The Libertarian Critique of Labor Unions

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Many Americans, including some who would benefit economically from union membership, view unions with ambivalence or even hostility. Fewer than half of respondents to a poll recently conducted by Fox News thought that unions were good for the country. This skepticism may reflect disapproval with the alienating style and performance of the AFL-CIO in modern times. But American individualism also plays a role. Americans tend to distrust organizations that seem to put solidarity, security, and fraternity above personal liberty, innovation, and competition. Therefore, despite generations of struggle, labor unions remain cultural anomalies. Labor lawyer Thomas Geoghegan describes union meetings as events at which "paunchy, middle-aged men, slugging down cans of beer, come to hold hands, touch each other, and sing 'Solidarity Forever.' O.K., that hardly ever happens, but most people in this business, somewhere, at some point, see it once, and it is the damnedest un-American thing you will ever see."

Most prominent union supporters take for granted that the labor movement benefits workers. They often assume that opponents have selfish economic motives, while anti-union workers must be victims of coercion or misinformation. This attitude ignores the possibility that moral values (such as liberty, self-reliance, and efficiency) motivate distrust of unions. Meanwhile, public figures on the other side of the debate generally assume that unions are harmful and talk darkly about bosses, strike-related violence, and rent-seeking bureaucracies.

To their credit, libertarians approach the question with less partisanship. While they are receptive to unions as non-governmental associations, they are also skeptical of institutions that interfere with "free" markets. Since the libertarian position captures certain widespread American attitudes in a refined (and radical form), it is a good starting point for philosophical analysis. If libertarian arguments against unions are strong, then maybe public skepticism is justified. If, however, libertarians employ flawed arguments, then perhaps the widespread distrust of unions is misguided.

Unions Against Individual Rights

Libertarians strongly defend freedom of choice and association. Thus, when workers choose to act collectively, negotiate together, or voluntarily walk off the job, libertarians have no reasonable complaint--even if other people are harmed--because they support the right to make and exit voluntary partnerships.

But unions gain strength by overriding private rights. They routinely block anyone from working under a non-union contract, and they prevent employers from making offers--even advantageous ones--to individual workers unless the union is informed and consents. Unions declare strikes and establish picket lines to prevent customers and workers from entering company property; they may fine employees who cross these lines. They also extract fees from all workers who are covered by their contracts. Although covered workers may avoid paying for certain union functions (such as lobbying) that are not germane to contract issues, they must pay for strikes and other activities that some of them oppose.

The great libertarian theorist Friedrich Hayek concluded that unions "are the one institution where government has signally failed in its first task, that of preventing coercion of men by other men--and by coercion I do not mean primarily the coercion of employers but the coercion of workers by their fellow workers." Hayek may have been thinking mainly of corrupt and unaccountable union leaders. But even a completely democratic union sometimes supplants private rights. As libertarians like Morgan O. Reynolds point out, majorities within a union are able to ignore minorities' preferences.

Libertarians are especially critical of "closed shop" contracts (which require businesses to hire only union members) and "union shop" contracts (which require all employees to join a specified union after they are hired). Libertarians see such arrangements as state-sanctioned violations of

private contract rights. Both closed shops and genuine union shops are now illegal in the United States, but if libertarian arguments are flawed, then perhaps these institutions deserve reconsideration.

In any case, "agency shops" remain in the 29 states that have not passed so called "right-to-work" legislation that bans this kind of contract. In an agency shop, the union negotiates one collective-bargaining agreement that covers a whole class of employees. Workers do not have to join the union, but they must pay dues and work under the union contract. Proponents argue that employees ought to pay fees for a service (union representation) that benefits them tangibly, just as they may be required to pay for food in the company canteen. But this also means that workers in agency shops cannot avoid their union's jurisdiction.

