

MAKING UNIONIZATION THE DEFAULT POSITION
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I. Introduction

- a. My new book, *In the Name of Liberty: The Argument for Universal Unionization*, contains three essays
 - i. The book's first essay shows that even in a libertarian utopia, unions would naturally arise as a result of free market transactions with which no one has a right to interfere
 - ii. The second essay shows that in a real-world liberal capitalist state, private sector unions are a necessary basic institution, and therefore must be part of every firm in order to ensure background justice.
 - iii. And the final essay looks at public sector unionization, and shows that our attitude toward unionization there should not be any less accommodating
- b. Taken together, the three essays show that as matter of liberty, what anti-union folks would call compulsory unionization, or what I call universal unionization, is required as matter of background justice in every liberal capitalist society
 - i. While I obviously can't give a summary of arguments in the entire book here today, I am going to try to summarize the second essay, that is, why we should consider unions a basic institution of society
 - ii. The book is published by Cambridge University Press, and is available as part of the Cambridge Core, which accessible electronically through most university library websites
 - iii. It is also now out in paperback, and so is available for a reasonable price
 - iv. But I am also happy to send a PDF of the published essay of even the entire book to anyone who wants one (but don't post it anywhere!) – just send me an email
- c. A couple of things I want to note
 - i. The book talks about unionization throughout the liberal capitalist world, but it does pay special attention to the state of unionization in the US, and I am going to focus my remarks today exclusively on the US
 - ii. I also want to note that I am going to be addressing this question as a political philosopher
 1. political philosophy has a lot to say about the question of unionization
 2. or at least it should, because unionization is one of the most important tools in the fight to establish distributive justice, which is one of the central issues within political philosophy

3. unfortunately, political philosophers have for far too long shied away from this question, ceding it to economists and labor-management relations specialists
4. this is a problem, because neither economists nor labor management relations specialists have had any training in the history of political philosophy or the how to use the various tools that political philosophers have developed over centuries to deal with questions of political morality, of which unionization is surely one
5. the insights that political philosophy gives us on the issue of unionization have accordingly been missed by the great mass of theorists who have been writing about the issue
6. So it is about time we did something to correct that

II. The State of Unionization

- a. I'm sure I don't have to tell anyone in this audience how grim things look for unionization today, especially in the US
 - i. In the United States, after reaching a peak in [1953](#) of 33.8 percent for salaried workers (27.7 percent for all employed workers), unionization hit [10.3 percent](#) for salaried workers in 2019 (and slightly less for all employed workers), its lowest level in [over 75 years](#).
 - ii. In part this decline comes from the success unions have had in establishing better working conditions and wages for all.
 1. Joining a union simply seems less urgent now than it used to.
 - iii. In part this decline is due to changes in the relevant economies, where large numbers of unionized jobs in heavy manufacturing have been moved to less-unionized countries, and the jobs that remain are in industries that are more difficult to organize.
 - iv. Local outsourcing, where what used to be high-paying unionized jobs are moved to smaller, exploitive, non-unionized contractors, has also played a role.
 - v. As have technological advances in automation, which have made many well-paying unionized jobs obsolete.
- b. But this decline in union membership is also the result of decades of relentless [attacks](#) by the political right against the very idea of unionization—attacks that have been steadily [increasing](#), in both frequency and vigor, especially in the US.
- c. Joining a union has always been presented as part of the right of free association.
 - i. That is, workers argue they have a right to unionize, employers argue they do not.
 - ii. But even when employers recognize the right of employees to unionize, they tirelessly place obstacles in front of those who would like to do so.
 - iii. They retaliate against union organizers, conduct ruthless anti-union campaigns, and do whatever they can to starve unions of the funds they need to operate.

- d. Union supporters respond by emphasizing that unionization promotes the common good—that is they make a consequentialist argument for unionization
 - i. They argue that unions raise wages, improve working conditions, reduce income inequality, suppress invidious discrimination, and so on
 - 1. Anti-union forces deny these claims, but these denials fall against the overwhelming weight of empirical evidence
 - ii. The more successful anti-union argument is that *compulsory* unionization is a violation of workers’ rights, just like a prohibition on voluntary unionization would be
 - 1. It is a violation, they claim, because the right to liberty gives workers the option to refuse to join a union if they don’t want to
 - iii. And this is a powerful argument, because almost every political philosopher agrees that arguments from right should win out over arguments from consequences
 - 1. there is wide agreement that even if unionization was to have good effects, rights cannot be violated for the common good, so even if the union folks were right about their common good argument, unionization loses out
 - 2. the union arsenal of arguments is accordingly being outmatched from the very start
- e. But the claim that liberty protects workers *against* compulsory unionization is perverse
 - i. Workers should not have to go through what amounts to a political campaign and vote to unionize before an employer is required to recognize the union and deal with it
 - ii. Unions, I argue, are a basic institution of a just society
 - iii. And as a basic institution, their existence is not optional
 - 1. They are subject to regulation just like any other basic institution,
 - 2. But except for certain small family-owned firms, every firm must have a union, just like every community must have a government, if it is going to be in a position to be just
 - iv. At the very least, unionization should become the default position—that is, all shops should be unionized unless a majority of their employees vote to de-unionize after an initial period of unionization and then periodically vote to remain not unionized rather than having to affirmatively vote to unionize
 - 1. In other words, making the unionization the default position would be an interim, compromise position between what justice requires and what the law now provides
 - 2. Rather than needing to be voted in, shops would begin unionized but could be voted down and by a majority of employees
- f. Note this does not mean that firms would all become what are called “closed shops.”

