REMOVING LABOR'S LEGITIMACY: AMERICAN LABOR'S EXPERIENCE WITH RIGHT-TO-WORK, AND THE THREAT THAT RIGHT-TO-WORK REPRESENTS FOR CANADIAN LABOR

A THESIS
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ABSTRACT

Right-to-Work laws represent a serious threat to organized labor's legitimacy. In this thesis I will discuss the impact that Right-to-Work laws have had on American labor and the potential impact of these laws on Canadian labor. The hypothesis of this thesis is that Right-to-Work has been detrimental for American labor and could be more detrimental for Canadian labor. I will expand upon the purpose of the thesis in the introduction. I will examine the historical development of Right-to-Work and the impact that it has had on the states that have implemented it, and on their labor movements. I will also examine the national impact of Right-to-Work. The thesis will continue with a discussion of the implications of Right-to-Work laws for Canadian labor. I will conclude with a summation of the various arguments that have been made in the preceding chapters, and I will confirm the initial hypothesis of the thesis.

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INTRODUCTION

Organized labor is an essential part of society. Unions have worked to advance the concerns not only of their own members, but of all working people. Labor has worked to acquire greater social legitimacy so that it may better represent workers. Unions pursue a wide-ranging agenda and they must be able to finance their operations. Legislative impediments such as Right-to-Work laws remove labor's legitimacy and impede its ability to collect dues, and otherwise finance its operations.

Right-to-Work laws prohibit unions from deducting membership dues from workers who are covered by a collective agreement. These laws prohibit what are commonly known as union or agency shops. Workers in a union or agency shop are required to pay dues or make a contribution to the union equal to the amount that they would otherwise pay in dues. Workers in a Right-to-Work jurisdiction are still entitled to union representation under law even though they may not pay dues. Right-to-Work is a phenomenon that is currently unique to the United States, but it may also be introduced in Canada. The purpose of this thesis is to examine the American experience with Right-to-Work in order to determine the effect that these laws may have on Canadian labor if they were enacted. The basic hypothesis of this thesis is that Right-to-Work has been extremely detrimental for American unions and could be more detrimental for Canadian unions. I will explain why has Right-to-Work been negative for American labor and why it would be more negative for Canadian labor.

Right-to-Work legislation is important for a number of reasons. Right-to-Work is not about protecting individual choice. Its purpose is to deprive unions of legitimacy. Labor needs the protection of the state, and the state mandates Right-to-Work. It is

indeed true that capital benefits from state legislated property rights, but capital does not need the state to the same extent as labor. Unions acquired social legitimacy by agitating for the introduction of better labor laws. Societies can either have unions that have a lot of legitimacy and act as a social movement, or they can have unions with a lesser amount of legitimacy that function only as pressure groups. Unions in a Right-to-Work system are compelled to function more as pressure groups than as social institutions. It will be seen that Right-to-Work was part of an ostensible effort to balance relations between management and labor. The real effect of Right-to-Work was to marginalize unions and inhibit their ability to operate and challenge management. The negative impact of Right-to-Work is further accentuated by the legal obligation of fair representation under which unions operate. This leads to a problem with free riding.

The wider problem of diminished legitimacy is linked to economics. Right-to-Work involves union security and the right of unions to a financial contribution from workers in return for union representation. Right-to-Work denies unions of the right to be compensated for their efforts. Unions are based upon the idea of collective action and collective responsibility, and workers are expected to make a contribution to the union in return for the benefits that are derived from union membership. Right-to-Work enables workers to become free riders, if they so choose, and avoid paying dues. The benefits of union membership are equally distributed, but the responsibility for keeping a union financially viable is not borne by all those who derive these benefits. Right-to-Work thus runs contrary to the collectivism that is part of organized labor's foundation.

Right-to-Work is the product of a political system that is considerably different from the political system found in Canada. The United States and Canada both operate

under a first past the post electoral system, but Canadian unions still operate in a considerably different political milieu than their American counterparts. The American system is dominated by two parties and this system further ensures that the two parties need to compromise in order to make legislative progress. The American labor relations system is more centralized than the Canadian system. The American congressional system of government encourages bi-partisan political action, while the political agenda in the Canadian parliamentary system is determined almost solely by the party that forms the government. The only time this scenario changes is when a party is trying to form a government and needs third party support in order to be successful. A party in power may also adopt popular opposition policies in order to ensure continued electoral success.

Canadian unions have had the benefit of an alliance with a social democratic political party, while American unions have had to rely upon the Democratic party in order to further their political program. The bi-partisan nature of the American political system has occasionally led American unions to support Republican politicians in order to advance their interests. For example, New York State unions have supported moderate Republicans such as Jack Quinn.[1] It is virtually unheard of for a Canadian union to support a candidate from a right of center political party.

American labor is less of a social movement and more of an interest group. It is an influential interest group and does an effective job of protecting its interests considering the constraints under which it operates. American unions have not had the benefit of an association with a social democratic party, nor have they operated in a legal framework that actively promotes collective bargaining. American unions have,

[1] Joe Jamison, Research Director for the New York State AFL-CIO. Phone interview by the author on March 2, 2001.

however, been successful with using their position within the Democratic party to champion the introduction of broad social legislation such as the Family and Medical Leave Act. This relationship has not facilitated the introduction of legislation that is specific to labor, such as progressive labor law reform.

It is important to differentiate between unions that act as an interest group rather than a social movement. Unions that act as a mere interest group do not work to establish links with other progressive social organizations such as minority groups. They also tend to pursue an agenda that is confined to the direct economic interests of their members. Unions that are part of a social movement are willing to work in conjunction with other groups in order to promote a common agenda. They are also willing to pursue policy initiatives that may not appear to be directly linked to the economic interests of their members. Involvement with minority groups is an example of such a policy initiative. Unions that are part of a social movement also seem to be directly involved with a progressive political party.

Canadian labor has frequently advocated on behalf of welfare recipient and other disadvantaged groups. It has also been directly linked to a pro-labor political party. Canadian unions frequently form coalitions with other social groups. American labor has also advocated on behalf of disadvantaged groups and has promoted legislation such as the Family and Medical Leave Act, but appears to have only recently begun to form coalitions with other social groups. American labor has involved itself with the Democratic party. I will show that this alliance with the Democratic party has not been as beneficial for American labor as an alliance with the NDP has been for Canadian labor.

American unions once operated in difficult conditions similar to those in which their Canadian counterparts operated. Union density was relatively low in both countries prior to the Second World War. Both Canadian and American unions benefited from legislative changes that were introduced in the 1930s and 1940s. The paths of the two labor movements diverged considerably during the post Second Word War period following the passage of the Taft-Hartley Act in the United States. This act legalized the passage of Right-to-Work legislation in individual states. Right-to-Work was a unique part of Taft-Hartley. Section 14 (b) of Taft-Hartley deals with Right-to-Work, and it is the only part of the act that delegates authority over labor law to the states.

Taft-Hartley must be considered in relation to other events that occurred in the United States during the post-Second World War period. Canadian business generally accepted that the unions had significant influence, while American business vigorously opposed labor's gains. A far greater effort occurred in the United States to eliminate groups and individuals who were considered to be Communist or Socialist. This caused American labor to move towards the center of the political spectrum, if not the right. The introduction of Right-to-Work legislation in the United States was thus the product of political pressure from capital. It was also the product of internal social and cultural differences. The states that showed the most interest in passing Right-to-Work laws following the passage of Taft-Hartley were those that had already been in the process of introducing laws that limited union security. The first states to pass Right-to-Work laws were almost exclusively located in the South. In fact, Southern legislators from both major parties supported Right-to-Work at both the state and national levels.