Although organized labor is popular among covered workers--only 8 percent would vote to "get rid of" their unions--libertarians insist that if even *one person* pays dues but opposes the existence of her union, then she is not a member of a voluntary association. As Senator Barry Goldwater (R-AZ) told the union leader Walter Reuther in 1953: "There is only one question in this whole field in my mind. What about the man who does not want to belong to the union?" Goldwater spoke in the days of the "closed shop," when union membership could be compulsory. But more recently, Representative Ron Goodlatte (R-VA) claimed that even an "agency shop" violates individual rights, because "compelling a man or woman to pay fees to a union in order to work violates the very principle of individual liberty upon which this nation was founded."

At times, unions have overridden some of their own members' economic interests. In one important case, African American workers, dissatisfied by their union's efforts to end discrimination at a department store, attempted to picket without the union's approval. The Supreme Court ruled 8-1 (in a decision written by Justice Thurgood Marshall) that only the union could take such actions, because the principles of *organized* labor and *collective* bargaining implied that unions were entitled to gain power from disciplined action.

Unions have also abridged their members' individual freedom of conscience. Justice Potter Stewart once noted that a worker's "moral or religious views about the desirability of abortion may not square with the union's policy in negotiating a medical benefits plan. One person might disapprove of unions negotiating limits on the right to strike, believing that such policies guarantee the serfdom of the working class, while another person might object to unions on purely economic grounds."

Unions can harm outsiders, too, including the customers, managers, and owners of any company involved in a labor dispute. In general, libertarians believe that non-governmental organizations should be able to act freely in the marketplace, even if their behavior imposes costs on others. For instance, firms are within their rights to run competitors out of business or to lay off their employees. By the same token, it would seem that unions should not be stopped just because their tactics cost other people money. However, American unions owe some of their power to

government recognition, so libertarians view any harms that they cause as impermissible violations of liberty. In particular, the libertarian economist Milton Friedman complains that unions raise labor costs and thus increase unemployment, to the detriment of poor people who are not their members. He insists that unions have "made the incomes of the working class more unequal by reducing the opportunities available to the most disadvantaged workers." Although unions often strive to protect poor people in order to narrow the pay differential between their own members and the rest of the workforce, Friedman's hypothesis is true in some cases.

Unions in Defense of Rights

Libertarians cite natural or individual rights, such as freedom of property and choice, that militate against unions. But unions also have the potential to *safeguard* freedom and due process. Some workers may see the job market as a "state of nature," a ruthless competition that endangers legitimate individual rights, and they may believe that a lone individual cannot secure through her own efforts a living wage, job tenure, freedom to criticize and dissent, and some measure of self-rule. Such workers may view their employer as a despot with absolute and arbitrary power. Although one way to guarantee rights is to pass and enforce appropriate legislation, employees may trust another strategy: unionization. A worker who is treated unfairly cannot expect her fellow workers to take effective action in defense of her (and their) rights unless they are organized into a disciplined organization such as a union.

This argument hinges on the notion that employers are "despots," since their power to discipline

and fire workers is comparable to the police powers of a state. Charles E. Lindblom, a Yale professor of economics and political science, writes that the "mere threat of termination can be as constraining, as coercive, as menacing as an authoritative governmental command." Losing one's livelihood, especially through layoff or demotion, can be catastrophic and arbitrary, entirely lacking in due process or rational justification. Thus, unskilled workers in a glutted labor market may need a union to give them any semblance of rights. But workers who command a high price in the market may feel that they are more free without a union--which will impose its own rules, officials, and bureaucracies.

In addition to the balance of power between labor and capital, a second factor is also relevant: the degree to which supervisors act in the overall interest of their companies. Assume that you can trust your boss to help maximize the firm's profits. Then you may be happy without a union if your skills give you some leverage in contract negotiations. But your own supervisor may not be competent or responsible. He may be lazy, arbitrary, discriminatory, or motivated by completely selfish goals (as in cases of sexual harassment). Since it is dangerous to challenge a supervisor directly and difficult to change jobs, even workers with high market value may want enforceable and inflexible rules to govern salaries, promotion prospects, grievance procedures, and job descriptions. For people who distrust managers, a union is not an unwelcome bureaucracy but an independent institution to which they can appeal in defense of their rights.