- i. These are businesses where only existing members of the union can be hired
 - ii. Instead, firms would be what are called “union shops”
 - iii. Hiring would proceed as it does now, and workers would *not* need to be a member of the union to get a job
 - iv. Once hired however, the worker would automatically become a member of the relevant union
- g. This may sound like a radical position, but it’s not, and here’s why
 - i. Remember, capitalist societies reject the idea of central economic planning
 - ii. Instead, they rely on the price mechanism of the free market to ensure that the economy allocates resources, including human resources, efficiently
 - iii. But the free market is not in operation within the firm
 - 1. Within the firm, resources are deployed, like in a socialist economy as a whole, by centralized command
 - 2. Every firm has a strict hierarchical structure
 - 3. Notwithstanding the fact that shareholders may have some say in the way the firm is managed (although only huge shareholders have any real influence and others simply have to choose to go along or sell their stock and move on), the firm functions like a mini socialist dictatorship.
 - iv. Note that this isn’t just me saying this—this is the view of Ronald Coase, the Nobel-prize winning conservative economist and inventor of the famed Coase Theorem, and I think it is fair to say that this view of the firm as not abiding by free market rules internally is not controversial today at all
 - 1. The difference between a capitalist and a socialist society is accordingly that that in a socialist society, the guiding principle for how the firm should be run is the common good.
 - 2. In a capitalist society, in contrast, the guiding principle is the good of that particular individual firm, meaning, supposedly, the maximization of its profit.
- h. So what?
 - i. Well, this seems a little odd, for how can you base an entire system on what you claim is a free market and still endorse the existence of firms?
 - ii. The justification offered for allowing firms to form in a capitalist society despite the internal central planning this entails is that doing so saves a lot of what economists call “transaction costs.”
 - 1. These are expenses that would otherwise have to be incurred negotiating each individual business venture with all the relevant participants, thereby allocating resources internally as well as externally using the price mechanism
 - 2. That would require that no one could be what we call an employee—everyone would be an independent contractor and

- could accept or refuse any assignment and haggle over the price every time something in a particular business venture needed to get done
3. This, in turn, would require countless time-consuming individual sets of negotiations and give the organizer of the business venture only limited ability to plan for how a product would be designed, built, marketed, serviced, and delivered over time
- iii. By adopting a strict hierarchical structure, we eliminate all the cost and delays of engaging in these repeated negotiations, and the uncertainty of not knowing what human resources are available in the medium to long term and at what cost
 1. We therefore have more resources to dedicate to actually producing things
 2. This makes them cheaper, and therefore more accessible to larger numbers of people—It raises the general standard of living
 - i. While some transaction costs to be saved from recognizing the firm as the basic institution, however, there are “social costs” incurred by doing so as well
 - i. These are costs that arise from the production process but are typically more indirect, intangible, and difficult to monetize
 - ii. For example, few relationships are as fraught with opportunities for abuse, exploitation, and mental, physical, and economic domination as the employer-employee relationship
 - iii. In other words, being an employee subjects one to a serious threat to one’s liberty
 - iv. Just ask any employee what he fears most—it is the possibility that his manager will, for one entirely arbitrary reason or another, fire him, or do something to make his working life more physically or mentally onerous, less financially rewarding, and in any event, more psychologically distressing
 - j. So it is ironic indeed that those on the political right claim that compulsory (what I call universal) unionization infringes on workers’ liberty
 - i. This claim is similar to those who are protesting lockdown and social distancing measures and effectively claiming they have the liberty to infect themselves and others if they want to
 - ii. But this is not the kind of liberty that a liberal capitalist democracy was created to protect
 - k. Insisting that all employees join a union is an infringement of what we philosopher’s call “negative” liberty—that is, human interference with one’s ability to do something one would otherwise have the capacity to do
 - i. But every liberal capitalist democracy interferes with everyone’s negative liberty in a massive number of ways every day

