Historical Contingency, Legal Ideology, and U.S. Labor Unions: The Origins and Effects of Right to Work Laws

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In the mid-1950s, union density in the United States stood at approximately one-third of the nonagricultural work force (Freeman, 1998). By 2004, that number had dropped to 12.5 percent, with only 7.9 percent in the private sector (Bureau of Labor Statistics, 2005). The causes and consequences of union decline have attracted substantial academic attention; one recent study declares, for example: “Two of the most significant socioeconomic events of our time are growing income inequality and the decline of unions” (Katz & Darbishire, 2000: 1). Many commentators attribute unions’ steady loss of membership to the overt antiunionism of American employers (e.g., Weiler, 1991). Among the more visible and immediate tactics for defeating organizing drives are threats, intimidation, and other illegal activities (Freeman & Medoff, 1984; Bronfenbrenner, 1998). But scholars of the “union opposition” thesis also describe long-term strategies undertaken by American firms to eliminate or resist collective bargaining (Kochan, Katz & McKersie, 1994; Jacoby, 1997). Those strategies are best understood in a historical context that takes into account the political and cultural forces affecting unions (Goldfield, 1987; Lipset & Meltz, 2004).

The National Labor Relations Act of 1935 (the “NLRA” or “Wagner Act”) established the basic law regulating collective bargaining activities between unions and employers in the United States. As an exercise of federal power, the NLRA displaced a large body of existing state common law governing labor relations. The change was so transformational that one commentator describes the Act as the “most radical piece of legislation ever enacted in the United States” (Klare, 1978). Even though the NLRA aimed to create national uniformity on the matter of union organization, Senator Robert Wagner, the bill’s architect, nonetheless apparently conceded a crucial dimension of labor relations to state governance. Wagner said that individual states would retain the right to regulate compulsory union membership requirements, thus protecting state law from federal pre-emption.

When Congress modified the NLRA in the Taft-Hartley Act of 1947, it inserted specific language granting states the authority to prohibit contractual union security. Section 14(b) of Taft-Hartley provides that nothing in the federal law authorizes an agreement requiring membership in a labor organization as a condition of employment “in any State or Territory in which such execution or application is prohibited by State or Territorial law” (National Labor Relations Act, 1988). The legislative policy of Section 14(b) relies heavily on the argument that the federal government historically protected states’ jurisdiction over closed shops. Therefore, proponents of 14(b) insisted, they had made no change in the settled understanding that protection of individual rights and liberties warranted an exception from the rule of collective security. At present, 22 states have enacted “right to work” laws, and federal bill H.R. 500, titled the “National Right to Work Act,” is currently pending in Congress (U.S. Congress, 2005). Econometric analysis shows that right to work laws effectively reduce union density in the range of six to eight percent (Hogler, Shulman, and Weiler, 2004). As the drive for legal restrictions against union activity continues, the threat to organized labor in the United States intensifies. This paper examines the historical context of right to work laws and concludes that the labor’s dilemma came about through political opportunism and ideological narratives tilted in favor of stronger management and weaker unions. Unless current right to
work initiatives are defeated, American unions will continue their decline into economic and political insignificance.

Robert Wagner and the Problem of the Closed Shop

The economic collapse of 1929 and President Herbert Hoover’s perceived inability to deal with the crisis led to Franklin Delano Roosevelt’s election in 1932. Roosevelt immediately undertook sweeping legislative changes; and on June 16, 1933, he signed the National Industrial Recovery Act (NIRA), which he envisioned as the centerpiece of his New Deal program (Dearing, et al., 1934). Among other provisions, the NIRA had protections for labor included at the insistence of William Green, president of the American Federation of Labor. Section 7(a) of the NIRA contained three separate clauses dealing with workers. First, the section gave employees “the right to organize and bargain collectively through representatives of their own choosing.” Second, the NIRA stated that no one should be “required as a condition of employment to join a company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing.” Third, employers were required to comply with any applicable minimum wage and hour laws (National Industrial Recovery Act, 1933).