Canadian unions occupy a far different role in their society than American unions do in their social system, as Canadian labor is more institutionalized than American labor. Canadian union density is relatively equal across all ten provinces. Alberta has the lowest union density in Canada at 23 percent, while Newfoundland has the highest at 38 percent.[2] In contrast, American union membership levels vary widely from state to state. New York has the highest union density at 25.5 percent, while South Carolina has the lowest at 3.8 percent.[3] American unions are quite strong in the North-Eastern states, California, and the North-West. More than half of American union members live in seven states, though these states account for only 38 percent of wage earners nationally.[4] American labor is particularly weak in the South-Western and Southern states. A lack of fairly equal union membership across the states means that American labor cannot claim to be a national movement to the same extent that Canadian unions can claim a national mandate.

Canadian labor's political power grew in the early 1990s with the election of New Democratic governments in Ontario, British Columbia, and Saskatchewan. This situation changed with the 1995 election of a Progressive Conservative government in Ontario and the emergence of the radical right-wing Reform party at the federal level. The Conservative government of Premier Mike Harris immediately repealed progressive legislation passed by the previous government. It has recently passed legislation permitting a 60 hour work week and legislation requiring unions to divulge the names of

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[2] Statistics Canada, *The Daily* (August 24, 1999). www.statscan.ca/daily/english.
[3] Bureau of Labor Statistics, *Labor Force Statistics from the Current Population Survey.* www.stats.bls.gov/news.release/union2.t05.htm.
[4] Bureau of Labor Statistics, *Labor Force Statistics from the Current Population Survey.* www. bls.gov/news.release/union2.550.htm.

officers who receive more than $100,000 per year in compensation.[5] In 1997, a private members bill was introduced into the Ontario legislature that would have effectively implemented Right-to-Work to Ontario had it been passed.[6]

Alberta is the other Canadian province to have considered implementing Right-to-Work. Alberta's Progressive Conservative government rejected Right-to-Work after determining that such a law would not bring significant economic benefits.[7] There are differences between Ontario and Alberta that may lead to the introduction of Right-to-Work in the former province. The Alberta labor movement is generally not as militant as its Ontario counterpart. Public and private sector workers in Ontario have vigorously opposed the Harris government. There were rotating city wide general strikes during the mid-1990s to protest government policies. Implementing Right-to-Work would enable the Harris government to severely weaken one of its most vocal opponents. Harris has a majority in the legislature, and the nature of the Canadian parliamentary system ensures that the opposition Liberal and New Democratic parties can do little to prevent the government from passing legislation. Implementing Right-to-Work in Ontario would also fragment the Canadian labor movement and give business access to another major North American jurisdiction that has anti-union legislation.

The majority of Canadian workers are covered by provincial labor legislation, while workers employed in specific industries such as banking and telecommunications are covered by federal legislation. The federal Liberal government of Prime-Minister

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[5] Government of Ontario, *Employment Standards Act*. http://192.75.156.68/DBLaws/Statutes/English/00e41_e.htm.
[6] Ontario Legislature. *Employees' Rights and Freedoms Act,1997 (Bill 131).* www.ontla.on.ca/Documents/documents index.htm.
[7] Fazil Mihlar, ed., *Unions and Right to Work Laws: The Global Evidence of Their Impact on Employment* (Vancouver, Canada: The Fraser Institute, 1997), 215.

Jean Chretien has adopted a more moderate approach to labor legislation than has its Ontario counterpart. For example, the federal government passed Bill C-19 that prohibits employers from using replacement workers "for the demonstrated purpose of undermining a trade union's representational capacity rather than the pursuit of legitimate bargaining objectives."[8] This law will still not greatly strengthen Canadian unions since provincial labor law rather than federal law covers most workers.

I will examine Right-to-Work from a variety of perspectives. The historical development of Right-to-Work will be discussed in the first chapter, with the emphasis on the transition from the Wagner Act to the Taft-Hartley Act. Taft-Hartley was not an amendment to the Wagner Act, and instead represented a significant departure from the earlier legislation. This discussion of the development of Right-to-Work will examine the manner in which the Democratic party reacted to Taft-Hartley.

In the second chapter I will examine the impact of Right-to-Work on the states that have introduced it and the impact on their labor movements. The analysis will include a discussion of union density in Right-to-Work states and other socio-economic indicators such as worker income. The chapter will also include an analysis of some of the academic and non-academic theories that exist regarding Right-to-Work. I will show which of these theories are more credible. I will also use some of the information contained in the academic and the non-academic sources cited in order to substantiate the arguments that I make throughout the thesis.

In the penultimate chapter I will analyze how American unions have reacted to Right-to-Work. This analysis will also expand upon the idea that the American labor

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[8] Government of Canada, *Bill C-19*. www.parl.gc.ca/36/1/parlbus/chambus…ills/government/C-19_3/21454b-3E.html.

movement is more of a regional interest group rather than a national movement. The chapter will include an analysis of the impact of Right-to-Work on the national political scene in the United States. I will also discuss methods that American labor may use to resist the further expansion of Right-to-Work.

The last chapter of the thesis will deal with structural differences between Canadian and American labor, including the reasons why the two labor movements have developed differently. I will discuss the reasons why Right-to-Work may be introduced in Canada and the impact that it would have on Canadian labor. I will also show why Right-to-Work could be more detrimental for Canadian labor than it has been for American labor. In the conclusion I will summarize the arguments made in the preceding chapters, and I will confirm the initial hypothesis of the thesis. Canadian unions should carefully study the manner in which Right-to-Work developed and the manner in which their American colleagues responded to this legislation. Right-to-Work would negatively affect Canadian labor's legitimacy and every effort should be made to resist it.

CHAPTER ONE –
THE HISTORICAL DEVELOPMENT OF RIGHT-TO-WORK

Right-to-Work legislation has been a part of American society for fifty-four years. It came to national prominence with the passage of the Taft-Hartley Act in 1947. It is necessary to discuss Taft-Hartley in order to understand the reasons Right-to-Work was implemented, and I will argue that the purpose of Taft-Hartley was to restrain labor's power. The act, which was formally known as the Labor-Management Relations Act, contained several anti-union clauses including Right-to-Work. The thesis of this chapter is that Right-to-Work was part of a post Second World War conservative effort in the United States to reverse gains that unions had made during the 1930s and 1940s. It will be seen that Taft-Hartley contained a number of other clauses that were intended to restrain unions. I will make reference to these additional clauses, but the emphasis will be on Right-to-Work.

The Taft-Hartley Act and Right-to-Work involve many issues other than the basic issue of union security. Organized labor in America was becoming a true social movement following the passage of the Wagner Act. Communists and Socialists were heavily involved in unions during the pre Second World War period, and they and other groups agitated for social change. The situation changed during the war years, and the labor movement that emerged into the 1950s was different than the one that existed in the 1930s. Unions became less militant, and they purged leftist elements. They were also operating under considerable legal constraints.

Unions had become a major part of the Democratic party during the 1930s and 1940s. Labor continued to play a major role in the Democratic party through the 1950s, but it was unable to ensure that the party would do everything necessary to protect labor's

legal position. Labor's involvement with the Democratic party was also more of a regional association than a national one, as Southern Democrats played a significant role in bringing Taft-Hartley and Right-to-Work into law. The influence of the South was particularly important, as it remained a strongly non-union region despite union efforts to organize Southern workers. Right-to-Work needs to be considered in relation to other events of the late 1940s. The United States was entering the Cold War era, and elites in the United States wanted to ensure domestic stability. It is widely known that the American military was constituted into its present form in the late 1940s, and that agencies such as the National Security Council and the Central Intelligence Agency were also created at this time. The United States is not noted for comprehensive national planning. It did, however, engage in considerable planning for the Cold War.

