Forgotten Facts of American Labor History

by Thomas E. Woods, Jr.

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Just about everything that people think they know about labor unions and wage rates is wrong.

The standard tale that practically every student hears over the course of his education is that before the emergence of labor unions, American workers were terribly exploited and their wages were consistently falling. The improvement in labor's condition was due entirely or at least in large part to labor unionism and favorable federal legislation. In the absence of these, it is widely assumed, people would still be working 80-hour weeks and children would still be working in mines.

This oft-heard tale is, however, almost entirely false, and those parts of it that are true (the low standard of living that people enjoyed in the nineteenth century, for example) are true for reasons other than those alleged by pro-union historians, who see in them only confirmation of their prejudices against the market economy.

As late as the 1920s, labor law in America was based on the following considerations.

Freedom of contract and association were essential principles. A laborer was perfectly free to reject any offer of compensation that an employer might make to him, and an employer was likewise entitled to reject any offer made by a laborer. An employee was free to withhold his labor services if unsatisfied with his employer's terms; likewise, a group of laborers jointly exercising this individual right were permitted to do so. **No one, however, was allowed to prevent individuals who wished to work from exercising their right to do so.**

Strikers — like anyone else — were forbidden to interfere with consumers' right to shop where they liked. And strikes could not obstruct suppliers from making deliveries, since to do so would again violate the rights of others. **Finally, since the employer's plant was private property**, the employer had the absolute right to decide who would be permitted to enter, and complete strangers who wished to enter for the purpose of agitating his employees could be lawfully excluded altogether.

This common-sense legal approach to labor unionism began to give way with the **Norris-La Guardia Act**, signed by Herbert Hoover in 1932. The legislation made "yellow dog" contracts — in which an employee could be required to promise to refrain from union activity as a condition of employment — unenforceable in the courts. The Act also e**xempted labor unions from prosecution under the Sherman Antitrust Act.** Although the Sherman Act should certainly have been (and still should be) repealed, if there were ever an institution guilty of "restraint of trade" it was labor unions, which not only withheld their own labor but which also used intimidation and force to keep down non-union competition. They would henceforth be exempt from behavior that the law deemed criminal in any other context.

The Act also prohibited the federal courts from issuing injunctions against labor unions in some cases and seriously crippled their ability to do so in others. Subsequent Supreme Court decisions made clear that the Act in effect shielded unions from prosecution for activities they may have engaged in during labor disputes. The injunction had been used to put a stop to union violence and property destruction when local authorities seemed unwilling or unable to protect life and property. Unions hated them.

As labor historian Morgan Reynolds explains, "An injunction temporarily restrained union actions pending a trial and this explains the intense union campaign against its use in labor disputes because once violence-ridden strikes were enjoined for a few days, they were difficult to revive, reorganize, and rekindle."

It is one of the many myths of American labor history that the courts issued injunctions frequently and indiscriminately. Labor economist Sylvester Petro undertook a thorough study of the period from 1880 to 1932 and found injunctions to be exceedingly rare: federal injunctions were issued in not even one percent of all work stoppages, while state injunctions were issued in less than two percent of all work stoppages. And these few injunctions were issued not to thwart labor union activity per se but to put a stop to violence against persons and property. Now even this protection of the employer's rights — yes, employers have rights, too — would

henceforth be absent.

The New Deal added the National Labor Relations Act of 1935, more commonly known as the Wagner Act, to the mix. It had once been the case that a worker who did not wish to join a union or pay its dues refrained from joining and was not **obligated to pay dues**. Thanks to the Wagner Act, that individual freedom disappeared. From then on, if a majority of workers in a given bargaining unit chose to unionize, then that union represented all the workers and could require them either to join or at least to pay dues.

The usual defense of such coercion is that since the Wagner Act called for a **single certified bargaining agent** to represent all workers in a given bargaining unit, it was only fair that all such workers be required to contribute something to the union. After all, it is argued, since all workers gain from the union's activities on their behalf, it would be wrong for them not to contribute toward union expenses. **This objection overlooks the real problem, which is the idea of having an exclusive bargaining agent in the first place.**

If unions were content to bargain solely on behalf of their own members, then there would be no problem of non-members getting union benefits for free. If individuals were allowed to represent themselves and to enter into contracts with their employers on their own terms, those who wished to remain non-union would not be "free riding" on the benefits bestowed by labor unions, since the union would simply not bargain on their behalf. **But federal labor law no longer guarantees workers this freedom.**

(As a result of the **Taft-Hartley Act of 1947** — which labor historians detest despite the mildness of its provisions, which did little to overturn settled labor law — states have the right to pass "right-to-work" laws, which prohibit unions from attempting to force union membership and dues on workers as the price for keeping their jobs.)

