

The Closed Shop

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"The average worker is a jolly decent chap who, if kept away from nasty shop stewards and made to understand the economic facts of life will quickly become a docile, conscientious, obedient company supporter who will never have any problems with his pay or conditions or supervision. Most of these chaps would not be in unions at all, if it wasn't for the closed shop."(*1)

There are few, if any, institutions which can provoke as much heated discussion as closed shops. It is often claimed that they trample mercilessly across the freedom of individuals in a manner quite unacceptable in an open liberal-democratic state and that they give the unions unparalleled power which can be and is used to the detriment of industry, the economy and the common good (in general). It is the task of this essay to see if these assertions are warranted.

While closed shops (or union membership agreements - U.M.A.s - to use the terminology of the Trades Union and Labor Relations Act 1974 and the subsequent Amendment in 1976) are by no means homogeneous and vary not only through time but from place to place, it is beneficial to produce a definition at this early stage. W. E. J. McCarthy states that a closed shop occurs where:

"employees come to realise that a particular job is only to be obtained and retained if they become and remain members of one of a specified number of trade unions."(*2).

Two points must be stated here. Firstly, what follows is not a discussion on the relative merits of strong versus weak trade unions, but rather a comparison of compulsory and voluntary unionism.(*3) Secondly, a distinction has to be made between a pre-entry closed shop where workers have to be members of a particular union(s) before they can apply for employment and a post-entry shop, where they must join after they get the job. This distinction is critically important as both have disparate effects on the balance of power, and on the rights and freedom of individuals. It is the latter topic to which I now turn.

Crouch's theory of the Logic of Collective Action suggests that an apparently free choice to join a trade union in fact contains an in-built bias against membership. So organised labour must strive to increase the benefits of membership relative to those of non-membership. One way of doing this is to ensure that to acquire or retain a job, workers must

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- *1 Paul Roots: 'Myths that Blind British Business', page 37. Roots, Director of Industrial Relations at Ford, was not expressing his own opinion, but parodying the views commonly held by management.
 - *2 W. E. J. McCarthy, as quoted in Ferdinand von Prondzynski's 'Freedom of Association and Industrial Relations', page 117.
 - *3 Dunn, S. and Gennard, J. 'The Closed Shop in British Industry'. As Stephen Dunn and John Gennard point out, voluntary unions can be powerful. As an example of this, they cite the case of the Post Office's Engineering Union in Britain, which, although not operating a closed shop, achieved almost 100% membership in the late 1970s.

possess a union card. The question is, therefore, does this element of compulsion amount to coercion?

In relation to the post-entry shop, I believe that it does not, for the necessity to join a union is just one of the many conditions of employment workers choose to accept. Those who criticise the U.M.A. in this regard possess a limited rationality for they overlook the similar degree of compulsion to join a sports club, a pension fund or even to work nights, all of which may also be found in the job contract. It must also be said that allowances are invariably made if employees have serious conscientious or religious objections to entering into a closed shop arrangement (*1).

The pre-entry shop, however, is more problematic. It is difficult not to see the potential here for the restriction of individual rights. Actors, for example, are forced to be members of Equity before they can even look for a job. Yet simplistic suggestions of 'freeing the market' are not particularly helpful either. Thus we are left with a paradox:

"How far can the right of combined action be curtailed without depriving individual liberty of half its value, how can it be left unrestricted without destroying either the liberty of individual citizens or the power of the Government?" (*2)

The stark facts, however, are that workers must unite to enhance their own individual power, and that any organisation, not just unions, that ignores its own security cannot survive. Putting the two together, a strong case can be made for asserting that pre-entry closed shops increase, rather than diminish, the liberty of the individual worker.

Many academics and politicians warn that closed shops give union officials the power to make completely arbitrary or malicious decisions which can effectively impinge upon employees' 'right to work'. Undeniably, there is some justification for this argument. All power can be abused. But once again, this bounded rationality comes through. For what is not in question is the fact that unfair decisions can be made against workers, but that they can now be made by union officials!