- ii. If I could beat you up, steal your stuff, defraud you, and enslave or even kill you if I wanted, I would have more negative liberty, and you would have more if you could do these things to me
- iii. But this would make social life impossible
- iv. The motto, after all, is “Live Free or Die,” not “Live Free *and* Die or Kill Others”
- l. Everyone who is thinking clearly, then, realizes that the mere interference with someone’s negative liberty does not amount to a violation of right, something you have an absolute power to prevent in a free society
 - i. Negative liberty is not a political theory—it is not a theory about what ends we can pursue and how to set priorities among competing ends
 - ii. It is an analytical theory—it tells us that an interference with our capacity to act by other human agents is different than interference by things or animals or the laws of physics, and claims that when there is such interference, this needs to be justified
 - iii. It does not tell us what counts as a justification or how strong that justification has to be
 - iv. Some other theory, a political theory, one that does describe the ends we may pursue free from interference, is required to do that
- m. There are a number of theories that do this, but the one that is most relevant is what is now widely called “republican” liberty
 - i. This theory is derived from how philosophers conceived of liberty back in the ancient republics of Greece and Rome.
 - ii. Their thinking was that someone is not free if they are subject to the arbitrary will another
 - iii. Being a slave is obviously the most extreme example of a lack of republican liberty, given the requirement of absolute subjugation by the slave to the will of the master
 - iv. But absolute subjugation is not required
 - v. Even a single instance of subjugation to the arbitrary will of another is a violation of one’s republican liberty
- n. Given the degree to which workers have little autonomy and are at the mercy of arbitrary and capricious decisions by their employer, republican liberty is obviously at risk when it comes to the employer-employee relationship
 - i. For without a union, employees are subject to all kinds of arbitrary treatment
 - 1. With a union, employees have some protection against this
 - ii. If the firm is going to continue to be the basic institution of our economy—and I am not suggesting that this should change—then unionization is a necessary countermeasure to the threat to republican liberty that the firm presents
 - 1. Rather than being an infringement of the kind of liberty we actually care about when we talk about freedom in a liberal capitalist democracy, compulsory unionization is a protector of it

- III. The basic structure
 - a. To defend this conclusion, let's go back to some fundamental aspects of how every society must be organized
 - i. Every society must have a basic structure.
 - 1. It must decide what kind of economic, legal, political, and educational system it wants to employ.
 - ii. Once it makes those choices, it must then populate these systems with basic institutions
 - 1. These are the institutions which operationalize the basic structure—they set the stage for ordinary social and political life to take place
 - 2. They cannot guarantee justice—a great deal of post-institutional regulation is required to do that
 - 3. But they can be designed so as to maximize the chances that justice can be achieved
 - 4. That is what creating “background justice” means
 - b. Once we have embraced capitalism as our economic system, the primary form of business organization must clearly be the firm
 - i. It is therefore a basic institution
 - ii. But because the firm also puts the republican liberty of workers at risk, we cannot rely on post-institutional regulation alone to address this risk
 - 1. History shows us that without the structural protections that union provide, workers are too often subject to exploitation and abuse and arbitrary treatment even when there are laws prohibiting such misconduct.
 - iii. Given the expense, delay, and risk of seeking recourse in the courts, the deterrent effect of these post-institutional legal prohibitions is not enough.
 - iv. A just society must do more to discourage the firm from using its power to threaten the freedom of its employees
 - v. This means we need to recognize that unions are as much a basic institution as the firm itself and make unionization universal, or at least the default position
 - c. There is already long-standing precedent for this in Germany and other northern European nations
 - i. There, as part of what these nations call “co-determination,” unionization has been a prevalent fixture in the economy for almost the entire post-war period
 - ii. And while the unionization rate is dropping even there, the rate remains high compared to other liberal capitalist countries
 - iii. In these countries, unions even get seats on many corporate boards
 - iv. Given that the economic performance of these countries has been quite impressive, the argument that increased unionization in our part of the liberal capitalist world would retard economic activity is just not credible

