

RIGHT-TO-WORK LAWS: LIBERTY, PROSPERITY, AND QUALITY OF LIFE

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The most essential ingredient embodied in the liberty championed by the classical liberal writers of the Enlightenment and beyond is individual choice and right of expression—the right of persons to say what they think, decide for themselves what groups that want to join, what religion that want to profess, what person they want to marry, what goods they want to buy or sell, and what persons they want to represent them where necessity requires collective decision-making. One important economic dimension of individual liberty is the right to sell one’s labor services without attenuation—that is, without limits on the terms of the agreement (e.g., wage rates and hours of work), or who will represent the worker in reaching those terms.

The eroding of employment liberty in the United States had begun before the 1930s, with various sorts of state laws restricting hours and setting minimum wages, but in 1930 America was still largely governed by an employment-at-will standard where employers and employees could freely “truck and barter,” to use Adam Smith’s phrase, without major outside interference.

Labor legislation in the early 1930s such as the Davis-Bacon Act and, to a lesser degree, the Norris-LaGuardia Act began to chip away at bargaining freedom, but it was the National Labor Relations Act of

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1935 (Wagner Act) that dramatically revolutionized employment contracts, severely restricting the freedom of workers and employers to reach individual bargaining arrangements. Required union representation elections allowed for a small majority of workers to force other workers to join a union or lose their job. Under the closed shop arrangement permissible under the Wagner Act, unions controlled who was hired, since union membership was mandatory for employment.

With the return to high employment and prosperity with World War II and the postwar boom, concern about excessive union power grew, probably most symbolized by strikes of coal miners during 1946 that threatened significant hardships on seemingly uninvolved Americans. In 1947, the Republican majority in the 80th Congress enacted the Taft-Hartley Act, and Congress overrode a veto of the legislation by pro-union President Harry Truman. Fortunately, there was one important provision (section 14b) in Taft-Hartley that works to significantly lower the infringements on liberty and adverse economic effects of the law—namely, state governments can pass right-to-work laws that outlaw union shop collective bargaining agreements, permitting individual workers to decide whether they want to join a labor union or not. At present 22 states have adopted right-to-work laws.¹ None of the 14 states in the Northeast or East Central parts of the country (industrial Midwest) have these laws, as unions have been successful in thwarting their passage. Outside of that area, however, a solid majority of Americans (60 percent) now live in right-to-work states.

The Impact of Right-to-Work Laws on Migration

Indeed, an important untold story is the rapid growth of population living in right-to-work states relative to states refusing to grant workers the right to reject unionization. In 1970, 28.5 percent of Americans lived in right-to-work states; by 2008, the proportion had risen to nearly 40 percent (to over 121 million).² The population liv-

¹The states are Alabama, Arizona, Arkansas, Florida, Georgia, Idaho, Iowa, Kansas, Louisiana, Mississippi, Nebraska, Nevada, North Carolina, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, and Wyoming. Indiana has a very limited right-to-work law, limited to school employees, but is not considered a right-to-work state in this article.

²Throughout this article, unless otherwise noted, calculations are based on Census data (U.S. Bureau of the Census 2009a).

ing in right-to-work states more than doubled, compared with a modest 25.7 percent increase in non right-to-work states. Moreover, only a small proportion (about 15 percent) of the increase in the proportion of Americans in right-to-work states is due to states newly enacting right-to-work laws. Indeed, in the last 20 years, only one state (Oklahoma) has adopted a new right-to-work law. Most of the population gains arose from greater population increases in right-to-work states.

Undoubtedly, the most important reason for the increase in the percentage of U.S. population living in right-to-work states has been because there has been a huge migration of persons from the non-right-to-work states to those allowing greater personal liberty with respect to employment. Unions cannot erect Berlin-type walls to prevent people fleeing states where employment contracts are constrained by law. Consequently, internal in-migration into the right-to-work states has been astonishing. For example, U.S. Census Bureau population estimate data show that more than 4.7 million Americans moved from the non-right-to-work states to right-to-work states from April 1, 2000, to July 1, 2008—on average more than one person every single minute of that eight years (U.S. Bureau of the Census 2009b). Presumably people move to improve the quality of their lives; they perceive that they likely will be happier in their new home than in their old one. Thus, this immense human movement strongly suggests that job conscious Americans prefer areas that allow more individual employment liberty than ones that do not.