Right-to-Work was passed at a supposedly optimistic time in America, as the country had just emerged from the Second World War with its power considerably enhanced. In reality, the domestic situation was less stable than is generally believed. George Lipsitz notes in his book *Rainbow at Midnight* that the American workforce had changed markedly during the war due to the large influx of women and minorities.[9] American unions had also changed, with the Congress of Industrial Organizations (CIO) having doubled its membership during the war years.[10] There was also a lot of strike activity between 1945 and 1946, with workers sacrificing $1 billion in wages in order to further their collective aims.[11] American capital prepared to resist labor's increased post war strength.

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[9] George Lipsitz, *Rainbow at Midnight: Labor and Culture in the 1940s* (Chicago, Illinois: University of Illinois Press, 1991), 45.
[10] Lipsitz, 62.
[11] Lipsitz, 115.

The Taft-Hartley Act was ostensibly a modification to the Wagner Act that had been passed in 1936. In reality, Taft-Hartley represented a significant departure from the intent of the Wagner Act. American unions had relatively little legal protection prior to the Wagner Act. There was a long history of persecution in the United States, and union members had been convicted of violating conspiracy laws as late as 1836.[12] Legal injunctions were frequently used to impede union activity, even though they were only supposed to be used in extraordinary cases.[13] Harry A Millis and Emily Clark Brown note in their book *From the Wagner Act to Taft-Hartley* that the Wagner Act did not attempt to impose detailed control over labor relations and instead created basic conditions in which collective bargaining could occur.[14]

The Wagner Act was a response to the social unrest of the 1930s and was part of a broad array of progressive legislation known as the New Deal. This era marked a major change in organized labor's position in American society as unions became more influential than ever before. Senator Robert Wagner believed that his bill was "permeated with the principles of freedom."[15] The Wagner Act enabled workers to bargain collectively without coercion, and it also mandated a national agency to enforce labor law. However, the liberalism that existed during the New Deal did not last through the post Second World War period. American elites had shown themselves to be willing to accommodate labor in times of national distress, such as war or economic turmoil. These same elites reverted to a position of wanting to restrain labor once the crisis had passed.

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[12] Harry A. Millis and Emily Clark Brown, *From the Wagner Act to Taft-Hartley: A Study of National Labor Policy and Labor Relations* (Chicago, Illinois: University of Chicago Press, 1957), 6.
[13] Millis and Brown, 8.
[14] Millis and Brown, 258.

The National Labor Relations Board (NLRB) was a product of the Wagner Act, and it was initially composed of three members who were appointed by the President and confirmed by the Senate.[16] Writers who discuss the passage of the Wagner Act and the creation of the NLRB often seem to believe that these events occurred as part of a large wave of public enthusiasm for organized labor. It is certainly true that legislators were favorably disposed towards labor when the Wagner Act was passed. American business, however, resisted the passage of the Wagner Act and continued to agitate against it after it was enacted. The Wagner Act and the NLRB were under a state of continual attack from the time that they came into existence until the passage of Taft-Hartley in 1947.

The legitimacy of the Wagner Act was almost immediately challenged in court. The Supreme Court heard the first cases in 1937 and the act was found to be constitutional.[17] The NLRB had initially begun as an agency with twenty-one offices across the country and a relatively small staff.[18] The staff was overworked almost from the time the board began operation, and this situation was exacerbated by the fact that the board was the subject of investigation by three full-scale congressional committees.[19] The Wagner Act managed to bring the NLRB into existence, but the board's operation was continually imperiled.

The problems that the NLRB and the supporters of the Wagner Act faced were aggravated by a continuing conflict within the labor movement itself. The American Federation of Labor (AFL) was engaged in a rivalry with the Congress of Industrial

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[15] Millis and Brown, 29.
[16] Millis and Brown, 31.
[17] James A. Gross, *The Making of the National Labor Relations Board: A Study in Economics, Politics, and the Law. Volume I (1933-1937)* (Albany, New York: State University of New York Press, 1974), 229.
[18] Millis and Brown, 36.
[19] Millis and Brown, 49.

Organizations (CIO), particularly over organizing. The AFL began to believe that the NLRB favored the CIO. The AFL complained that the NLRB was undertaking "to reshape the form and structure of our labor movement."[20] The representation elections that the NLRB administered between 1936 and 1947 did not support the view that the board was biased. Unions won 30,110 of 36,969 votes held, with the AFL winning 12,353 and the CIO winning 13,837.[21] The AFL position on the NLRB and on the Wagner Act is important to note as conflict within the labor movement helped lead to the passage of Taft-Hartley. The AFL felt threatened by the growth of a rival federation.

The opponents of the Wagner Act felt that they had sufficient resources to successfully pass legislative changes following the Second World War. Most national labor leaders had promised to avoid striking for the duration of the war.[22] They were not entirely successful with maintaining rank and file support for this promise as there was a lot of strike activity during the war years, with 4956 strikes in 1944 alone.[23] In fact, there were more strikes in the twelve months following the surrender of Japan than at any other time in American history.[24]

Business leaders feared the continuation of wartime militancy.[25] It is again important to note the importance of the Cold War. America was embarking on its fifty year ideological struggle with what was considered a Communist threat. Elite groups in the United States were wary of working class militancy disrupting the socio economic system that was confronting the Soviet Union. Speaking about rank and file union

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[20] Millis and Brown, 143.
[21] Millis and Brown, 89.
[22] Lipsitz, 73.
[23] Lipsitz, 87.
[24] Lipsitz, 99.
[25] Lipsitz, 91.

members, Senator Robert Taft thought "the men more radical than their leaders."[26] Commentators writing in the immediate post war era foresaw that labor would be blamed for economic problems and other social difficulties. Robert Lynd predicted that capitalists could not provide full employment, and that labor would be blamed for a lack of full employment.[27] Lynd further predicted that business failures abroad would be blamed on Soviet subversion.[28] These predictions ultimately came true.

The Wagner Act was intended to enhance union power, while the Taft-Hartley Act was devised to reduce union power. It was the product of two different pieces of legislation. Senator Robert Taft introduced a bill into the Senate at approximately the same time that Representative Fred Hartley introduced a bill into the House of Representatives. Both legislators were Republicans. The Republicans had retaken control of Congress during the 1946 elections; the first time that they had enjoyed such control since 1930.[29] The Republican gains in 1946 were a kind of counter-revolution against the New Deal. Senator Glen Taylor of Idaho noted in the debate over President Harry Truman's veto of Taft-Hartley that the Republicans had established a conservative legislative pattern, including the repeal of rent controls.[30]

The passage of Taft-Hartley was part of the conservative counter-revolution, and the introduction of this act was partly the result of a long drive by the National Association of Manufacturers' (NAM) to have the Wagner Act repealed.[31] The NAM actually spent $100 million on propaganda in favor of Taft-Hartley, which was an

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[26] Lipsitz, 172.
[27] Lipsitz, 168.
[28] Lipsitz.
[29] R. Alton Lee, *Truman and Taft-Hartley.* (Lexington, Kentucky: University of Kentucky Press, 1966), 9.
[30] United States Congress, Senate, Senator Glen Taylor of Idaho speaking against overturning President Harry Truman's veto of the Labor-Management Relations Act (Taft-Hartley Act). 80th Congress, First Session. *Congressional Record* (June 20, 1947), 7385.

enormous figure for the 1940s.[32] It identified its propaganda targets as "the great, unorganized, inarticulate, so-called middle class."[33] This was a shrewd, deceptive strategy. Most union members did not understand the collective bargaining process, so it was even more unlikely that those who had no association with unions would have understood it any better. The Wagner Act had only been in existence for twelve years and the public would not have understood how the act worked. Harry Truman confided in William Green of the AFL that "there was little doubt in his mind that a definite plot had been hatched at the close of the war to smash, or at least cripple, our trade union movement in a period of post-war reaction."[34] Truman may have indeed agreed with the idea of restraining unions and may have confided the opposite sentiment to Green for partisan reasons. He was undoubtedly correct that Taft-Hartley was the product of post-war reactionism.