The initial draft of the NIRA prohibited an employer from requiring an employee’s membership in “any organization,” but Green and other AFL leaders argued that the language would prevent unions from entering into closed shop agreements requiring union membership as a condition of employment. To avoid that outcome, they persuaded Congress to substitute “company union” for the words “any organization.” Labor advocates used that pejorative term to identify organizations dominated by, and subject to the control of, the employer (Kaufman, 2000). Opposing the change, employer representatives testified before the Senate Finance Committee that Section 7(a) deprived workers of their freedom to deal with employers through organizations other than outside trade unions; but after extensive Senate debate, Greene and the AFL prevailed (Bernstein, 1950: 32-37).

Trade unionists’ fears about company unions during the NIRA period were amply justified. Membership in company unions increased from 40.1 percent of the trade union membership in 1933 to 59.5 percent in 1935 (Millis & Montgomery, 1945: 841), and powerful employer groups urged their implementation. The Iron and Steel Institute, for example, published an informational pamphlet asserting that the steel industry favored collective bargaining for its employees, but not in the form advocated by the American Federation of Labor. The Institute declared that in 3,314 companies with 2.5 million employees, over 45 percent of workers bargained under internal representation plans and only 9.3 percent desired trade union representation (American Iron & Steel Institute, 1934). Employers’ motives for creating company unions were evidenced by a Bureau of Labor Statistics study which found that 41.6 percent of the firms surveyed had created a representation plan in response to union organizing threats (Bureau of Labor Statistics, 1935).

The task of enforcing Section 7(a)’s rights of organization and bargaining fell to the National Labor Board (NLB), which was made up of three employer members, three labor members, and Senator Robert Wagner as impartial chair (Bernstein, 1970: 173). Despite the controversial nature of company unions, the NLB did not outlaw them as a form of collective dealing. Instead, it developed general principles to determine whether an employer’s internal representation plan genuinely reflected the wishes of the employees and had been “freely chosen” by them. Among other criteria, the NLB considered the extent of the employer’s control over the organization, the employees’ opportunity to reject the plan, and the available choice of outside representation. If the NLB concluded that employees exercised genuine
free choice in the matter of representation, they would be permitted to bargain collectively through an employee representation plan or company union (Lorwin & Wubnig, 1935). In July 1934, the NLB’s successor, the first or “old” National Labor Relations Board (NLRB), took over administration of Section 7(a). The NLRB continued to develop a body of federal labor law building on the work of the NLB and adding new principles that were subsequently incorporated into the Wagner Act. However, neither the NLB nor the NLRB ever dealt directly with the inherent conflict between compulsory union membership and individual freedom of choice under Section 7(a). Although the AFL had clarified its intent to protect closed shops by modifying the first draft of the NIRA, it made no attempt to define what “representatives of their own choosing” meant with regard to the company unions. Consequently, the language offered the possibility that employees could choose the employer’s representation plan as a bargaining agent and that the internal organization could then negotiate for a closed shop. The administrative boards never resolved that problem, although they had the occasion to do so.