Once officially designated by a majority of workers as the exclusive bargaining agent for all workers, the union is never required to stand for re-election. Even after all the workers who originally voted for the union have died or retired, the union is simply assumed to have the support of a majority of workers. The new slate of workers has no say in the matter at all.

The Wagner Act also forced employers to bargain "in good faith" with unions that were established by a majority of workers. Whether an employer had complied with the vague instruction to bargain "in good faith" would be determined by the all-powerful National Labor Relations Board.

Moreover, the Wagner Act also interfered with **employers' freedom of speech** by making it an "unfair labor practice" to attempt to influence their employees' decision whether to unionize or not. Employers were required to permit union organizers — that is, total strangers — who did not work for them to use company property for the purpose of persuading employees to unionize.

Furthermore, the Wagner Act gave labor unions a degree of legal insulation afforded to no other group in society. The Act made labor unions immune to claims of vicarious responsibility. In plain English, that means that labor unions are not legally responsible for any violence their members might commit, even if union officials themselves order the violence.

All of these legislative measures made it much easier for labor unions to accomplish their goals. In order to fulfill their stated purpose of increasing the wages of their members, labor unions must restrict an employer's access to alternative sources of labor. That is to say, nonunion workers who wish to seek employment on the terms offered by an employer whose firm is unionized must be prevented from doing so. Harvard University's Edward Chamberlin once described the unique legal status that labor unions had been granted:

If A is bargaining with B over the sale of his house, and if A were given the privileges of a modern labor union, he would be able (1) to conspire with all other owners of houses not to make any alternative offer to B, using violence or the threat of violence if necessary to prevent them, (2) to deprive B himself of access to any alternative offers, (3) to surround the house of B and cut off all deliveries, including food (except by parcel post), (4) to stop all movement from B's house, so that if he were for instance a doctor he could not sell his services and make a living, and (5) to institute a boycott of B's business. All of these privileges, if he were capable of carrying them out, would no doubt strengthen A's position. But they would not be regarded by anyone as part of "bargaining" — unless A were a labor union.

No wonder Nobel Laureate F.A. Hayek once said, "We have now reached a state where [unions] have

become uniquely privileged institutions to which the general rules of law do not apply."

In practice, during strikes the police have typically stood aside and done nothing in the face of union intimidation and even violence against non-union workers or those who simply wish to continue working. (This is one reason that the court injunction was so often sought in the past against violent strikes.) By means of this kind of coercion, labor unions are able to deprive employers of labor if they do not accede to union demands.

As Henry George wrote in the nineteenth century, "Those who tell you of trades unions bent on raising wages by moral suasion alone are like those who would tell you of tigers that live on oranges." The result of union activity, therefore, is to reduce the number of jobs in an industry and to raise the money wages of union labor, while at the same time relegating many workers, driven out of this line of work by the decreased quantity of labor demanded there, to other lines of work, whose money wages must decrease as a result of the greater supply of workers now forced to compete for them.

The net result is that the gains to certain workers are more than offset by the disabilities inflicted upon other workers. When union activity reduces the number of people who can be profitably employed in skilled trades, it correspondingly increases the number of skilled laborers who are forced to find work in fields that are well below their level of competence. The outcome of this displacement of skilled labor is no different from a situation in which laborers never possessed these skills in the first place. If union privilege prevents some workers from putting their skills to their proper use, the effect is the same as if they had never gone to the trouble to acquire them at all. Thus society produces below its potential, and wealth that would otherwise have been created never sees the light of day.

The ways in which labor unionism impoverishes society are legion, from the distortions in the labor market described above to union work rules that discourage efficiency and innovation. The damage that unions have inflicted on the economy in recent American history is actually far greater than anyone might guess. **In a study published jointly in late 2002 by the National Legal and Policy Center and the John M. Olin Institute for Employment Practice and Policy, economists Richard Vedder and Lowell Gallaway of Ohio University calculated that labor unions have cost the American economy a whopping $50 trillion over the past 50 years alone.**

That is not a misprint. "The deadweight economic losses are not one-shot impacts on the economy," the study explains. "What our simulations reveal is the powerful effect of the compounding over more than half a century of what appears at first to be small annual effects." Not surprisingly, the study did find that unionized labor earned wages 15 percent higher than those of their nonunion counterparts, but it also found that *wages in general* suffered dramatically as a result of an ***economy that is 30 to 40 percent smaller than it would have been*** **in the absence of labor unionism.**

Although labor unionism has actually **made working people worse off,** however, the usual argument for labor unionism and government legislation on behalf of labor is that in the absence of these things, employers will pay their workers unconscionably low wages.