The process of curtailing union power had begun in the Southern states as early as 1943.[35] Right-to-Work amendments were passed in Florida and Arkansas in 1944.[36] A further eleven states passed Right-to-Work laws in 1945.[37] The South was ultimately the deciding factor in Taft-Hartley's implementation. The passage of restrictive laws in the South was part of a national legislative trend to curtail union influence. Various states had passed smaller versions of the Wagner Act during the 1930s. This trend was quickly

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[31] Lee, 11.
[32] Lee.
[33] Millis and Brown, 288.
[34] Lee, 15.
[35] Millis and Brown, 317.
[36] Millis and Brown.
[37] Millis and Brown, 327.

reversed and only New York, Rhode Island, and Connecticut had pro-labor laws like the Wagner Act by 1947.[38]

There are several interesting points about the actual legislative process surrounding the passage of Taft-Hartley. Legislators introduced seventeen different bills dealing with labor on the first day of the Eightieth Congress.[39] It was extraordinary that so much legislative attention was devoted to organized labor. Anti-union groups were determined to have changes made to labor law, but the committee processes in both the House and Senate were weighted in favor of management. Almost all corporate witnesses bitterly attacked the NLRB.[40] NLRB Chairman Paul Herzog was not granted enough time to respond to criticisms leveled against his agency.[41] The Republicans were obviously interested in getting both the Hartley and Taft bills through the committee stage as quickly as possible.

Both the Hartley and Taft bills were long and complex in comparison to the Wagner Act. The Hartley act was sixty-six pages long.[42] The Taft act was only slightly longer at sixty-eight pages.[43] The most significant aspect of the passage of both bills was the large number of Democrats who voted for them. The Hartley act received ninety-three Democratic votes, and almost all of these came from the South and South-West.[44] The Taft bill received twenty-one Democratic votes in the Senate, with all of these votes also coming from the South and South-West.[45] The labor movement may have been under the impression that it could influence the Democratic party, but the votes on these

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[38] Millis and Brown, 329.
[39] Millis and Brown, 363.
[40] Millis and Brown, 367.
[41] Millis and Brown, 368.
[42] Millis and Brown, 371.
[43] Millis and Brown, 374.
[44] Millis and Brown, 371.

bills clearly showed that Southern Democratic legislators were far more influenced by factors other than organized labor.

The final version of Taft-Hartley was the product of a harmonization of the original Hartley and Taft bills. Some people claimed at the time of its passage that the combined Taft-Hartley act was milder than the original Hartley act by itself.[46] A Democratic Senator observed that this was like saying that a 25 percent solution of carbolic acid was mild in relation to a 100 percent solution.[47] The new law certainly achieved the purpose of curtailing union power. The closed shop was banned.[48] A major restriction was imposed in the form of Section 14b, which permitted states to pass Right-to-Work laws.[49] These were the main clauses that dealt with union security.

The act federalized large portions of labor law, as much of this law had previously been grounded in common law and the courts.[50] Section 14b was an exception as it delegated the authority to pass Right-to-Work to the states. The whole effect of Taft-Hartley was to impose more detailed control over labor relations, while the Wagner Act had simply created a labor relations framework. Lipsitz believes that Taft-Hartley achieved three main purposes. It addressed corporate aims of stability, predictability, and security.[51] It restrained mass strikes and ensured management control over production.[52] It also prevented rivalries within unions from leading to excessive demands on

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[45] Millis and Brown, 380.
[46] Lee, 77.
[47] Lee.
[48] Millis and Brown, 432.
[49] Millis and Brown, 435.
[50] Millis and Brown, 482.
[51] Lipsitz, 157.
[52] Lipsitz.

management.[53] This analysis is correct as the labor movement that emerged from Taft-Hartley was de-radicalized and more capitalist in outlook.

The passage of Taft-Hartley was immediately followed by demands that Truman either sign it or veto it. Truman was no real advocate of labor's, despite the fact that it supported his party. In 1945 he had sought passage of a law that would have allowed him to draft striking workers.[54] Truman claimed to oppose Taft-Hartley, and he noted in his memoirs that the law would lead to more government intervention in national affairs.[55] Truman did eventually veto Taft-Hartley, but Congress overturned this action. Truman knew that the veto would fail, and he instead vetoed Taft-Hartley for political reasons. NLRB board member James Reynolds once recounted a discussion that he had with Truman regarding Taft-Hartley. Truman was standing next to a globe with his hand over the Soviet Union and said "you know, Reynolds the Taft-Hartley (Truman snapped his fingers) is about that important compared to this."[56] Truman was determined that the Marshall Plan be implemented "to save the Western countries from Communism."[57] With regards to Taft-Hartley itself, Truman believed that it was "a pretty good law."[58]

Truman knew that he would get labor support in the 1948 election if he vetoed the law, and that he would "be re-elected and the Marshall Plan will go forward."[59] The fact that he vetoed Taft-Hartley undoubtedly helped Truman gain enough political support from labor to successfully pursue initiatives such as the Marshall Plan. His decision to

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[53] Lipsitz.
[54] Lipsitz, 114.
[55] Harry Truman, *Memoirs, volume 2: Years of Trial and Hope* (New York: Doubleday and Company Inc., 1956), 29.
[56] James A. Gross, *The Reshaping of the National Labor Relations Board: National Labor Policy in Transition: 1937-1947* (Albany, New York: State University of New York Press, 1981), 258.
[57] Gross, *The Reshaping of the National Labor Relations Board*.
[58] Gross, *The Reshaping of the National Labor Relations Board*, 259.
[59] Gross, *The Reshaping of the National Labor Relations Board*.

sign the veto was thus a politically sound decision. Truman could have been more honest about why he vetoed Taft-Hartley. The decision gave unions the impression that Truman was their advocate, when in fact he was not particularly interested in protecting labor's interests.

The passage of Taft-Hartley involved anti-Communism, which was somewhat unique to the United States. Lipsitz notes that, while Communism was never a major force in American life, anti-Communism has certainly been a major part of American life.[60] Short of Fascism, no other country adopted anti-Communism with the same fervor as the United States. A clause requiring union leaders to sign an affidavit affirming that they were not Communists was a major part of Taft-Hartley.[61] This obsession with anti-Communism can be attributed to the general hysteria perpetrated by conservative groups against supposed Communists. Virtually everyone to the left of the political spectrum was suspected of Communist leanings.

Efforts were made in the late 1940s to purge leftists such as Communists from the NLRB staff.[62] The actual activities of Communists at the NLRB were less important than what conservatives presumed Communists were doing at the NLRB.[63] Some Communists had worked in the Economics Department at the NLRB.[64] The presence of supposed Communists appears to have been one pretext that reactionary groups used for attacking the NLRB. The attack on Communists was important for a number of reasons. The anti-Communist hysteria present in the late 1940s and early 1950s forced radicals within the union movement underground. This led to the ascendance of conservative

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[60] Lipsitz, 178.
[61] Millis and Brown, 545.
[62] Gross, *The Reshaping of the National Labor Relations Board*, 131.
[63] Gross, *The Reshaping of the National Labor Relations Board*, 150.

union leadership. Anti-Communist labor leaders such as James Carey of the CIO and George Meany of AFL became the ideal.[65]

A combination of Southern Democrats and Northern Republicans passed Taft-Hartley. The reasons why the South responded so negatively to organized labor are not always sufficiently explained. American unions were aware of the difficulty that the South posed for the expansion of their influence. It was necessary to at least attempt to organize Southern workers as labor's base in the North was being eroded by the departure of capital for the non-unionized South.[66] The South was the most anti-union region of the United States.[67] It had a distinct social culture that was characterized by racial segregation, poverty, and provincialism.[68] Barbara Griffith notes in her book *The Crisis of American Labor: Operation Dixie and the Defeat of the CIO* that it is an error to dismiss the fundamental social circumstances of the American South.[69] Her view is important, as these circumstances ultimately prevented labor from organizing Southern workers