Although unions support due process, fair treatment, and other rights for workers, they are

typically seen as the enemy of *property* rights. However, some have argued that jobs should be seen as the property of workers, since their labor creates value. Late in the nineteenth century, political economist Henry C. Adams contended that, in appropriate circumstances, employees should "be given tenure of employment," so that they "cannot be discharged except for cause that satisfies a commission of arbitrators." Further, he believed that workers ought to be "consulted whether hours of work or the numbers employed shall be reduced," and given preference over those outside the industry. These steps would make jobs into "workmen's property." Adams added that the state could not be trusted to intervene fairly and, consequently, unions were the best means to redefine property.

As Adams (among others) realized, "property" admits of no universal, self-evident definition. Some have claimed that a class of objects should be defined as property because doing so encourages such positive consequences as increased investment and effort, or the efficient use and distribution of goods. At present, jobs are considered the alienable property of employers, who use them to maximize profits. If instead jobs were seen as the (non-transferable) property of workers, then although investment and innovation might suffer, employees might also feel deep satisfaction when positions became *theirs* because of their work. In short, Adams' proposal has both positive and negative implications, and the net change would be difficult to assess.

In my view, only the state has the authority to decide what is the best system of ownership in the labor market. The marketplace itself cannot make such decisions, because any market

presupposes the existing system of property. Nor should we allow unions to determine property rights unilaterally, since they do not allow outsiders to vote. But elected legislatures could decide that jobs shall become workers' property under certain circumstances, and an appropriate means to that end would be to strengthen unions. After all, if investors can create entities such as corporations, with a well-defined set of property rights, then perhaps workers ought to be able to form entities such as bargaining units, with similar claims to property.

Unions and Competitive Markets

Mainstream economic theory contends that a competitive market generally produces the greatest possible quantity and desired goods and services; in this sense, it is efficient. However, unions reduce competition in labor markets by preventing employers from firing unionized employees and by blocking job-seekers from accepting offers below the union rate. They may thus protect unproductive workers, raise costs, distort incentives, and frustrate entrepreneurship. Furthermore, organized labor is specifically exempted from antitrust laws whose general goal is to promote competition. Judge Richard A. Posner (who is often called a libertarian, although his views are idiosyncratic) concludes that American labor law is a device to promote the "cartelization of the labor supply by unions." Because it confers power on unions, the law "is founded on a policy that is the opposite of the policies of competition and economic efficiency that most economists support."

One economist has calculated that unions cost the country 4.9 percent of GDP annually. Other

estimates are much lower, and some cite evidence that unions are good for the economy--boosting morale and trust, reducing turnover, offering senior workers incentives to share knowledge with novices, and improving the flow of information between workers and managers. One recent study by Sandra E. Black and Lisa M. Lynch found that productivity in unionized firms was ten percent higher than in comparable non-unionized firms. Still, unions must at least sometimes reduce the nation's supply of goods and services. Of course, the same could be said of many private activities (smoking, gambling, early retirement) that libertarians consider well within the bounds of personal liberty. But Hayek distinguished between harms--which free people inevitably cause as they pursue their own interests--and coercion, which is impermissible. Hayek thought that unions acted coercively, so whenever they caused economic damage, they also violated rights and freedoms.

Contrary to what libertarians assume, freedom is not just a matter of selecting among choices in a marketplace. Imagine that workers have won some leverage over an employer because of a union. As a result, they can lay claim to a larger portion of the profits that their work generates. Now they must decide how tough to be in contract negotiations (considering possible damage to the company) and how seriously to risk a strike. They must also decide whether they want to use their collective muscle to pursue salary increases, equity among their membership, additional leisure time, job security, or insurance against catastrophic losses that would only affect their least fortunate members. This type of political deliberation and self-government is a form of freedom that is impossible without the union.