- d. Nor does endorsing universal unionization mean inviting widespread economic disruption
 - i. Workers would not constantly be on strike and firms would not be forced to pay salaries so high and provide benefits so great that businesses would quickly fail
 - ii. Remember, unions have an incentive to be realistic in their demands. If their demands are excessive, the firm will go out of business and all the workers the union represents will lose their jobs
 - iii. There is a natural ceiling on what any rational union will ask for
- e. Employers, in contrast, have no bottom beneath which they will not sink in their attempt to get more work for less wages and benefits
 - i. For the more they can exploit their workers, the more profit they can make—at least this is how many firms seem to act
 - ii. As a practical matter, the threat to liberty that workers face from employers is far greater than any threat to liberty created by compulsory unionization
- f. Note, however, that when I speak of universal unionization, I am speaking only of the *core* functions of unions
 - i. These are: the right to collectively bargain for workers with their employer; to monitor employer compliance with existing rules and regulations and the terms of the collective bargaining agreement; to represent individual workers in disciplinary actions brought against them by their employer; and to lobby government for the enactment of laws, rules, and regulations that promote their workers' interests
 - ii. These core functions do not include the right to strike
 - iii. Rather than being a core function, this is something that can be bargained for or relinquished in exchange for other benefits
- g. Note also that I have not addressed whether the same rules regarding universal unionization in the private sector should also apply to the public sector, especially to public employees who provide essential services
 - i. I happen to think the same rules should apply, but I don't have time here to make an argument for this
- h. Finally, note that embracing universal unionization would also not resolve all the practical questions about how this would be implemented and what unions could and could not do in the exercise of their permitted functions
 - i. All sorts of rules about how unions could go about their business, how unions would compete to represent the employees of particular firms, and so on, would be required
 - ii. But again, these are post-institutional rules
 - iii. All basic institutions are subject to such rules, and as long as these rules do not undermine any of the union's core functions, these rules can be determined according to the normal political process or by bargaining between the union and the employer
 - iv. Only if we recognize that unions are a basic institution, however, is unionization something that cannot be taken from workers without

depriving them of the very kind of liberty that liberal capitalist democracy was created to ensure

- v. Only then can workers reasonably consider themselves in a position to be “free”

IV. Free Speech and Free Association

- a. But what about the rights of free speech and free association—wouldn’t universal unionization violate these?

- i. The first thing to note here is that these are derivative rights—that is, they are derived from our general concept of liberty, and are not independent of it
- ii. They are merely applications of our general concept of liberty to specific kinds of activities
- iii. As such, they cannot be broader than the fundamental notion of liberty from which they are derived
- iv. So if our consideration of general liberty supports recognizing universal unionization, that conclusion cannot be reversed by considering the role of special liberties like free speech and freedom of association

- b. Claims based on these particular notions, however, are popular, and their derivative nature has not stopped anyone from raising them successfully to attack unionization through the courts

- i. So let’s consider them anyway
- ii. The free speech argument is an attack on the ability of unions to collect dues in order to finance their operations
- iii. Unions have to represent all employees, even those who are not members, so workers who want to “free ride” have an incentive to refuse to join, for they get the same services whether they join or not
- iv. To prevent this, most states have rules that require non-members to pay “agency fees”—basically the same dues as everyone else less a small amount—to cover the cost of representing them
- v. The free speech argument against this is that the involuntary payment of such a fee is a form of compelled speech, and therefore a violation of the liberty of freedom of expression

- c. But this is nonsense

- i. Free speech may be infringed when we prevent someone from spending money to finance a particular point of view, as the US Supreme Court controversially held decades ago
- ii. But this does not suggest, despite what the Court has now also held, that the compelled payment of an agency fee is an infringement of free speech
 - 1. In the former case, the money is being used to say something the contributor wants said, so precluding this is preventing him from publicizing his views
 - 2. But in the latter case, when someone is being compelled to pay a fee, what exactly is that person supposed to have been compelled into saying?

3. The communicative significance of a compelled payment is ambiguous, at best
- iii. Indeed, the fact that payment has to be compelled makes the message it expresses more likely to be that one is opposed to whatever the payment is used to fund
 1. We would certainly never assume that taxpayers support everything a government does just because they pay for it
- iv. If an involuntary payment were compelled speech, taxation and every fee the government imposes would be impermissible
- d. When it comes to freedom of association, the problem is this: freedom of association implies a liberty to associate with those you want to; it does not imply a right not to associate with those you don't
 - i. One cannot just declare oneself not to be American or Texan or an oboist or a consumer if one otherwise meets the relevant criteria for being included in these groups
 - ii. You can sever your ties if you want, and this may remove you from that grouping, but as long as the ties remain you remain a member
 - iii. A person need not take a job if they do not want one, but if they voluntarily become an employee, they automatically become a member of the union
 - iv. No right to free association precludes that
- V. But isn't this all just pointless utopianism—there is no realistic possibility that unionization will be made universal, so why argue for it?
 - a. But arguing to for universal unionization is not a waste of time even if universal unionization is not realistically achievable
 - i. By pushing the objective of the union movement toward universal unionization, we make it much more likely that some progress can be made toward making the US more pro-union than it currently is
 - ii. And we might actually be able to make unionization the default position in some fashion, even though that goal is probably a long way away
 - b. After all, there was a time when the right was trying to ban unionization altogether
 - i. And while they have not succeeded in doing this so far, they have gotten a lot closer than they were, partly because what they have accomplished now looks like a compromise instead of total victory
 - c. The left needs to use this tactic too
 - i. by advocating universal unionization, or even merely making unionization the default position, we can help make the options before the public more balanced, instead of slanted toward the anti-union extreme
 - ii. this makes it more likely that we will actually make some progress toward a more just society even before either of these goals can be completely achieved