The South was backward in many ways. The textile industry was a significant part of the regional economy and mill owners exercised considerable power over their employees. One mill owner actually had access to the files of the sheriff in his county and was known to fire people for having a "disrespectful attitude."[70] Workers in Southern mill towns lived in conditions like those in a police state.[71] They were actually

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[64] Gross, *The Reshaping of the National Labor Relations Board*, 134.
[65] Lipsitz, 191.
[66] Barbara S. Griffith, *The Crisis of American Labor: Operation Dixie and the Defeat of the CIO* (Philadelphia, Pennsylvania: Temple University Press, 1988), 15.
[67] Griffith, 3.
[68] Griffith, 16.
[69] Griffith, 17.
[70] Griffith, 60.
[71] Griffith.

told to take their children out of school so that they could be put to work in the mill.[72] Wages in the South were also markedly lower than in other parts of the United States.[73] Southern workers had attempted to resist their dismal employment conditions. There was a little known general strike in the South in 1934 that involved approximately 400,000 textile workers.[74] The strike failed and thousands of workers were blacklisted for their involvement in it. The workers that the CIO was attempting to organize were marginalized and afraid of their employers.

The CIO was determined to attempt unionization of Southern workers and began Operation Dixie in 1946, the same time that Southern states were passing the first Right-to-Work laws and the Republicans were taking control of Congress. The AFL almost immediately criticized the CIO's efforts, and one of the main tasks involved with Operation Dixie was to protect the organizing drive from the AFL.[75] The AFL strenuously opposed the CIO's efforts because it felt threatened by its more aggressive rival. AFL leader George Meany called the CIO executive board "the devoted followers of Moscow."[76] The AFL repeatedly used anti-Communist rhetoric in order to enhance its position relative to the CIO.

Operation Dixie was difficult to attempt for a number of reasons, including the opposition of the AFL. The main problem was that labor did not have a significant base in the South from which to operate. The enormous size of the textile industry meant that the CIO was faced with the prospect of either organizing all of the plants in a given chain,

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[72] Griffith, 92.
[73] Griffith, 89.
[74] Griffith, 59.
[75] Griffith, 25.
[76] Griffith, 25.

or not organizing at all.[77] The CIO eventually adopted a compromise approach that involved targeting both large and small workplaces.[78] It had devoted considerable resources to Operation Dixie, but these resources paled in relation to those mobilized by Southern business. In 1946 the CIO's Texas political action committee (PAC) raised $3,500, while the Texas Manufacturers' Association PAC raised $3,400,000.[79]

The fierce resistance mounted by Southern elites was another major problem for the CIO. Griffith notes that Southern capitalists mobilized the political, cultural, and economic power at their disposal.[80] One Southern preacher actually told his congregation that the choice to unionize was a question of "Christ or the CIO."[81] Some CIO organizers were subjected to gunfire.[82] Various citizens' organizations also mobilized to oppose the CIO. The Christian American Association was an example of the sort of group that opposed the CIO. It had also opposed women's suffrage.[83] The CIO believed that mill owners financed the various ecclesiastic challenges to Operation Dixie.[84]

The CIO had a particularly difficult time in the South when it came to organizing African-American workers, even though these workers responded more favorably to the prospect of organizing than did white workers.[85] This is understandable considering that the Civil Rights movement had not yet begun and African-Americans were at the bottom of the social hierarchy in the South. Many white Southern workers were also not

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[77] Griffith, 47.
[78] Griffith, 48.
[79] Griffith, 90.
[80] Griffith, 163.
[81] Griffith, 107.
[82] Griffith, 62.
[83] Griffith, 114.
[84] Griffith, 117.
[85] Griffith, 72.

receptive to being in the same bargaining units as African-Americans. The CIO's efforts were consequently frustrated at the local level. Griffith notes that Operation Dixie was a sort of "racial balancing act."[86] The CIO needed to organize every worker that was receptive, but it also had to take into account the racial barrier in the South. Operation Dixie was further harmed by anti-Communism. In 1947 the Secretary of Labor publicly demanded that the Communist Party be outlawed.[87] The CIO's purge of Communists in the late 1940s led to the loss of committed organizers and the dissipation of important resources.[88]

Operation Dixie continued in a reduced form into the early 1950s, even though it really began to shut down by the end of 1946.[89] The organizing drive had lasted less than a year. The CIO faced almost insurmountable odds before the drive even began. Operation Dixie was an undertaking that basically involved Northern trade unionists, many of them leftists, going into the strongly conservative South in the hope of helping oppressed workers and strengthening the labor movement. One Southern lawyer who was involved with the organizing drive later said that "those fellows from Michigan and Pennsylvania who came down here were astounded at what we were running into, and I guess they still are."[90] Griffith refers to Operation Dixie as "a moment of high tragedy from which the U.S. labor movement has yet to recover."[91] This assessment is correct. It is possible that there may never have been a Taft-Hartley Act or the continuation of

[86] Griffith, 76.
[87] Griffith, 149.
[88] Griffith, 157.
[89] Griffith, 161.
[90] Griffith, 163.
[91] Griffith, 176.

Right-to-Work had Operation Dixie succeeded. Regrettably, those organizers from Michigan and Pennsylvania were not ready for what they ran into in the South.

The process that lead to Taft-Hartley and Right-to-Work has been noted. It is worthwhile to discuss the manner in which Right-to-Work was implemented in an individual state, and the immediate consequences that implementation had in this state. Michael S. Wade discusses the introduction of Right-to-Work in Arizona in his book *The Bitter Issue: The Right to Work Law in Arizona*. Efforts were made to implement Right-to-Work in Arizona in 1945, prior to the passage of Taft-Hartley.[92] Arizona was predominantly Democratic at this time, with registered Democrats outnumbering Republicans by an eight to one margin.[93] The Democratic party was internally divided into conservative and liberal factions.[94] The first two Right-to-Work bills introduced into the Arizona legislature were supported by business, with the Senate bill having been introduced at the urging of the Associated Farmers.[95] These bills did not pass, but the issue emerged again in 1946 as an amendment to the state's constitution.[96]

The passage of Right-to-Work in Arizona coincided with the rise in power of the state's Republican Party. This was a pattern found in other Right-to-Work states. Wade notes that Barry Goldwater began to emerge on the Arizona political scene in the late 1940s, and that he was heavily involved in the effort to have Right-to-Work included as an amendment to the state's constitution.[97] Goldwater also used Right-to-Work to help

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[92] Michael S. Wade, *The Bitter Issue: The Right-to-Work Law in Arizona* (Tucson, Arizona: The Arizona Historical Society, 1976), 6.
[93] Wade, 21.
[94] Wade.
[95] Wade, 6.
[96] Wade, 36.
[97] Wade, 43.

establish his national political credentials. He was an extreme conservative and helped lead the Republican Party to adopt views more like his own.

Arizona labor sought support from state Democrats as part of its efforts to resist the Right-to-Work, but appeals to the Democrats proved unsuccessful. Taft-Hartley had passed through Congress with Democratic support, and state Right-to-Work laws had passed with similar Democratic support. Labor was regarded as a crucial Democratic constituency and had given considerable support to the party. Labor could not stop Right-to-Work despite everything that it had given to the Democratic Party. The Democrats also ultimately suffered from Right-to-Work as the Republicans gained ascendancy. Wade notes that the Arizona Republican party was the chief beneficiary of the Right-to-Work amendment.[98]

Right-to-Work had an important effect on Arizona Democrats. It was difficult for them to advocate the repeal of Right-to-Work in the face of popular approval of it.[99] Right-to-Work became the social norm in Arizona, much the same as it did in other Right-to-Work states. Elite groups helped make Right-to-Work a social norm, and Democratic legislators could not oppose such a social norm without incurring the wrath of their electorates. Labor tried to get Section 14b of Taft-Hartley repealed in 1965, but the amendment was defeated in the Senate.[100] A major reason for this was that Democrats from Right-to-Work states who voted for repeal of Section 14b would have essentially voted to repeal their own states' Right-to-Work laws.