I am not suggesting that the exercise of monopoly powers by unions should not go unmonitored. Clearly, such a 'watch-dog' provision would be desirable. However, we must keep the matter in perspective. Compulsion, like it or not, is prevalent in our society and to attack just one manifestation of it (albeit an especially visible form) will not measurably enhance liberty.

"In short, those who see the closed shop simply in terms of coercion might be said to hold a view of individual freedom of a purity which would be quite startling if applied to other, comparable situations. In any case, it seems clear that the compulsion of the closed shop does not usually coerce the unwilling but motivates the apathetic. (*3)

*1 One such way in which allowances are made is through an agency shop where workers are not compelled to become members but must instead agree to pay a sum to the trade union or to a mutually acceptable charity.

*2. A. V. Dicey, as quoted in Charles Hanson, Sheila Jackson and Douglas Miller: 'The Closed Shop: A Comparative Survey', page 11.

*3. Ferdinand von Prondzynski: 'Freedom of Association and Industrial Relations' page 129.

Turning now to the question of the balance of power, it is instructive to briefly reflect upon the recent history of the U.M.A. The closed shops McCarthy described tended to be of an informal nature, and were only achieved after a long and bitter struggle. So, it tended to be those areas which had a stronger union organisation to begin with, that gained these monopoly rights (thus attenuating the dualistic nature of the British labour movement). Pre-entry shops were highly prevalent in this era. Characteristic of this form of U.M.A. is that it generally

"comprises workers who possess skills for which there is normally no substitute in the short-run, that its members are usually admitted on the basis of a selection process operating through controls on entry to the facilities needed to acquire the approved skills and through entry charges."(*1)

Now it is my contention that pre-entry shops do in fact help organise labour to mitigate the imbalance of power. For it is only in this kind of U.M.A. that unions can exercise real control over the supply of labour. The decision to grant a union card and access to employment rests squarely and solely upon their shoulders. As a corollary to this, the adverse economic effects generally assigned to closed shops in general, such as inducing wage inflation and reducing the supply of skilled labour are more correctly attributed to pre-entry U.M.A.s.

In these situations, unions tend to weigh increased wages higher than extra employment, in keeping with their job rationing ethos which is designed to prevent labour surpluses emerging. It is this ability to manipulate the labour supply curve that enhances their potential to enforce, unilaterally, trade union rules and demands. This power certainly is not absolute, however, for technology and the tendency of employers to 'run away' to locations outside the jurisdiction of pre-entry shops (a la Wapping) limit the extent to which unions can get their own way. Nonetheless, one could plausibly suggest that the strength of unions increases as the proportion of workers covered under pre-entry U.M.A.s widens.

The trend since the 1960s tells its own story. Although the population covered by closed shops in general increased from 3.75 m to 5.2 m by 1978, the figures for pre-entry shops plummeted to .8m (*2). Obviously, further analysis is needed to account for these revealing statistics.

The reason why post-entry U.M.A.s blossomed in the 1970s is, quite simply, that managerial attitudes towards the practice changed considerably.

"It was anticipated that it (post-entry shops) would prevent protest resignations from union membership and therefore give stewards the confidence to conclude unpopular agreements, and discipline renegade groups who would not conform to such agreements."(*3)

*1 Charles Mulvey: 'The Economic Analysis of Trade Unions', pages 38 - 39.

*2 These figures, which come courtesy of Stephen Dunn, obviously refer to the U.K. Despite the absence of any 'hard' data, it is a fair assumption that the trends would be similar in Ireland.

*3 Stephen Dunn: 'The Law and the Decline of the Closed Shop in the 1980s', page 93.

The decisive factor in the establishment of these closed shops was not generally union pressure but managerial facilitation and even encouragement. Indicative of this was the fact that U.M.A.s spread to areas such as banking where hitherto unions had exerted little influence. While these arrangements tend to increase union membership (this is its main attraction for organised labour) and possibly even its short-term security, it does little to address the imbalance of power in industry.