The absence of right-to-work laws makes employment a less pleasant experience for those forced to join a union against their will, so at the margin, some persons might choose to simply not work (to be sure, not an option for many persons given the dominant importance of labor income). The descriptive statistics provide some confirmation of that view. All four states that had over 70 percent of the population over the age of 16 that was working in 2007 (Nebraska, North Dakota, South Dakota, and Utah) were right-to-work states; the U.S. average was 63 percent. The unweighted arithmetic mean for the right-to-work state was 1.4 percentage points higher than for the non-right-to-work states (U.S. Bureau of the Census 2009b: Table 573). About 60 percent of the gap is explained by higher labor force participation rates in the right-to-work states, and about 40 percent of it by lower unemployment rates in those states (in 2007, the mean unemployment rate for the right-to-work states was 4.04

percent, while for the other states it was 4.58 percent). The simple descriptive statistics suggesting right-to-work laws increase labor force participation are reinforced using far more sophisticated statistical analysis. Lowell Gallaway, Robert Lawson, and I have demonstrated using a two-stage regression model that, other things constant, right-to-work laws enhance labor force participation (Gallaway, Vedder, and Lawson 1991).

To be sure, the evidence expressed above is not a rigorous analysis of the relationship between right-to-work laws and human behavior. For example, six right-to-work states (Texas, Florida, Tennessee, Nevada, South Dakota, and Wyoming) also have no personal income taxes, and migration could well be more related to fleeing the oppression of high taxation than to work in an environment where individual employment choices are given favorable legal treatment. Some might note also that many of the right-to-work states are in the Sun Belt, and, other things equal, many Americans prefer sunny, warm climates to cold, damp ones (and the nonpecuniary benefits bestowed by good weather are not taxable by governments). Accordingly, additional statistical modeling is needed to control for these other potential determinants of migration behavior.

Consequently, I did some multiple regression analysis to explain variations in the interstate migration of native-born Americans from 2000 to 2008. I tried several different models, incorporating different sets of explanatory variables (tax, climate, occupational composition of the labor force, unemployment, population density, and economic growth variables). Without exception, in all the estimations, a statistically significant positive relationship (usually at the 1 percent level) was observed between the presence of right-to-work laws and net migration. To be sure, the results indicate that right-to-work was only one of several factors explaining migration—for example, there was strong out-migration from manufacturing-intensive states, and Americans as well moved into low tax states, while the climatic variables were relatively weak and not statistically significant. Nonetheless, the findings reinforce the view that people vote with their feet to move to freer labor market environments. Consider a state with a population of five million in 2000. Other things equal, the model with the best predictive power that we used suggests that about 150,000 more people would move into the state between 2000 and 2008 because of right-to-work laws. If, as almost certainly is the case, in-migration is associated with perceived enhancements in the

quality of life and happiness, then, the empirical evidence supports the proposition that right-to-work laws promote human betterment.

Economic Effects of Right-to-Work Laws

The descriptive evidence above suggests that right-to-work laws enhance the amount of labor resources within a geographic area, in part from in-migration, in part from higher birth and labor force participation rates, and in part because of lower unemployment rates. Labor inputs are easily the single most important ingredient in production, and owners of labor resources are compensated more than twice as much as the owner of capital resources for precisely this reason.

Using a Cobb-Douglas production function (Cobb and Douglas 1928), economists have found that the elasticity of output with respect to labor is about 0.7, which means that a 1 percent increase in labor is associated with a 0.7 percent increase in output. Given that labor input usage associated with right-to-work laws may increase labor input usage by around 2–3 percent (based on differential employment-population ratios), one would expect that right-to-work laws may positively impact output by around 2 percent. Since only 40 percent of the U.S. population is impacted currently by these laws, the aggregate national output effect would be about 0.8 percent—about \$110 billion a year, which is more than \$1,000 annually for a household of three. Although this is a “back of the envelope” type calculation, it shows that the potential impact of passing right-to-work legislation is far from trivial.

The forgoing calculation ignores important secondary and tertiary effects of right-to-work laws. It is clear that such laws are associated with significantly lower levels of union membership, which is why unions so strongly oppose them. The unweighted mean union membership as a percentage of workers for the 50 states was 6.7 percent for right-to-work states in 2007, less than one-half the 14.2 percent rate for states without such laws. Only two relatively small right-to-work states had more than 10 percent union membership (Iowa and Nevada), while only four of the 28 non-right-to-work states had *less* than that percentage (Colorado, Kentucky, New Hampshire, and New Mexico). In non-right-to-work states, where union collective bargaining agreements exist, fewer than 8 percent of workers are not union members, compared with over 17 percent in right-to-work states.