The most important NIRA case concerning the closed shop involved an in-house union at the Tamaqua Underwear Company in Tamaqua, Pennsylvania. In May 1934, the Amalgamated Clothing Workers (ACW) mounted an organizing campaign at the firm. The ACW engaged in strikes and picketing to force recognition, but the company’s owner, J.E. Auchmuty, refused to bargain with the AFL-sponsored organization. The NLB assumed jurisdiction over the labor dispute, and the Philadelphia Regional Labor Board conducted a secret ballot election. The in-house Tamaqua Employees’ Union (TEU) won the election by a substantial margin. The TEU’s first and only contract demand was for a closed shop, which the employer granted. Those facts raised the issue of whether an organization chosen by employees, but not an independent union, could lawfully negotiate for a compulsory membership provision. The labor boards chose to avoid the legal conundrum by characterizing the TEU as a dominated, illegal company union under Section 7(a). The NLRB ruled that the organization’s leadership consisted of employees in “an executive or supervisory capacity,” and even if Auchmuty did not create the TEU, “he has at least fostered its growth with considerable enthusiasm, by advising his employees to affiliate therewith, and by permitting it to use the plant for meetings and his office equipment for certain typing” (Decisions of the National Labor Relations Board, 1934:10-11). Consequently, the NLRB declared that it was not required to decide “the validity of a closed shop agreement with a bona fide labor union resulting in the discharge of employees not joining the union.” The NLRB went on to describe TEU’s labor agreement, which consisted only of the closed shop provision, as “an oddity in the annals of labor relations” (1934:11). But the NLRB’s assessment of the situation was highly misleading, because the context of the representation election showed clearly that employees voluntarily selected the inside union for the sole purpose of establishing a closed shop. Auchmuty met with the TEU and recalled, “During this conference I was bluntly informed that unless the [Company] agreed to recognize the ‘closed shop’ that the Tamaqua Underwear Employees Union would strike” (Auchmuty, 1934).

The Tamaqua case concisely illustrates the conundrum of closed shops and company unions. Employees voted in favor of the company union by a large margin in an election supervised by the appropriate federal agency. If the employer had in fact attempted to influence the vote, the independent union likewise did so, and only the most disingenuous interpretation of employee behavior could attribute the outcome of the election solely to company domination. By depicting the TEU as a company union, however, the NLRB skirted the fundamental problems raised by the case: first, whether closed shops were lawful under the NIRA’s principle of freely chosen representation, and second, if they were, whether company unions were entitled to negotiate for them. Those two problems formed the backdrop for Wagner’s subsequent legislative efforts.
Company unions continued to dominate political events between early 1934 and the signing of the NLRA in July 1935. To avoid a costly and politically damaging strike at General Motors in March 1934, President Roosevelt negotiated a settlement between the company and the United Auto Workers union which allowed GM's company union to represent some employees, while the UAW represented others. Roosevelt's compromise of "proportional representation" contradicted the NLRB's decision in *Houde Engineering* holding that a union with majority support had a right to exclusive representation of all employees (Decisions of the National Labor Relations Board, 1934: 35-44). More importantly, Roosevelt's interpretation was flatly irreconcilable with the principle of a closed shop and undermined an important dimension of trade union power.

Despite Roosevelt's stance, Wagner carried on a vigorous political attack against the company unions through the different versions of his labor bill. The main thrust of Wagner's critique rested on the macroeconomic objective of the NLRA, which condemned company unions because they lacked sufficient bargaining power to effectively redistribute economic resources (e.g., Taussig, 1929). At the same time, however, Wagner could not logically defend his proposed legislation in terms of furthering workplace democracy while it prohibited the company unions as one of the vehicles for collective action. Sometimes, as Wagner well knew, workers genuinely preferred such organizations over the trade unions. In the end, Wagner equivocated by outlawing only "dominated" organizations and implicitly authorizing company unions selected in a secret ballot election (Hogler & Grenier, 1992: 65-69). But that compromise did not resolve the question of compulsory union membership, and because the NLB and NLRB failed to address that question, no body of precedent existed to guide the development of a federal policy.

The conflicting themes of individual choice, company unions, closed shops, and exclusive representation persisted as the core paradox of Wagner's proposed legislative scheme. Wagner sketched the dimensions of the problem in a nationally publicized speech introducing the first version of his bill in March 1934 (National Labor Relations Board, I, 1985: 15). Wagner began by stating that the "greatest obstacles to collective bargaining are employer-dominated unions," which eviscerated the notion of equal bargaining power between employers and employees. His bill, he continued, would forbid an employer from fostering or influencing any organization that dealt with wages, hours, and working conditions. Freedom from employer coercion, in Wagner's view, was an essential prerequisite of workers' freedom of choice about representation.