In these situations, unions do not operate a veto over who gains access to jobs. They merely are a passive participant in the employing process, issuing union cards at the whim of employers. Neither do they have the final say in whether an employee is dismissed for activities unbecoming to a union member, for, when all is said and done, it falls upon management to decide whether he/she should be sacked. Since its control over the supply of labour is negligible, only marginal economic effects can be attributed to the practice.

In short, if it is employers who in effect determine the existence and the behaviour of post-entry U.M.A.s it is unrealistic to label them great power advances for trade unions.

"More appropriately the practice (post-entry shop) should be seen increasingly as a source of order and discipline in industrial relations, goals ... which explain why employers have learnt to love the closed shop. Those who should perhaps be most worried about the manner of the recent spread of compulsory unionism are paradoxically trade unionists themselves."(*1)

Through this policy of maximising control by appearing to share it - in Flanders - employers were able to stave off any more radical demands which might have occurred, such as pressure for pre-entry closed shops. At the turn of the decade, the potential danger for employers eased and they reappraised their approach. Many were content to let their agreements remain until they encountered a situation where it was likely to act against their interests.(*2) It must also be said that there was growing managerial disillusionment with the practice as they discovered that solving the problem of union control was rather more complex than merely imposing compulsory membership.

These developments must be seen in the light of the rapidly changing industrial relations environment which prevailed since the advent of the Conservative Government in Britain in 1979. A deliberate assault on the unions was quickly initiated, largely through economic and legal forces. For trade unions to have any real countervailing power they require a fully employed, highly organised economy subject to government demand management. So under the pretext of controlling inflation, the Tories fostered conditions directly opposite to those most conducive to unions and, by extension, individual workers.

*1 Moira Hart: 'Why Bosses Love the Closed Shop', page 354

*2 Proof of this came with the British Bakers Union (B.F.A.W.U.) dispute of 1978. The union voted to expel some 2,000 strike-breakers. As an industry-wide Union Membership Agreement operated, it was thought that the employers, the Bakers Federation, would sack the non-strikers. However, not only did they refuse to dismiss these workers but they actually tore up the agreement, saying it was no longer in force!

The Employment Acts of 1980 and 1982 managed to attack both forms of U.M.A. simultaneously. Firstly, they narrowed the definition of a trade dispute to cover only conflict between workers and their immediate employer over terms and conditions of employment. In a pre-entry shop, of course, the common link is not the same boss but the same craft or profession so that collective action in support of such an U.M.A. is not now covered by legal immunities. In relation to the post-entry closed shop, it was declared that a shop which had not been ratified by 80% of those entitled to vote or 85% of those actually voting in a recent ballot within the previous five years, would not fall within the suitable legal definition of an U.M.A. and employees would have the right to opt out of union membership at will.

So the future of closed shops in the form we presently know them (*1) is in some doubt. Given the dramatic changes which have evolved over the last twenty years, however, one is wary of making any definitive predictions. Much will depend on the future magnitude and nature of industrial conflict. It is possible that strike activity may galvanise workers to the closed shop principle and thus they will fight bitterly for its survival and extension.

In summary, closed shops currently constitute a threat to no-one - workers, governments and especially employers. Claims that post-entry U.M.A.s which account for 85% of the total closed shop population seriously threaten the balance of power in industry or the rights and liberties of employers, can be empirically refuted. Pre-entry shops can help mitigate the capital labour imbalance for individual workers by gaining a modicum of control over them. Any libertarian would prefer a society where people are not compelled to do anything but the alternative, a supposedly free market, is considerably more unpalatable. For, as Burkitt points out:

"when the economic circumstances of the parties to a bargain are unequal, legal freedom of contract enables the stronger to dictate terms. Workers are legally free but effectively powerless." (*2)

*1 Stephen Dunn and John Gennard (among others) suggest that a semi-closed shop where workers are not compelled to join a union, but are merely strongly encouraged to do so, may evolve. Whether this type of arrangement actually constitutes a closed shop is, however, highly doubtful.

*2. Brian Burkitt: 'Excessive Trade Union Power', page 66