Unions challenged Right-to-Work through the courts. Taft-Hartley was somewhat contradictory as it initially permitted the agency shop under Section 8(a)(3),

[98] Wade, 125.
[99] Wade, 108.

but Section 8(a)(3) was subsequently found to fall under Section 14b following judicial review.[101] The fact that one section of the act was found to be subordinate to another section facilitated the elimination of the agency shop. In fact, some states viewed agency shop requirements as a criminal offense.[102] The ability of individual states to implement Right-to-Work was confirmed by the courts. This action continued a tradition of judicial conservatism when it came to reviewing cases dealing with labor.

Right-to-Work originated prior to Taft-Hartley, but essentially became part of national life with the passage of this act. It is important to consider the length of time involved with the implementation of Right-to-Work. The late 1930s and 1940s are often regarded as a golden age of American labor. This was a short time period. American unions went from having little legal protection prior to the Wagner Act, to expanding their power considerably over an eleven year period from 1936 to 1947. The Second World War ended and capital elites quickly began the process of reversing labor's power. The regime that capital chose to impose has lasted almost sixty years, while labor only had a brief eleven years.

It is unfair to say that American labor did not sufficiently try to resist Taft-Hartley and the restrictions that it imposed. The CIO tried to organize the South but encountered ferocious resistance. This inability to organize the South would have lasting consequences as Griffith suggests, as the South has remained a problem for American labor. Some people involved in the American labor movement in the 1930s and 1940s were interested in progressive social change, and many of these people were leftists. CIO

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[100] Wade, 122.
[101] Charles Hanson, Sheila Jackson, and Douglas Miller, *The Closed Shop: A Comparative Study in Public Policy and Trade Union Security, the USA and West Germany.* (Aldershot, England: Gower Publishing, 1982). 147.

unions in particular were interested in labor becoming more of a social movement than a simple interest group. The passage of Taft-Hartley and the virulent anti-Communism of the time effectively purged American unions of their most progressive elements. The union leadership that was left after the purge was relatively complacent and willing to accept the status quo that capital imposed. Capital had successfully removed much of labor's legitimacy and relegated it to the role of interest group.

The most critical local problem that emerged with Right-to-Work, as Wade noted, was that it became a social norm in the states that implemented it. It is unlikely that Right-to-Work will be repealed in those states, because it weakens unions, and they consequently do not possess sufficient strength to get it repealed. Though Right-to-Work has not expanded beyond the South and South-West, these regions have become far more influential in the years since the passage of Taft-Hartley. It is not unreasonable to say that Southern opinion in many ways forms national opinion. Southern conservatism is a major national influence.

There are a few basic statements that can be made about the passage of the Taft-Hartley Act and the introduction of Right-to-Work. It is not particularly surprising that Taft-Hartley came about, or that Right-to-Work was introduced in the South and South-West. Capital had strenuously resisted union gains after the First World War and there should have been no reason to assume that it would act differently after the Second World War. It is also not surprising that American labor was unable to stop Taft-Hartley, or organize the South. Unions faced enormous opposition at a time when they were in many ways divided against themselves.

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[102] Hanson, Jackson, and Miller, 146.

The biggest disappointment for labor must have been the failure of its relationship with the Democratic party. Labor was in many ways locked into an association with the Democratic party based on convenience rather than ideological agreement. It was clear that the other major party would not consider any policies that were agreeable to labor. It was probably also clear to the Democratic party that it could rely on labor support without having to give too much to it, as the Republican alternative was unpalatable to unions. William Form notes in his book *Segmented Labor, Fractured Politics* that the Truman era marked the end of labor's "free ride" and that unions began to get less from the Democratic Party than they gave to it.[103]

The American labor movement remained strong in the short term, but it was largely confined to its base in the North-Eastern states. Business continued to transfer jobs to the non-union South in the years subsequent to the passage of Taft-Hartley. The labor movement was united under one federation following the merger of the AFL and CIO in 1955.[104] The argument that this merger strengthened the movement is specious. Form notes that the CIO had expelled its Communist members during the merger process.[105] The unified federation adopted the AFL's conservatism and limited view of the role of unions in society.

Senator Glen Taylor said during the debate to overturn Truman's veto that Taft-Hartley would "provide the lawyers with a field day."[106] Taylor continued that this law would make it possible to take unions to court "and string out the process."[107] He was

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[103] William Form, *Segmented Labor, Fractured Politics: Labor Politics in American Life* (New York: Plenum Press, 1995), 270.
[104] Craig Heron, *The Canadian Labor Movement: A Brief History* (Toronto, Ontario: James Lorimer and Company, 1996), 87.
[105] Form, 271.
[106] United States Congress, Senate, 7406.
[107] United States Congress, Senate.

correct. It would also be a long time before American labor would again consider being a progressive social movement. It will be seen in subsequent chapters that the widespread passage of Right-to-Work would have lasting economic, legal, social, and political ramifications for labor.

CHAPTER TWO –
THE IMPACT OF RIGHT-TO-WORK LAWS ON THE STATES THAT HAVE IT AND THE IMPACT ON THEIR LABOR MOVEMENTS

In this chapter I will discuss the effect that Right-to-Work has had on those states that implemented it. The thesis of this chapter is that Right-to-Work has had a negative impact on the states that implemented it and on the labor movements of these states. The information in this chapter will show that the main impact of Right-to-Work has been to remove labor as a countervailing social influence in those states that have implemented it. I will show that Right-to-Work has a significant impact on the social conditions in the states that have introduced it and on their labor movements. I will also discuss some of the academic and non-academic literature that deals with the impact of Right-to-Work laws.

It is important to differentiate between certain aspects of the discussion regarding Right-to-Work. There are facts about Right-to-Work that are disputable, and those that are indisputable. For example, the last chapter confirmed that the introduction of Right-to-Work was part of a wider conservative effort to marginalize labor. This argument cannot be disputed. I will argue that Right-to-Work has a serious, measurable impact on the social conditions in Right-to-Work states. It also has a measurable, negative effect on labor in those states that have implemented it. I will show that these ideas cannot be disputed. The idea that Right-to-Work involves issues that are more fundamental than economics is a central theme of this thesis and will be further supported in this chapter.

Right-to-Work is an issue that often evokes considerable emotion. Organized labor is generally emphatic that Right-to-Work is an attack on union rights and has significantly impeded union operations. Those on the right of the political spectrum,

such as the National Right to Work Committee (NRTWC), believe that Right-to-Work preserves individual rights. Right-to-Work is often portrayed as an economic phenomenon, even when it is considered from an emotional perspective. This may be due to the fact that virtually all labor issues in the United States are dealt with from an economic perspective. American unions operate under a business unionism model far more than do unions in other countries. I will show that Right-to-Work should be considered a social phenomenon. Right-to-Work does not exist as a discrete form of legislation. It is in fact a product of particular social and political conditions, and its introduction perpetuates these conditions.

A variety of measures are used to describe the effects of Right-to-Work, including comparisons of individual incomes in Right-to-Work versus non Right-to-Work states. The unionization rate in Right-to-Work states versus non Right-to-Work states is another measure. Much of the available information regarding Right-to-Work laws deals with the impact of this legislation on individual states. Few studies appear to deal with Right-to-Work from a national perspective. This is probably because Right-to-Work is a broad topic that cannot be easily dealt with in a single journal article. It is still necessary to consider the academic literature that exists regarding Right-to-Work as it illustrates what arguments are used to dispute the negative effects of Right-to-Work and the arguments that show that the negative effects of Right-to-Work cannot be disputed.