Wagner observed that another weakness of Section 7(a) was its failure to mandate exclusive bargaining representation, which he regarded as a necessary condition of union security and thus of union power. He noted that some interpretations of Section 7(a) authorized an employee to select alternative representation or to deal with the employer on an individual basis. The difficulty, Wagner argued, was that "Such an interpretation is detrimental to the practice and contrary to the theory of collective bargaining. It permits an unscrupulous employer to divide his employees against themselves by dealing with innumerable small groups or with individuals" (National Labor Relations Board, 1985, I: 25.) By necessary implication, any rule permitting proportional representation would preclude enforcement of a closed shop. Such a rule would also have deprived unions of rights they had before the NIRA came into effect.

In order to reconcile the ban on dominated organizations with unions' rights to negotiate for compulsory membership, Wagner explained that the pending bill neither compelled employers to agree to closed shops nor imposed a federal standard concerning their use (1985: 25):
The proposed legislation does not resolve the question of the closed-union shop. Such issues should be worked out by labor and industry in the course of experience. But the bill, if enacted, would make clear that Congress has not intended to foreclose the issue by illegalizing the closed-union shop or by placing any other obstacles in the way of making collective bargaining a working reality.

In short, Wagner envisioned a scheme of outside bargaining agents representing all employees covered by the agreement and having the capacity to contract for union membership as a condition of employment under the rights they enjoyed prior to Section 7(a). The scheme fit closely with the macroeconomic objectives of his bill. Wagner was not willing, however, to try to guarantee the right to a closed shop under federal law.

The Senate debates on the NLRA in early 1935 provide crucial insights into Wagner’s strategy of generally approving union security at the federal level but deferring to state law for its specific implementation. In a radio address on April 21, 1935, Wagner began by insisting that his bill would help to reduce unemployment, lead to a “sustained rise in purchasing power,” and minimize industrial discontent. Opponents of the bill, Wagner went on, had misrepresented its contents, especially with respect to the principle of free choice embodied in its provisions.

The malicious falsehood has been widely circulated that the measure was designed to force men into unions, although the text provides in simple English prose that workers shall be absolutely free to belong or to refrain from belonging to any organization. Practically everyone has heard the charge that the bill imposes a closed shop and a union monopoly upon the whole United States, when in fact it does absolutely nothing to change in any State the existing law in regard to the closed shop.

Wagner insisted that his legislation was intended only to make “the worker a free man” (National Labor Relations Board, II, 1985: 2284). His understanding of freedom had roots in an Anglo-American tradition that envisioned freedom not only as the absence of coercion, but also as a condition of communal support that provided the capacity for self-government (Schwartz, 1997; Skinner, 1998). Workers, on this view, created the means of their emancipation through the collective empowerment of union representation.

Moreover, when Wagner assured the public and his colleagues in Congress that no “existing law in regard to the closed shop” would be changed, he did not anticipate the phenomenon of right to work laws enacted by legislatures. Wagner’s reference to “existing law” was based on a body of common law principles governing unions’ rights to demand a closed shop. He had no expectation of a widespread prohibition of closed shops because the common law was moving in a direction favorable toward unions. As a leading treatise of the time summarized the controlling rules: “Though there have been recent decisions in which the closed or all-union shop has been held to be illegal and strikes to secure it have been enjoined, there is now apparent a tendency for most of the courts to accept a different view” (Millis & Montgomery, 1945: 563). Consequently, Wagner believed that state courts would continue to develop principles advantageous to unions in attaining closed shops, and he had no intention of interfering with the evident course of legal evolution.

A final contingent factor in the circumstances of the Wagner Act had to do with the peculiarities of American constitutional law. The U.S. Supreme Court had held in a number of cases prior to 1935 that states could not enact laws which interfered with “freedom of contract” as specifically related to labor markets. In the leading case of the time, the Kansas legislature attempted to outlaw “yellow dog” contracts by which employers required employees to agree as a condition of employment that they would not join a union. The U.S.
Supreme Court ruled that the Kansas legislation interfered with rights protected under the 5th and 14th amendments to the federal constitution. The terms “liberty” and “property” meant that parties were free to enter into labor contracts on any conditions they wished, and legislatures could not restrict that freedom (Coppage v. Kansas, 1915). Logically, if state legislative bodies lacked constitutional power to forbid agreements to refrain from membership as a condition of employment, they lacked the power to forbid agreements requiring membership as a condition of employment. When Wagner indicated a willingness to defer to states in the regulation of union security, he obviously — and for good reason — did not expect that “state law” would metastasize into statutory proscriptions of such agreements.