Libertarians sometimes argue that unions damage people's interests in a different way: by diminishing wealth or the supply of consumer goods and services. As economists David G. Blanchflower and Andrew J. Oswald note, "The idea that income buys happiness is one of the assumptions—made without evidence but rather for deductive reasons—in microeconomics textbooks." However, actual data reveal that, while money has a positive effect on happiness, its impact is "not as large as some would expect." Other variables—such as marriage, employment, and race—have more powerful effects. Indeed, while Americans have grown much wealthier in the aggregate since 1945, we have also seen a tenfold increase in the depression rate, a quadrupling of the teenage suicide rate, and dramatic increases in "headaches, indigestion, and sleeplessness" among younger people, even affluent ones.

Political scientist Robert Putnam argues these maladies can be traced to a decline in social connectedness. Interpreting data on self-reported happiness, he finds that "getting married is the 'happiness equivalent' of quadrupling your income" and that "regular club attendance, volunteering, entertaining, or church attendance is the happiness equivalent of getting a college degree or more than doubling your income." If the goal is the maximization of happiness or welfare, then one should strongly favor unions--even if they reduce aggregate money income--because they provide civic connections, which "rival marriage and affluence as predictors of life happiness."

Unions as Parts of Civil Society

Unions are more than economic actors that negotiate with employers; they are also communities of workers, forums for debate, and lobbying organizations. They can thus be described as parts of "civil society," a social sector that enjoys strong support from libertarians--and most other ideological groups as well. However, this terminology raises a new set of questions about the proper role and scope of civil society.

Libertarians believe that civil society should consist of institutions that people can join and exit freely depending on their values and preferences. But Americans usually join unions because the company where they want to work happens to be unionized--not because they support the labor movement or want to frequent the union hall. Quitting the union would then mean waiving their right to vote without escaping the obligation to pay dues and to work under the union contract. Therefore, unions serve the goal of free association less well than other organizations do.

However, libertarians' equation of civil society with freedom of association overlooks some of its most attractive features. For instance, some people argue that the purpose of civil society is to offer the moral and psychological advantages of *community*, which are missing in a competitive market. Unions commonly meet political theorist Thomas Bender's definition of a "community," which involves a limited number of people in a restricted social space who are "held together by shared understandings and a sense of obligation." Bender observes that relationships are "close, often intimate, and usually face to face," with individuals bound together by emotional ties rather

than individual self-interest. He concludes that "there is a "we-ness" in a community; one is a member." As philosopher Richard Rorty notes, "You would never guess, from William Bennett's and Robert Bork's speeches about the need to overcome liberal individualism, that the labor unions provide by far the best examples in America's history of the virtues these writers claim we must recapture. The history of the unions provides the best examples of comradeship, loyalty, and self-sacrifice."

Rorty is right: cultural conservatives should concede that unions exemplify some of their favorite virtues. Nevertheless, conservatives may reasonably prefer *other* institutions that promote different virtues--such as religious faith, military discipline, and individual initiative and responsibility. It is not obvious that unions are especially good at generating the most valuable virtues as ranked by conservatives, by liberals, or (least of all) by libertarians. However, perhaps unions generate virtues that are particularly neglected in our culture.

A third understanding of "civil society" views this sector the source of "social capital." Robert Putnam and his colleagues use this phrase to refer to habits, skills, and attitudes--especially trust and a propensity to join organizations--that expedite collective action and lessen the burdens on government.

Union members have much more social capital than those who belong to no groups at all. According to the General Social Survey, union members are 10 percent more likely to trust other

people, 19 percent more likely to express an interest in politics, 16 percent more likely to vote, 17 percent more likely to influence others about elections, and 22 percent more likely to talk to several people about important issues—a pattern that remains even when one controls for income, education, and employment status. Further, large numbers of union members report having contacted the government (18.3 percent), attended conferences (56.5 percent), or served as committee members (49 percent) and officers (36.8 percent) as a result of their membership.

However, union members are not very active in civil society compared to people who belong to at least one association, but not to a union. Union members perform at least five percent worse than these other participants on all the measures listed above except "influencing people about elections" (where union members are more active than other members). It seems, then, that unions boost civic participation, but to a lesser extent than the average association. Union membership is also a weak predictor of overall associational membership--unionized workers are not avid joiners the way that Rotarians and PTA volunteers are. Thus, although unions contribute to civil society and cultivate civic behavior, they are not outstanding contributors of civic life.

