "If freedom

of association only protects the joining together of persons for common purposes, but not the pursuit of the very activities for which the association was formed, then the freedom of association is indeed legalistic, ungenerous, indeed vapid."

The book has lacunae. This is not a fault; no one book can tackle every issue and answer every question. But I have a few. For one, most of Panitch and Swartz's analysis relates to public employee unions. Notwithstanding recent Wal-Mart problems, private sector unionism in Canada looks still vigorous from here thanks to the Rand Formula, card-check and rapid representation elections, no permanent striker replacement, not having to bargain over health insurance, and other distinguishing features of labour law and practice protecting workers' rights in Canada much more than in the United States. Is government "coercion" against public sector workers replicated in the private sector?

Panitch and Swartz also leave me wondering if public sector unions have not come to prefer a choreographed scenario where they can launch strikes knowing they will be legislated back to work with a fair shot at compromise terms. This lets them show militancy and blame the government for contract shortfalls. In contrast, federal employees and many state and city employees in the United States cannot strike at all and would be summarily fired if they do, as happened to air traffic controllers in a 1981 strike. They would certainly prefer a chance at taking action, then "bargaining" through the political process, without risking dismissal.

From Consent to Coercion is really two books in one: first, a detailed account of how public sector workers have suffered rights violations; second, extrapolated from the public sector union experience, a much larger Marxist critique of the Canadian labour

movement and Canadian political life, joined with radical policy prescriptions for change. I appreciate this *parti pris* political framework for the book, which gives it more force than a bland, apolitical account of back-to-work legislation, Supreme Court cases, and ILO complaints. But I still disagree with specifics of the authors' manifesto.

I'm in center-left trade union camps that Panitch and Swartz denounce. One camp they call "partnership internationalism," seeking global Keynesian policies and stronger labour rights and protections in international trade agreements. The other camp is that of "progressive competitiveness," calling for high-wage, high-skills, high-road national industrial policies to better deal with the global economy. I believe that a combination of these approaches would best serve Canadian, American, and developing country workers.

Panitch and Swartz instead call on Canadian workers and unions to reject globalization and turn to locally-based

economic planning boards making investment and production decisions. They call this "new labour internationalism" because it involves learning from experiences abroad such as participatory municipal budget-making in Porto Alegre, Brazil. They can call this internationalism, but it is localism taken to the extreme, and not likely either to come to pass or to work.

Even in disagreement with some of its policy prescriptions, I find *From Consent to Coercion* a strong, meticulously documented, powerfully argued, thought-provoking work that serious scholars and practitioners of trade unionism and labour law should read and engage. We Americans can still look at Canadian labour law and practice as a model compared with our own, but thanks to Panitch and Swartz's work we can see it with eyes open, not eyes wide.

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