The Creation and Consequences of Right to Work Laws

In May 1937, the U.S. Supreme Court upheld the power of the federal government to regulate labor relations as a matter of interstate commerce (National Labor Relations Board v. Jones & Laughlin Steel Co., 1937). The Court also ruled that rights of liberty and property were not unduly burdened by protecting workers’ concerted activity because the NLRA did not impede any legitimate decisions about hiring and firing employees. After the Jones & Laughlin decision, antiunion factions stepped up their efforts to change the NLRA. One historical analysis noted (Millis & Brown, 1950: 332): “Scarcely had the ink dried on the President's signature establishing the National Labor Relations Act as part of our national policy when bills to repeal or amend the Act began pouring into the congressional mill, and some 230 bills were introduced during the decade 1936-46.” Developments in the states provided the political momentum for the changes in the federal law that came to fruition in 1947, including restrictions on compulsory union membership.

During World War II, several states enacted their own labor laws in reaction to labor’s growing power and influence. Those laws, such as Colorado’s Labor Peace Act in 1943, typically attempted to limit or curtail the rights granted to unions under the NLRA and were expressly antiunion in content (Seligson & Bardwell, 1961; Hogler & Shulman, 1999). As part of the general movement, five states passed right to work laws between 1944 and 1946, and another seven joined that list by 1947 (Gall, 1988: 18-49). The Supreme Court’s new constitutional views permitted greater latitude for employment regulation, and the Court specifically upheld the concept of statutory right to work (Lincoln Federal Labor Union v. Northwestern Iron & Metal Co., 1949). Finally, Section 14(b) of Taft-Hartley by its terms accomplished the goal of dislodging union security from any federal protection under the NLRA.

As the Taft-Hartley bill moved through Congress, legislators made clear that the new law was designed to promote individual rights of workers regardless of any perceived need of unions to maintain stable and powerful organizations for economic purposes. The ideology of “liberty” as the absence of restriction on individual action supplanted Wagner’s communitarian vision of freedom to participate made immanent through collective solidarity. In the House of Representatives Report on H.R. 3020, the committee castigated unions as oppressive, illegitimate organizations that exercised unwarranted power over labor. The American workingman, the report claimed, “has been cajoled, coerced, intimidated, and on many occasions beaten up, in the name of the splendid aims set forth in section 1 of the National Labor Relations Act. His whole economic life has been subject to the complete domination and control of unregulated monopolists.” As a result, “his mind, his soul, and his very life have been subject to a tyranny more despotic than one could think possible in a free country” (Committee on Labor and Public Welfare, 1974: 295).

Speaking in the Senate in support of Section 14(b), Senator Robert Taft asserted the intent of the Wagner Act itself was contrary to the notion of a closed shop. Taft reiterated that
the bill enacted in 1935 “did nothing to facilitate closed-shop agreements or to make them legal in any State where they may be illegal.” The Wagner Act proviso dealing with closed shops, according to Taft, simply meant that the NLRA did not abolish closed shops but made clear that they could be prohibited under controlling state law. Thus, Taft said, “It was the law of the Senate bill; and in putting in [Section 14(b)] we in no way change the [NLRA] as passed by the Senate of the United States” (Committee on Labor and Public Welfare, 1974: 1597). Taft’s revisionist affirmation of individual rights over collective welfare not only ignored the economic agenda of the Wagner Act, but it also provoked a course of “individual bargaining and employer resistance to unionization and collective bargaining” (Gross, 1995: 272).