A fourth theory views "civil society" as the domain of interest groups, political factions, or lobbies. This definition clearly covers unions, since they lobby government officials, litigate, communicate to their own members about elections and issues, spend money on grassroots political campaigns, buy advertising, make endorsements, and donate to candidates and parties. Especially in recent decades (and especially in the United States), these political activities have

been much more effective than such traditional tactics of labor unions as organizing workers, bargaining with employers, and striking.

One could object that unions do not "speak" for all their members, since they often take one public position instead of reflecting the diverse views of their members. Further, although unions are generally popular with their own rank-and-file, they score the lowest levels of support for their "positions on national issues" and their "endorsements of candidates in political campaigns." In a series of cases since 1977, the Supreme Court has ruled that union members may resign without penalty and that non-members who are required to pay dues need not pay for lobbying or organizing efforts. These rulings have not gone far enough for libertarians, who worry about the status of workers who want to retain their union memberships (so that they can vote on bargaining issues) and yet disagree with the union's political agenda. Libertarians also complain that dissenting dues-payers must seek refunds instead of receiving automatic exemptions from the costs of political speech.

On the other hand, supporters of organized labor argue that the Court is overly concerned about dissenters' rights, especially since corporations are not similarly regulated. For instance, owners of companies are free to take a position on any issue and fire workers who disagree. And majorities of stockholders can dictate policies that minorities abhor. The right not to speak would be protected if *all* organizations were prohibited from lobbying, but this approach would undermine rights of association and petition. And allowing corporations to lobby while banning

political action by unions would be discriminatory and arbitrary. Thus the current treatment of union lobbying seems defensible.

Indeed, unions often enhance public deliberation about national priorities by adding a disciplined, well-funded alternative to the influential views of corporations. In some cases, speech is a public good that cannot be produced by uncoordinated, individual action. Since many employees may be tempted to act as free riders, relying on others to speak for the interests of workers as a class, the few who do speak (or voluntarily pay for speech) will see weak results from their efforts. But if workers form a union for collective-bargaining purposes, and if it can *compel* everyone to pay for political activities, then all workers will gain a strong voice at a small cost to each. In many poor communities, unions are among the only institutions that have the power to fund themselves without outside assistance from either government or philanthropy. The benefit to the larger community is robust public debate, which libertarians prize.

In these pages, political theorist Jean L. Cohen has argued that the "concept of the *public sphere* is the normative core of the idea of civil society and the heart of any conception of democracy." The public sphere is the arena in which citizens gather information, form preferences about public policy, encounter alternative perspectives and arguments, and sometimes improve their views. Unions form part of this sphere. General Social Survey data reveals that union members participate in such deliberative activities as writing to newspapers and contacting the government. Unions actually surpass other associations in the percentage of their members who

talk about elections.

Unions also force other institutions, such as the mass media and legislatures, to debate issues that may otherwise be ignored. And by protecting freedom of association and criticism inside the workplace, unions give workers a means to *act* on their deliberate beliefs in ways that influence the wider society. As scholar-activists Harry Boyte and Nanci Kari argue in *Building America*, many "deliberative theorists put citizens in the role of judicious audience." That is, they assume a distinction between judgment—the citizens' role—and work or action, which is what rulers do. But when union members debate a contract, decide to strike, and then provide food and childcare for their fellow strikers, they fruitfully combine judgment, work, and action.

Conclusion

These arguments will not satisfy pure libertarians, but they do suggest that unions are compatible with personal liberty. To be sure, the powers and prerogatives of unions must be balanced against individual rights. Workers should be free to avoid union membership and dues beyond those necessary for contract negotiations, and all members ought to have enforceable rights against discrimination by their unions. But these qualifications (which are enshrined in current law) would not prevent strong unions from forming.

Unfortunately, the actual rate of union membership—15 percent of all employees; less in the private sector—is much lower than other democracies and below half the level reached in

America around 1950. About one third of non-unionized American workers believe that, "were an election held tomorrow, workers at their firm would support a union," but they are unlikely ever to have the opportunity to cast a vote.

