“From Theory to Practice and Memory: Sylvester Petro and the Post-war Career of the Anti-Union Idea”
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This paper will trace the postwar history of the anti-union idea through the thought and career of one of its most ebullient, influential, and yet lesser-known exponents, law professor Sylvester Petro (1917-2007). Born on Chicago’s South Side to immigrant parents, Petro was a steelworker and CIO recruiter before attending law school at the University of Chicago. In the 1950s he taught at New York University, where he developed an increasingly sharp libertarian critique of union power and government labor regulation. Petro testified against union corruption at the McClellan hearings in 1957 and authored a large number of books and articles advancing the “right-to-work” cause and accusing unions of promoting violence. By the early 1970s he emerged as the most influential conservative critique of the growing power of public sector unions. Although little known outside of conservative circles today, his influence continues to resonate today among those who oppose unions and government regulation.

The first part of this essay (THEORY) will focus on the formative years of this anti-union intellectual. The trajectory of Petro’s work allows us to trace the emergence of a radically conservative attack on the reigning economic and legal theories in the midst of the “consensus era” of the 1950s “labor-capital accord.” Petro’s criticism of labor law and of the National Labor Relations Board, which he wanted abolished, reveals a political culture at odds with the tenets of postwar liberalism, which emphasized the protection of security and economic citizenship by a federal government with expanding administrative capabilities. Trained at the University of Chicago, Petro rejected the legal realism that underwrote the New Deal. Rather, his work betrays the influence of the Austrian economic School, to which Petro was exposed thanks to his colleague at New York University, Ludwig von Mises. Significantly, in applying these ideas to the question of labor unions, Petro did not simply argue that unions should disappear. Rather, he preached a return to Commonwealth v. Hunt (1842) and to the common law the US had inherited from Great Britain.

What is most intriguing about Petro is that he was not simply an intellectual preaching against liberal laws. As his testimony at the McClellan hearings shows, he was most interested in making the move from ideas to politics, bringing to fruition a conservative revolution in labor law and policy. Hence in the second part of this essay (PRACTICE), we will analyze Petro’s legal struggle against unions in two important Supreme Court Cases, Abood (1977), and Usery (1976). In these cases, Petro argued that laws protecting unions or regulating the labor market should be opposed on First Amendment and Tenth Amendment grounds. A close analysis of Petro’s role in these cases suggests that by the 1970s, conservatives had found a way to link their anti-union philosophy to two of the lightning rod issues of their day: individual rights and federalism. In doing so, they made anti-unionism relevant to the lives of a new generation of activists and workers, thus laying some of the groundwork for conservative electoral victories.

Finally, we examine a third important stage in Petro’s career as an anti-unionist, his intellectual legacy. In the 1980s he convinced one of his students, Howard Dickman, to write a history of industrial democracy from the standpoint of conservative ideology. Petro had long believed that the received account of American labor history, one that emphasized inequality, labor injunctions, and privileged companies, was wrong, but a counter account remained to be written. In the third part of this essay, (MEMORY) we will argue that Howard Dickman’s book Industrial Democracy in America, (1988), which argued that labor unions had been unfairly privileged by labor law since 1932, reflected in many ways the newfound maturity of the anti-union idea, a maturity that could be fully expressed in Reagan’s America.
As Sylvester Petro knew, the days when workers organized to make a new deal were long gone