In keeping with the antimonopoly thrust of Taft-Hartley, right to work laws had far-reaching impact on the development of unionism during the postwar period. The Congress of Industrial Organizations (CIO) launched “Operation Dixie” in 1946 to unionize the southern textile industry and extend a labor presence across regional boundaries. That effort failed for a number of reasons having to do with Southern culture and politics, and its failure had deleterious effects on labor which remain evident today (Lichtenstein, 2002: 103-114). To begin with, it signaled “the end of the dramatic union growth that started in 1933 and the beginning of the steady decline of union density that continues through the 1990s” (Goldfield, 1992: 167). The conservative political agenda was manifested in the enactment of right to work laws in Arkansas, Florida, Georgia, North Carolina, Tennessee, Texas, and Virginia between 1943 and 1947 (Gall, 1989: 230-31). Further, the collapse of Operation Dixie left intact a powerful political coalition and low-wage enclave generally opposed to unions and collective bargaining procedures, an important consequence of which was the continued enervation of labor’s political and economic power (Cummings, 1998).

Management historians often note the “exceptionalist” nature of the American labor movement (Jacoby, 1991). That term typically describes labor’s failure to establish a national system of social welfare with mandated levels of compensation and benefits in employment, as is the case in many industrialized nations. Instead, American unions exist in a low-density, decentralized environment where labor costs are open for negotiation and few unions have the power to “take wages out of competition” in a given industry (Rogers, 1990). Managers thus have powerful financial incentives to resist unionization, and organizing becomes more costly to unions and workers alike. Right to work laws contribute to the process of union opposition.

Since Taft-Hartley, 22 states have enacted laws prohibiting compulsory membership, 27 states permit union security clauses, and Colorado has a “modified” right to work law which requires members of a bargaining unit to approve union security in a state election (Hogler & Shulman, 1999: 872-73). Oklahoma was the most recent state to adopt right to work, which it did by a ballot initiative in September 2001 (Hogler & LaJeunesse, 2001). The outcomes of right to work laws have been studied extensively, with increasingly clear conclusions. For example, a survey of the industrial relations literature (Moore, 1998: 463) found that passage of a right to work law “significantly reduces unions’ organizing efforts and successes in NLRB certification elections for at least a decade. These negative effects also are consistent with a long-run decline in unionization of 5 to 8 percent.” Such laws also increase the incidence of free riding between 6-10 percent, thereby depriving unions of resources to effectively represent workers and undertake further organizing activities.

Another study examined the effect of adoption of a right to work law in Louisiana on shareholder wealth (Abraham & Voos, 2000). Using an event study methodology, the authors found that investors anticipated increased profits from firms in states adopting a right to work law; the magnitude of the effect was about 2-4 percent. Their conclusion is that such legislation positively affects future profits because it negatively affects union power. Supporting that conclusion, an analysis of 1997 Census Bureau data showed that per capita income and union density were negatively correlated with right to work laws at statistically
significant levels (Hogler & Shulman, 1999: 928). Evidence thus suggests that right to work laws generate not only lower incomes, but they also tend to shift wealth from labor to capital and frustrate the Wagner Act’s aim of reducing economic inequality. A report on economic conditions in the U.S. concludes: “Significant institutional shifts, such as a severe drop in the value of the minimum wage and deunionization, can explain one-third of the growing wage inequality among prime-age workers, with the minimum wage primarily affecting low-wage women and weaker unions having the greatest impact on blue-collar, middle-wage men” (Mishel, Bernstein & Schmitt, 1999: 120).

More recent econometric analysis provides additional insights about right to work laws and their correlation with other important dimensions of employment. Hogler, Shulman and Weiler (2004) examined the relations between right to work legislation, union density, employer anti-unionism, and state levels of social capital. They found that “even after controlling for the social, political, and labor relations contexts for unionization, RTW laws are significantly related to lower union density” by 8.8 percentage points (p. 96). Regression analysis showed a number of interactions between unionization and socio-economic factors. Using Putnam’s (2000) social capital index for states, the authors found that social capital within a state fell as the state’s opposition to unions rose (as measured by a ratio of unfair labor practices to representation petitions). Income inequality also negatively affected social capital, suggesting that stratification reduces perceptions of common social identity. Taken together, these factors indicate a toxic configuration of forces aligned against labor. Right to work laws are symptomatic of sustained opposition to workers’ organizations manifested on a political, social, and economic level.