There is no question that Right-to-Work leads to significant problem with free riding. Casey Ichniowski and Jeffrey S. Zax discuss the problem of free riding in their article “Right-to-Work laws, Free Riders, and Unionization in the Public Sector.” They note that Right-to-Work laws increase the net price that union members must pay in order

to obtain union protection.[108] This is due to the fact that everyone covered by a collective agreement enjoys the benefits of union protection, but not everyone pays dues or an agency fee. Ichniowski and Zax note that prohibiting union security clauses reduces union membership regardless of the strength of bargaining laws or private sector unionization.[109] They further note that repealing Right-to-Work laws in the states that have them would increase union membership by 111 percent in police bargaining units, 78 percent amongst firefighters, and 287 percent in public welfare departments.[110] The information presented by Ichniowski and Zax clearly shows that Right-to-Work has a measurable effect on union membership levels.

David T. Ellwood and Glenn Fine have done one of the more interesting analyses of Right-to-Work. They have found that Right-to-Work laws have a sizable impact on organizing but that the effect occurs over time.[111] Ellwood and Fine note that there is a drastic reduction in the number of newly organized workers following the passage of a Right-to-Work law.[112] Organizing drops by 46 percent during the first five years after the introduction of Right-to-Work.[113] Organizing continues to drop by 30 percent during the next five years.[114] Ellwood and Fine also note that there are certain barriers to organizing in the South.[115] Their analysis also indicates that the negative impact of Right-to-Work on union organizing cannot be refuted.

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[108] Casey Ichniowski and Jeffrey S. Zax, "Right to Work Laws, Free Riders, and Unionization in the Public Sector." *Journal of Labor Economics* vol 9, No. 3. (1991), 257.
[109] Ichniowski and Zax, 273.
[110] Ichniowski and Zax, 276.
[111] David T. Ellwood and Glenn Fine, "The Impact of Right-to-Work Laws on Union Organizing" *Journal of Political Economy* 95 (April, 1987), 250.
[112] Ellwood and Fine, 252.
[113] Ellwood and Fine, 266.
[114] Ellwood and Fine, 266
[115] Ellwood and Fine, 262.

Right-to-Work is in many ways symbolic and free riders are one of the more obvious symbols. Gary N. Chaison and Dileep G. Dhvale discuss the free rider problem in "The Choice Between Union Membership and Free Rider Status." They argue that Right-to-Work has a negative impact on union membership, and they introduce the concept of cheap riders.[116] Free riders do not pay any form of union dues, while cheap riders pay a service fee that may range from 20 to 60 percent of regular dues.[117] The decision to not be a free rider is based on certain considerations. People may feel that union members receive special treatment on the job.[118] They may also fear that their reputations may be damaged if they opt out of paying dues.[119] There is also the extent of union consciousness in the workplace.[120] Chaison and Dhvale further note that union members may not understand a union's duty of fair representation and the link to free rider status.[121] They also note that unions such as the Communication Workers of America (CWA) and the United Steel Workers of America (USWA) have attempted to organize free riders.[122] Chaison and Dhvale present information that strongly confirms their main argument that Right-to-Work has a negative impact on unions. This is because Right-to-Work leads to free riding and cheap riding, both of which have a significant impact on organized labor.

The influence of Right-to-Work on organizing is also discussed by Joe C. Davis and John H. Huston in "Right-to-Work Laws and Union Density: New Evidence from Micro Data." Davis and Huston believe that Right-to-Work laws may cause national

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[116] Gary N. Chaison and Dileep Dhvale, "The Choice Between Union Membership and Free Rider Status" *Journal of Labor Research* XIII, no. 4 (Fall, 1992), 357.
[117] Chaison and Dhvale.
[118] Chaison and Dhvale, 360.
[119] Chaison and Dhvale, 361.
[120] Chaison and Dhvale, 362
[121] Chaison and Dhvale, 365.

unions to concentrate their organizing efforts in non Right-to-Work states.[123] This is because workers in non Right-to-Work states may be required to pay dues. Davis and Huston believe that workers in the South are more educated and more likely to work in professional or service industries.[124] This is presumably a reference to the idea that professional and service industry workers are less inclined to join unions than those in other employment classifications, and that these characteristics accordingly make Southern workers less inclined to organize. They further note that union membership is usually higher among workers who are older, non-white, married, and less educated.[125] The information presented by Davis and Huston supports the view that the negative impact of Right-to-Work cannot be disputed. They conclude that there is a "significant statistical relationship between Right-to-Work laws and union membership of private sector employees."[126]

The impact that Right-to-Work has on membership levels is also discussed by Barry T. Hirsch in "The Determinants of Unionization: An analysis of Interarea Differences." Hirsch believes that union membership in Right-to-Work states is 15 to 22 percent lower than membership in non Right-to-Work states.[127] He differentiates between the level of unionization in a jurisdiction and the extent of contract coverage.[128] This means that overall union density in a jurisdiction may be low, but that those who are actually covered by a collective agreement in this jurisdiction tend to join the union.

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[122] Chaison and Dhvale, 356.
[123] Joe C. Davis and John H. Huston, "Right-to-Work Laws and Union Density: New Evidence From Micro Data" in *Journal of Labor Research vol* XVI, No. 2 (Spring, 1995), 224.
[124] Davis and Huston, 226.
[125] Davis and Huston, 224.
[126] Davis and Huston, 228.
[127] Barry T. Hirsch, "The Determinants of Unionization: An Analysis of Interarea Differences" *Industrial and Labor Relations Review* vol.33, No. 2, 159.
[128] Hirsch, 159.

There may be low overall union density in a certain city, for example, but those people who are actually covered by a collective agreement still tend to join the unions in their workplaces despite the low unionization rate in their city. Hirsch notes the role of local preference and says that this has an effect on the extent of unionization.[129] He does not appear to ascribe considerable importance to local preference despite having referred to it. It is interesting to note Hirsch's belief that union wage gains are greater for non-whites than for whites.[130] It can be inferred from this observation that the presence of a Right-to-Work law will negatively impact the incomes of non-whites as it reduces their access to union membership. Hirsch's analysis shows that Right-to-Work has a negative impact on unions but his conclusion is not as emphatic as those of other commentators.

Marc G. Singer and Barbara Hastings have studied the public's comprehension of Right-to-Work laws. Their study of residents of Arizona and Virginia reveals that even people in Right-to-Work states do not entirely understand it. Singer and Hastings believe that there should be considerable understanding of Right-to-Work among people in Arizona and Virginia.[131] They found that in both Arizona and Virginia 25 to 55 percent of respondents were uninformed about Right-to-Work or misunderstood it.[132] These results were based on an eight question survey.[133] Singer and Hastings believe that a misunderstanding of Right-to-Work is based on a lack of interest in labor law and a lack of advocates who could communicate information about Right-to-Work.[134] They too cite the importance of a local population's cultural background and note the tendency of the

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[129] Hirsch, 150.
[130] Hirsch, 149.
[131] Marc G. Singer and Barbara Hastings, "Comprehension of Right-to-Work Laws Among Residents on the States of Arizona and Virginia: A Comparison" *Journal of Collective Negotiations in the Public Sector* vol. 14 (2) (1985), 173.
[132] Singer and Hastings, 179.
[133] Singer and Hastings, 175.

South to be resistant to unionization.[135] Singer and Hastings' study neither disputes nor endorses Right-to-Work, and instead shows that the public does not understand the issue. The findings in Singer and Hastings' study illustrate a serious problem for labor. People will not support the revocation of Right-to-Work laws if they do not understand the negative impact of these laws.

