

The right to contract

Eric Blair

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Depending on how you look at it, collective bargaining is either the free market freely being free, or the coercive denial of rights.

On the freedom side, firms can hire whomever they want to and sign whatever contracts they want to. If the firm's owners sign a contract in which the firm agrees to restrict its hiring abilities in exchange for a better pool of new hires, more loyalty from current employees, or two dozen free donuts, then the firm is free to do so. The stylized story goes like this: 51% of the employees at a firm want to enter into an exclusive contract with the firm they work for. The firm chooses to agree. The other 49% of the workers now face a new situation, wherein they may either start paying union dues or get fired as the firm complies with the contract it entered into.

On the denial of freedoms side, a series of free choices by most of the involved parties led to what looks a lot like coercion to the 49% remaining, who now have to pay union dues to the union they voted against. If the union signs a contract with the firm, the individuals can not write side-contracts with the firm—in fact, people who aren't part of the union and didn't agree to anything can't sign side-contracts with the firm either. In this sense, all of the workers of the world are bound by the contract signed by the union and the firm.

Because of this, there are Right-to-work laws in many states which make it illegal for a firm to sign a contract that it will hire exclusively from the union. Here is a list of such states. Sample text (from the NC law):

Any agreement or combination between any employer and any labor union or labor organization whereby persons not members of such union or organization shall be denied the right to work for said employer, or whereby such membership is made a condition of employment or continuation of employment by such employer, or whereby any such union or organization acquires an employment monopoly in any enterprise, is hereby declared to be against the public policy and an illegal combination or conspiracy in restraint of trade or commerce in the State of North Carolina.

So the law is worded in terms of the coercive denial of the right to work. However, the freedom to be free story applies equally well to the contracts described by this paragraph. Nothing here makes it unlawful for a firm to

decide to gets its entire supply of bolts from a single supplier—such vertical-integration contracts happen all the time. But if a firm chooses to enter into an exclusive-supplier arrangement for its labor, then that is a conspiracy in restraint of trade.

Let's say that the local KKK wants to contract with the company to run the company bar-be-que. No problem! Let's say that a private temp agency offers a discount to the company if it agrees to hire all of its temps from the agency. No problem! Let's say that any organization of any sort wants to enter into a contract with the firm which compels the firm to restrict its behavior in some manner. No problem—as long as it's not a trade union!

The laws above are a state-by-state issue, but here is a list of types of workers who can't unionize throughout the U.S.A.

The mast

In traditional economics, with an infinite number of agents all trading on the free market, it's generally difficult to come up with situations where tying oneself to the mast is beneficial—constraints are just generally bad. But in situations with only a few agents—the domain of game theory—they come up all the time. Notably, in the last episode, we had two people bargaining to split the surplus from a trade; the one who could most credibly say 'If you don't give me my way, I will destroy all surplus from this trade for both you and me' was the one who got more surplus from the trade. In equilibrium, the threat of getting nothing is never realized, but the threat has a real effect on the division of the surplus.

The first level of tying to the mast is that the bargaining entity needs to be able to credibly walk away. Employers always have the ability to walk away from an employment contract, because there are always other employees at the door, especially in the low-to-moderate skill jobs for which unions are prevalent. Similarly, labor as a whole must be able to threaten to walk away from the deal in order to get any surplus from the trade. [Why so few unions for PhDs in Gaelic literature? Because there are sufficiently few that if one walks away from a job offer, the imaginary position for a Gaelic literature professional will go unfilled; no need for a union.]

Which brings us to the second mast labor must tie itself to, aka the collective action problem. The firm can easily bind itself to not hire, because it is not a democracy: if 95% of the firm loves the potential employee but the head of HR hates him, then that guy's not getting hired. Meanwhile, the union is an amalgamation of individual laborers, and therefore has no strict hierarchy; instead, it's vehemently a democracy.

Governance is coercive

The United States would not work if people could opt out of its laws—even though everybody wants to. It'd be great if everybody had to pay taxes but me, and everybody had to wear pants in public but me. But governance is a bundle: if I want the protection of the police and the benefits from other

people's taxes, I've got to pay my own taxes and wear the darn pants. To the political scientist, volunteering to be restricted is the most natural thing in the world—*Constitutional Political Economy* has an illustration of Ulysses tied to the mast on the cover of every issue. He's even wearing pants.

[Since it makes an apropos aside, let me spell out what is probably obvious to most of you: by restricting the ability of firms to contract with unions, it is the unions which lose out. Because all firms in a state are bound by law to not deal with unions, none can cheat and allow a union into their shop—the law ties them to the no-union mast. Meanwhile, unions have one and only one contract which which to work: exclusive hiring agreements. Binding them to not enter into those contracts overcomes no collective action problem on the labor side; it just makes it impossible for unions to function.]

All this holds for the labor unions too. They will bargain better than an individual will, but only if every worker—including potential employees—are tied to the mast. Meanwhile, everybody will want to get out of paying their dues, and if there's a conflict, some number of members or non-members will want to selectively ignore the decisions of the organization.

Which brings us back to the conflict at the head of this essay. A market is built upon free decisions by all parties, but a representative governing body is built upon its members (voluntarily) restricting themselves. So how do we reconcile the inherent conflict between democracy and a free market?

Sorry, this essay won't give you an answer, but I will say that the answer is somewhere between the two extremes where the union has complete control over its workers and where the union is unable to set rules for the people it governs. Some unions have a history of corruption, fraud, and stacked elections—which I presume were the genesis of some pretty detailed rules from the Natl Labor Relations Board regarding union elections; e.g., "The color of the ballot must not be disclosed to the parties prior to the opening of the polls." With a corrupt leadership, freedom from the whims of the governing body is clearly desirable. But a government which lets people opt out of taxes that they don't like is not long for this world, and an army which lets its soldiers opt out from the uncomfortable stuff will not win any battles.

Most laws seems to strike the balance pretty well. For example, in most situations, a member who disagrees with union politics may refuse to pay that portion of dues which would be spent on campaigning and lobbying. However, the right-to-work laws trample any attempts at subtlety, insisting that the free market is about freedom, darn it, and therefore democratically governed bodies—which by definition impose rules for people to follow—may not operate in the market. The irony is that they eliminate these restrictive bodies by restricting the right of firms to enter into contracts they would otherwise choose to enter into.