Congress could respond to the current situation by legalizing "agency shops" nationwide. Research by economist David T. Ellwood and lawyer Glenn Fine suggests that this reform would allow about five percent of the population in current "right-to-work" states to join unions, for a total increase of millions of members.

Federal law could also approach corporate resistance differently. Companies typically rely on illegal tactics to stop an organizing drive by, for instance, intimidating union supporters and firing employees involved in organizing the union. Although federal judges may declare automatic certification of a union if they believe that laws have been broken, in practice, unions arising in this way are weak from the start and managers feel free not to make them serious contract offers. A better solution is to recognize a union as the sole legitimate bargaining agent of a workforce as soon as a majority of the covered workers signs a petition to unionize. Then employees would be spared a struggle against management intimidation, and neither side would know how deeply the rank-and-file was committed to the union or how well the union could weather a strike. This uncertainty would encourage management to negotiate seriously with the union leadership, which (for its part) would have dues money and other resources to use during the bargaining process.

Since this reform is untested in the U.S., one can only speculate on the results. But the proposal is consistent with the philosophical considerations explored in this article. As labor lawyer Thomas Geoghegan observes, "I can think of nothing, no law, no civil rights act, that would radicalize this country more, democratize it more ..., than to make this one tiny change in the law: to let people join unions if they like, freely and without coercion, without threat of being fired, just as people are permitted to do in Europe and in Canada."

Sources: Opinion Dynamics for Fox News, surveying 905 registered voters on March 28, and 29, 2001; Thomas Geoghegan, *Which Side Are You On?* (Plume Press, 1992); for evidence that unions gain strength by overriding private rights, see David T. Ellwood and Glenn Fine, "The Impact of Right-to-Work Laws on Union Organizing," *Journal of Political Economics*, vol. 95, (1987); F.A. Hayek, "Unions, Inflations, and Profits*"* in *The Public Stake in Union Power*, edited by Philip D. Bradley (University Press of Virginia, 1959; Morgan O. Reynolds, *Power and Privilege: Labor Unions in America* (Universe Press,1984) Morgan O. Reynolds, *Making America Poorer: The Cost of Labor Law* (Cato Institute, 1984); closed shops are prohibited by the Taft-Hartley revisions to the National Labor Relations Act, 29 U.S.C. 158(a)(3) and the Railway Labor Act, 45 U.S.C. 152; union shops are illegal under Supreme Court decisions that grant employers the right not to join unions, although they may be compelled to pay "agency fees" to cover the costs of collective-bargaining (see *Marquez v. Screen Actors Guild*, 119 S. Ct.

292-296 for a summary); the 29 states currently forbidding agency shops are listed by the National Right to Work Legal Defense Foundation at http://www.nrtw.org/rtws.htm; on unions' popularity among their members, see Richard B. Freeman and Joel Rogers, *What Workers Want* (ILR Press and Russell Sage Foundation, 1999), Exhibit 4.1, citing the Worker Representation and Participation Survey (WRPS) conducted in 1994; U.S. Senate, Committee on Labor and Public Welfare, Hearings, Taft-Hartley Act Revisions, 83rd Congress 1st session, 1953; *Congressional Record*, 106th Congress, E265; the quote by Judge Potter Stewart is found in *Abood v. Detroit Board of Education*, 431 U.S. 209; on unions and collective action problems, see Burton Hall, "Collective Bargaining and Workers' Liberty," in Gertrude Ezorsky, ed., *Moral Rights in the Workplace* (SUNY Press, 1987) and also Mancur Olson, *The Logic of Collective Action* (Harvard University Press,1971); Charles E. Lindblom, *Politics and Markets: The World's Political-Economic Systems* (Basic Books, 1977), p. 48; cf. *NLRB v. Jones and Laughlin Steel Corp*, 301 U.S. 1; on the relationship between trust for management and support for unions, see Freeman and Rogers, Exhibit 4.8; the various papers of Henry C. Adams from 1891-1897 are quoted in Mark Perlman, *Labor Union Theories in America: Background and Development* (Row, Peterson, 1958); on unions as having the same moral status as corporations see John Commons, *Industrial Goodwill* (McGraw Hill, 1919), p. 47 (cf. the Wagner Act, 29 USC § 151, *and NLRB v. Jones and Laughlin Steel Corp.*, 301 U.S. 1 at 33); for unions' antitrust exemption, see 15 USCS § 17; Richard A. Posner, "Some Economics of Labor Law," *University of Chicago Law Review*, vol. 51 (1984), p. 990; for other economic critiques of unions, see Milton Friedman, *Capitalism and Freedom* (University of Chicago Press, 1962) and Albert Rees, *The Economics of*