Economist George Reisman proposes a useful thought experiment to the contrary. Suppose you own a car in New York City but eventually decide that the hassle involved in finding and paying for parking is simply too great, and you would like to get rid of the car for that reason. Suppose, further, that you have grown so frustrated with owning a car in the city that you would be willing to sell it for one dollar. Does that mean that you will in fact have to sell it for one dollar? Of course not. Given the great many potential buyers of your car, they will outbid each other. If a potential buyer offered you only one dollar, you would certainly turn him down even if, in a state of complete despair, you would have been willing to sell it at that amount. This person, because of his low bid, will miss out on the opportunity to own the car altogether since his rivals will simply outbid him.

Exactly the same process takes place in the labor market. The California State University's Charles Baird explains:

This idea, that workers without unions will inherently have a disadvantage in bargaining power relative to employers, is the basis for most individuals' support of unionism and is picked up again in the Wagner Act. But that disadvantage is a hoary myth. A worker's bargaining power depends on the worker's alternatives. If a worker either works for Employer A or does not work (i.e., if Employer A is a monopsonist), the worker has little bargaining power. If the worker has several employment alternatives, he has strong bargaining power. There may

have been instances of monopsony or oligopsony in the 19th century, but…they were short-lived. Monopsony has not been a significant factor in the American labor market since the introduction and widespread use of the automobile.

The empirical evidence simply does not bear out the conventional wisdom regarding unions. If employers were really in a position to impose whatever wage rate they wished, then why in the decades prior to large-scale labor unionism did wages not diminish to near zero? (In fact, as we shall see below, real wages skyrocketed in the decades before modern labor law took shape.) For that matter, why did skilled workers earn more than unskilled workers? If firms were really in a position to tell workers to take or leave whatever pathetic wage they might choose to offer, *why would they have felt a need to pay skilled workers more than unskilled workers?* Why not just pay them both the same pittance?

The case for labor unionism does possess a superficial plausibility, but it is in fact entirely fallacious. Real wages rise not because of union activity but because of the process that George Reisman describes in his productivity theory of wages (which I describe here). In short, business investment in machinery increases the productivity of labor and therefore the output that the economy is capable of producing, and this greater supply puts downward pressure on prices.

As Reisman explains, "It is the productivity of labor that determines the supply of consumers' goods relative to the supply of labor, and thus the prices of consumers' goods relative to wage rates." This phenomenon is not always easy to see in an inflationary economy such as ours, in which prices of most goods seem to go up consistently. But the point remains: prices become lower than they would otherwise be, and all real incomes (wages included) increase.

This is why taxes on business and capital are so foolish and counterproductive. Such taxes hamper business investment, which is *precisely what raises our standard of living*. The vast bulk of high school teachers and college professors spend their time condemning the wickedness of businessmen and the wealthy, and describe taxation as a righteous method for redistributing the supposedly ill-gotten gains of the wealthy to the oppressed poor. To put it kindly, such people have not the faintest idea of how wealth is created, and their envy-driven policy proposals inevitably make society poorer than it would otherwise be.

The vast bulk of the existing scholarship on American labor history is essentially unreadable. It takes for granted all the economic myths of unionism, the essential righteousness of the union cause, and the moral perversity of anyone who would dare to oppose it. Major incidents in the history of American unionism, as with the Haymarket incident of 1886 and the Homestead Strike of 1892, are often misleadingly described in order to conform to the ideological demands of this one-dimensional morality play.

Labor historians and activists would doubtless be at a loss to explain why, at a time when unionism was numerically negligible (a whopping three percent of the American labor force was unionized by 1900) and federal regulation all but nonexistent, real wages in manufacturing climbed an incredible 50 percent in the United States from 1860—1890, and another 37 percent from 1890 to 1914, or why American workers were so much better off than their much more heavily unionized counterparts in Europe. Most of them seem to cope with these inconvenient facts by neglecting to mention them at all.

Labor economist W.H. Hutt referred to the Norris-La Guardia and Wagner Acts in 1973 as "economic blunders of the first magnitude." Economists Vedder and Gallaway find that New Deal labor legislation played a significant role in aggravating the unemployment problem. Both theory and history reveal the same conclusion: a society that genuinely wishes to become wealthier, to enjoy more leisure time, and to live longer will simply repeal *all* taxation on business and capital. That would do more for the material well-being of American workers than did all the storied episodes of labor's "struggle" - labor historians' favorite word - put together. *Reprinted from Mises.org.*

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