Where unions exist, they have in some cases used their labor monopoly power to extract agreements where the current marginal labor cost to employers exceeds the marginal revenue associated with that labor—at the margin, employers are losing money. Average pay levels in non-right-to-work states are over 20 percent higher (using unweighted means of state data) than in their right-to-work counterparts. Huge legacy costs (e.g., generous pension benefits and high health care costs for retirees) that have been brought about by collective bargaining agreements on such industrial icons as General Motors and Chrysler forced them into bankruptcy. In short, returns to capital investment are often impaired by unionization, so new start-ups and business expansions are likely to be much lower in non-right-to-work states with high unionization. Thus, capital formation and entrepreneurial initiative may be stifled by laws restricting unfettered labor market behavior, which adds to the negative effects of these laws on output growth.

To summarize, where right-to-work laws do not exist, unions tend to be much stronger. Some have argued that this is a consequence of such laws (Carroll 1983), while others differ (Lumsden and Petersen 1975, Farber 1984). In any case, no one disputes that non-right-to-work states are more unionized. This, in turn, leads to a reduction in the provision of labor, and, indirectly capital resources, lowering output levels from what would otherwise be the case. The long-term effects, particularly of reduced attractiveness of capital resources, would be lower rates of economic growth. This, of course, leads to a testable hypothesis: right-to-work laws promote economic growth.

Accordingly, regression analysis was used to relate the rate of growth in real per capita personal income from 1977 to 2007 for the 48 contiguous U.S. states to the existence of right-to-work laws, incorporating several other variables into the analysis for control purposes. For example, two tax variables (TAXBURDEN77 and CHTAXBURDEN) were included to take account of the amount of state and local tax revenue in 1977 as a percentage of personal income, and the change in that percentage from 1977 to 2007. An educational attainment variable (COLLEGE), specifying the proportion of the adult population with four-year college degrees or more, was also included along with two geographic/demographic variables: the amount of land area (LANDAREA) in a state, and the rate of growth in population (POPGROWTH). A number of other potential independent variables were tried in alternative models not

reported here, but their inclusion did not dramatically change the nature of the results—namely, a very strong and highly statistically significant (at the 1 percent level) positive relationship between right-to-work laws and economic growth (see Table 1).

Suppose two states were otherwise identical, but one had a right-to-work law while the second did not. Also, suppose the non-right-to-work states had real personal income growth of 50 percent (slightly below the average of all states) over the 1977 to 2007 period. The model predicts that economic growth in the right-to-work state would have been about 61.5 percent—that is, a 23 percent higher growth rate than in the non-right-to-work state. This is a powerful finding: a seemingly modest change in the legal environment in which labor markets operate has a significant impact on the rate of economic growth.

Suppose the two states in the forgoing example had per capita income of \$24,000 in 2007 dollars in 1977. Per capita income in the state without right-to-work protection would have risen to \$36,000 in 2007, compared with \$38,760 in the right-to-work state. The right-to-work protection would have increased per capita income by an extra \$2,760—or over \$11,000 annually for a family of four. Right-to-work laws potentially have powerful positive economic effects. Based on an examination of experiences following the passage of the

TABLE 1
RIGHT-TO-WORK LAWS AND ECONOMIC GROWTH, 1977–2007:
REGRESSION RESULTS

Variable or Statistic	Coefficient or Value	T-Ratio
Constant	0.5157	2.704
RIGHT TO WORK	0.1147	3.259
TAXBURDEN77	−4.1209	2.102
CHTAXBURDEN	−2.8285	1.352
POPGROWTH	−0.1298	3.461
LANDAREA	−0.0000	3.246
COLLEGE	2.4046	5.608
R ²	0.5455	
F-Ratio	8.2207	

Louisiana and Idaho laws, it appears some of these effects become capitalized in greater wealth in the form of higher stock market prices (Abraham and Voos 2000).