To take an example drawn from the 2004 U.S. elections, the National Right to Work Committee (2004) (the “NRTWC”) stated in its newsletter that voters in right to work states had given Republicans the majority of the Electoral College support they received. The NRTWC declared, “These states alone supplied the Bush- Cheney ticket with 211 Electoral Votes, or 78% of the 270 needed to win a presidential race.” An anticipated political reward from the Bush administration comes in the form of a Congressional vote on a federal bill which was introduced in February 2005 into the House of Representatives as H.R. 500, the National Right to Work Act. The president of the NRTWC (2005) “vowed that the 2.2 million members of the National Right to Work Committee will soon launch an intense lobbying campaign to secure recorded votes on H.R.500 and parallel Senate legislation.” Should the bill be adopted as a new labor policy, the AFL-CIO will shrink to a marginalized special interest group of utter inconsequence to politicians — and workers.

Conclusion

The Wagner Act emerged during the Great Depression as a symbol of hope for the American worker. It promised in 1935 to encourage the “practice and procedure of collective bargaining” and to guarantee workers “full freedom of association” toward the end of dealing on a footing of equality with their employers. Equality of power was meant to redistribute wealth fairly through all segments of society. That policy remains as part of the law today, but its promises have become empty rhetoric. In the two decades immediately following World War II, inequality remained at historically low levels and then began a reversal continuing into the twenty-first century. Since the 1970s, income in the United States has shifted upward on a trajectory still gaining momentum. In 1980, the top one percent of families earned 9.3 percent of income. Two decades later, that share had grown by 179 percent, while the share of the bottom 90 percent increased by only eight percent (Mishel, 2005).

In April 1947, Senator Robert Wagner (Committee on Labor and Public Welfare, 1974: 998) submitted a written statement addressing Taft-Hartley into the Congressional Record. Wagner presciently noted that the Taft-Hartley Act constituted a “grand assault” on
labor. In his words: “This bill would turn the clock back in labor relations, not to conditions that existed before the National Labor Relations Act was adopted, but in many instances to those that obtained more than a hundred years ago when labor had to fight for its right to organize.” Wagner went on to point out some of the most extreme defects of the law, characterizing it as “a confused hodgepodge of wholesale rewriting of our labor law” that would invite “another decade of extensive, costly, and exasperating court litigation to determine the full meaning and impact of the legislation.” He did not direct any specific attack against Section 14(b), for the simple reason that it did not exist at the time of Wagner’s critique.

The Senate version of the bill, S.1126, contained no provision exempting states from federal jurisdiction over union security. As passed in the House, H.R. 3020 had a number of restrictions on union security, such as individual authorizations and secret ballot elections to approve compulsory membership; those provisions derived directly from the state legislation that preceded Taft-Hartley (Hogler & Shulman, 1999). Section 14(b), in its present form, first appeared in the conference draft of June 3, 1947. The House Report offered the following rationale for the change (Committee on Labor and Public Welfare, 1974: 564):

Many States have enacted laws or adopted constitutional provisions to make all forms of compulsory unionism in those States illegal. It was never the intention of the National Labor Relations Act, as is disclosed by the legislative history of that act, to preempt the field in this regard so as to deprive the States of their powers to prevent compulsory unionism.

Had Wagner been afforded an opportunity to comment on Section 14(b), and the misleading justification repeatedly put forward by its proponents, he might well have described that change in the law as the greatest abomination of the entire statute. Nearly sixty years on, the consequences of right to work are only too evident.
REFERENCES


Coppage v. Kansas (1915), 236 U.S. 1.