Trade Unions (University of Chicago Press,1989); Sandra E. Black and Lisa M. Lynch, "How to Compete: The Impact of Workplace Practices and Information Technology on Productivity," *National Bureau of Economic Research,* Working Paper No. 6120 (1997); F. A. Hayek, *The Constitution of Liberty* (University of Chicago Press, 1960), pp. 145, 450 n. 6 (on unions); David G. Blanchflower and Andrew J. Oswald, "Well-being Over Time in Britain and the USA," *National Bureau of Economic Research,* Working Paper No. 7487 (2000); Robert Putnam, *Bowling Alone: The Collapse and Revival of American Community* (Simon & Schuster, 2000); on members' reasons for joining unions, see John A. McClendon, Hoyt N. Wheeler, and Roger D. Weikle, "The Individual Decision to Unionize," *Labor Studies Journal,* vol. 23 (1998); Thomas Bender, *Community and Social Change in America* (Johns Hopkins University Press,1982); on union membership as a predictor of other memberships, see John Brehm and Wendy Rahn, "Individual Level Evidence for the Causes and Consequences of Social Capital," *American Journal of Political Science,* vol. 30 (July 1997); Jean L. Cohen, "American Civil Society Talk," *Report from the Institute for Philosophy & Public Policy,* vol. 18, no. 3 (summer 1998), p. 15; to make the case concerning social capital and union membership, the author analyzed the data in the General Social Survey cumulative datafile; about a quarter of their members disagree with unions' political agendas to varying degrees: see Freeman and Rogers, Exhibit 4.5; the most important cases concerning the appropriateness of union dues are: *Abood v. Detroit Board of Education* (compulsory dues for politics are unconstitutional), *Pattern Makers League v. NLRB,* 473 U.S. 95 (union members have constitutional rights to resign without losing their jobs), *Communications Workers of America v. Beck,* 487 U.S. 735 (workers can withhold

dues for everything but the cost of bargaining), and *Lehnert v. Ferris Faculty Assn*, 500 U.S. 507 (announcing a strict three-part test for "determining which activities a union constitutionally may charge to dissenting employees"); in an old Railway Labor Act case, *International Association of Machinists v. Street*, the Supreme Court ruled that "dissent is not to be presumed—it must affirmatively be made known to the union by the dissenting employee," 367 U.S. at 774 (1961); this remains federal policy under *California Saw and Knife Works*, 320 NLRB 224 (1995), upheld in 133 F.3d 1012 (7th Cir. 1998)—a decision written by Judge Posner; Harry C. Boyte and Nancy N. Kari, *Building America: The Democratic Promise of Public Work* (Temple University Press, 1996); for international comparisons of union membership, see "Workers of the World" (chart), *Washington Post* (August 30, 1997), and for a U.S. time series of unionization rates, see Robert Putnam's *Bowling Alone*; For workers' beliefs about the results of certification elections, see Freeman and Rogers, p. 69; David T. Ellwood and Glenn Fine, *The Impact of Right-to-Work Laws on Union Organizing*, *Journal of Political Economy*, vol. 95 (1987), p. 270; for the problems with judge-ordered certification and the alternative advocated here, see Paul Weiler, "Promises to Keep: Securing Workers' Rights to Self-Organization Under the NLRA," *Harvard Law Review*, vol. 96 (1983), pp. 1769-1827; Geoghegan, p. 276.