The statistical modeling above is not necessarily the last word. Modifying the model by looking at different time periods, samples (e.g., including Alaska, Hawaii, and the District of Columbia in the sample), and variables would alter results somewhat. There are alternative econometric techniques, including general equilibrium modeling, that might offer somewhat different conclusions. Nonetheless, based on existing evidence, a strong case can be made that right-to-work laws have a positive impact on U.S. living standards.

Prospects for Future Changes in the Law

Economists are mediocre predictors of the future with respect to economic change, and arguably even worse at assessing political change. With that caveat, I nonetheless think it is possible to make some reasonable if somewhat speculative observations about the future of right-to-work laws. This is being written at a time when a strongly pro-union administration, that of Barack Obama, is supportive of changes that would roll back or eliminate right-to-work laws. I suspect that effort will be unsuccessful, despite Democratic control of both the executive and judicial branches of the federal government. Moreover, if the current trends in labor markets continue, I would suspect the longer-term prognosis is for right-to-work to expand, not contract, although the magnitude and timing of this move is very difficult to predict.

The U.S. has been in rough political equilibrium over right-to-work laws for at least 20 years. Excepting Oklahoma, there have been no states added or subtracted from the right-to-work list. I would expect national polling of citizens on the question would find more Americans in favor of right-to-work than opposed, perhaps by a fairly comfortable margin. That perceived reality, however, has not led to much real policy change in modern times because of the operation of an important principle of public choice economics: the asymmetry in the concentration of costs and benefits often leads to outcomes that are politically achievable but relatively unpopular with the general public and also suboptimal from the standpoint of maximizing human welfare. In this case, the costs of eliminating right-to-work laws exceed the benefits, but those costs are disbursed among liter-

ally hundreds of millions of Americans. The benefits of eliminating right-to-work are much smaller, but are concentrated among a vastly smaller group of labor union leaders. On a per person basis, those who are harmed by eliminating right-to-work laws perceive those costs as worth perhaps a few dollars a year (although the empirical work above suggests this is probably an understatement of those costs), so the issue does not loom large in the political consciousness of the bulk of the population—it is simply not worth getting agitated about. By contrast, on a per person basis, the beneficiaries of eliminating right-to-work see gains worth perhaps thousands of dollars per beneficiary (few in number that they may be), so these potential beneficiaries of right-to-work elimination are willing to spend large sums of money on lobbying and electing friendly politicians.

Thus, the anti-right-to-work lobby is stronger than the pro-right-to-work one, but politicians probably also suspect that public opinion is generally supportive of right-to-work laws. These factors are roughly offsetting, so the politically optimal thing to do is nothing: don't rock the boat. If the modern trend to reduced unionization in the labor force were to continue however, the lobbying prowess of unions should ultimately decline, and employer organizations might become more emboldened to try to establish right-to-work laws. My sense is that we are near a threshold in some states where that might occur. Historically, there has been a bit of a domino effect—if one state enacts such laws, the momentum may lead to further enactments. On the other hand, if my own sense is wrong and the Obama-labor goal of reversing the decline in unionization is successful (e.g., through some form of card check legislation), the political benefits of repealing right-to-work laws, or of even modifying the Taft-Hartley provisions, may start to exceed the costs sufficiently to lead to a change in the opposite direction.

Conclusion

Americans generally prefer freedom to coercion, high incomes to low ones, and individual decisionmaking to collective resolution of issues. For these reasons, they generally do not like laws that constrain their labor market behavior and force them to join collectives of other workers to negotiate their wages and working conditions. The right-to-work provisions of the Taft-Hartley Act of 1947 have created sort of a natural experiment, providing an opportunity to observe behavior in

two types of environments: one where workers are not compelled to join labor unions and a second where they can be compelled to join as a condition of employment. The evidence is absolutely clear: Americans prefer the right-to-work environment to the alternative.

The proportion of Americans living in right-to-work states has risen noticeably over the years, and only a small part of that is driven by new states adopting such laws. People move in extraordinary numbers to right-to-work states from states where union pressure has prevented the adoption of such laws. Moreover, the greater flexibility for workers and employers offered where right-to-work exists has contributed to higher rates of economic growth rates in the right-to-work environment. Although the United States seems to have been in roughly a stable political equilibrium regarding these laws in recent decades, if the past trends toward the right-to-work population growing in a relative sense persists while union membership continues to fall as a proportion of the labor force, a threshold point should be passed where the political equilibrium should tip toward making right-to-work laws universal for the entire American population.

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