I have presented the views of authors who have shown the negative impact of Right-to-Work. The study done by Singer and Hastings does not say that Right-to-Work is necessarily negative, but it does show that there is a problem with public understanding of Right-to-Work. I will now present the views of authors who dispute the negative impact of Right-to-Work. William J. Moore, James A. Dunlevy, and Robert Newman believe that Right-to-Work laws do not matter. Their analysis is similar to much of the economic research that has been done on Right-to-Work in the sense that it utilizes mathematical analysis. Moore, Dunlevy, and Newman promote the "taste" hypothesis on Right-to-Work and factor this variable into their calculations.[136] The basic idea of this hypothesis is that analyses of Right-to-Work are often flawed as they fail to account for the local preferences in Right-to-Work states. People in the South, for example, like Right-to-Work and this is why it continues to exist in Southern states.

Moore, Dunlevy, and Newman do not believe that free riding is a problem.[137] They also do not believe that Right-to-Work impacts wage levels.[138] Janet C. Hunt and Rudolph A. White share Moore, Dunlevy, and Newman's thesis regarding the importance

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[134] Singer and Hastings, 180.
[135] Singer and Hastings.
[136] William J. Moore, James A. Dunlevy, and Robert Newman, "Do Right to Work Laws Matter?" *Southern Economic Journal* vol 53, No. 2 (October, 1986), 515.
[137] Moore, Dunlevy, and Newman, 516.
[138] Moore, Dunlevy, and Newman, 523.

of local preference for unions.[139] Hunt and White believe that there is a link between Right-to-Work and participation in union elections. They have found that workers will be less inclined to participate in union elections if they derive benefits from union membership without having to actually pay dues.[140] Hunt and White do not necessarily refute the negative influence of Right-to-Work, but it is still important to discuss their findings as they include the idea of local preference, and their research also shows that Right-to-Work adversely influences internal union democracy.

The need to defend individual rights is frequently used as a pretext for introducing Right-to-Work. This idea forms part of the discussion presented by James T. Bennett and Manuel H. Johnson. They believe that the existence of free riders in Right-to-Work states means that there must be forced riders in non Right-to-Work states.[141] Bennett and Johnson also refer to the "maximizing behavior of the union manager."[142] This reference indicates that they view the operation of a union as being the same as the management of a company. Bennett and Johnson believe that the major difference between Right-to-Work and non Right-to-Work environments is the fact that demand for union services slopes downward in the former environment, while it slopes upward in the latter environment.[143] They conclude their discussion by saying that collecting forced dues violates a person's property rights.[144] Bennett and Johnson do not attempt to determine if Right-to-Work is harmful to labor, but their arguments appear to support Right-to-Work.

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[139] Janet C. Hunt and Rudolph A. White, "The Effects of Right-to-Work Legislation on Union Outcomes: Additional Evidence" *Journal of Labor Research* vol. IV, no. 1 (Winter, 1983), 49.
[140] Hunt and White, 59.
[141] James T. Bennett and Manual H. Johnson, "The Impact of Right-to-Work Laws on the Economic Behavior of Union: A Property Rights Perspective" *Journal of Labor Research* vol 1, number 1 (Spring, 1980), 8.
[142] Bennett and Johnson, 9.
[143] Bennett and Johnson.
[144] Bennett and Johnson, 23.

It is appropriate to summarize the arguments made in the academic articles discussed above. The articles discussed reflect a range of opinion. There are articles which show that the negative effects of Right-to-Work are measurable and indisputable. Another article showed that Right-to-Work is not understood by people living in certain Right-to-Work states. There are commentators who do not believe that Right-to-Work has a significant impact. There is also the view that the making dues payment compulsory leads to workers becoming forced riders. The influence of the South again emerges, as it is obvious that features of Southern culture influence analyses of Right-to-Work. Some commentators feel that local preference is an appropriate factor to consider when discussing Right-to-Work. None of the commentators who refer to local preference consider the idea that public attitudes are considerably influenced by elite preference. The argument that states have Right-to-Work laws because their citizens like these laws is like saying that a state bans occupational health and safety laws because its workers do not like safety on the job. It has been shown in the first chapter that elites in Right-to-Work states, such as those in the South, vehemently oppose organized labor. The elites in Right-to-Work states prefer these laws, not the workers.

Right-wing commentators believe that Right-to-Work protects individual freedom and refer to union leaders as managers. This view reflects their conservative values. It is redundant to say that the demand for union services slopes downward in Right-to-Work states. Demand for union services would of course be reduced in Right-to-Work states as unions are generally weak in these jurisdictions and do not have the kind of resources possessed by unions in non Right-to-Work states. The forced rider idea is dubious as it is not unreasonable to require a person to make a contribution towards something from

which he or she is deriving benefits. It is also questionable to claim that requiring the payment of union dues is a violation of property rights. The logic of this argument could also be used to say that the payment of taxes also represents a violation of property rights. Union dues are paid so that everyone makes a contribution in return for union representation, and to ensure that all members collectively support the union. People are also required to pay taxes in return for receiving services from the state, and to also make a contribution toward the collective good.

The argument that Right-to-Work has no effect on the states that have it is incorrect. Research shows that the passage of Right-to-Work laws has a significant impact on union organizing, particularly in the first ten years following passage. There is also a negative impact on overall membership levels. Right-to-Work frustrates efforts to organize workers in service and professional occupations. It is possible that Right-to-Work may have a particularly detrimental effect on minority workers as they derive greater benefits from union membership. Right-to-Work reduces organizing and would consequently reduce the opportunity for minority workers to enjoy the benefits of union membership. The arguments that dispute the negative impact of Right-to-Work are not as convincing as those arguments that do not dispute the detrimental effect of Right-to-Work.

The information presented by academic sources neither explicitly endorses or rejects Right-to-Work. Organized labor and certain conservative groups present considerable information about Right-to-Work, and they are emphatic in either their rejection or support of Right-to-Work. Both sides of this debate utilize economic statistics to support their arguments. In fact, they often use the same statistics. An

example of the conservative arguments in favor of Right-to-Work is the argument that the cost of living is less in Right-to-Work states and that adjusting for this fact results in different statistical conclusions. James T. Bennett presents this argument in his essay "Right-to-Work Laws: Evidence from the United States." This article of Bennett's is different from the previously discussed academic article by him as this one is found in a compilation of pro Right-to-Work articles published by the conservative, ideologically motivated Fraser Institute. Bennett notes that incomes in Right-to-Work states are lower than in non Right-to-Work states, but that the reduced tax levels found in Right-to-Work states offset this difference in income.[145] Bennett further notes that compensating for cost of living differences actually causes incomes in Right-to-Work states to be higher, with the average Right-to-Work income totaling $36,540 and the average non Right-to-Work income totaling $33,688.[146] Conservative commentators generally do not comment on the negative effect of Right-to-Work on unions, as they tend to favor any measures that will weaker labor.

The conservative argument regarding lower costs of living and lower taxes is specious. It is possible that any number of variables may be factored in to further adjust income comparisons. In reality, there is a clear difference between Right-to-Work states and non Right-to-work states when incomes and general quality of life issues are considered. Commentators may chose to factor in variables such as preference for unions, but it difficult to substantiate the view that workers in Right-to-Work states enjoy the same quality of life as workers in non Right-to-Work states. Adjusting for cost of

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[145] James T. Bennett, "Right-to-Work Laws: Evidence from the United States" in Fazil Mihlar, ed., *Unions and Right to Work Laws: The Global Evidence of Their Impact on Employment* (Vancouver, Canada: The Fraser Institute, 1997), 73.
[146] Bennett, 74.

living is similar to factoring in the "taste" idea when explaining the presence of Right-to-Work in the South.

The American Federation of Labor-Congress of Industrial Organizations (AFL-CIO) does not attempt to adjust its statistics based on variables such as cost of living, and notes that workers in Right-to-Work states are paid less than workers in free bargaining states. In 1993, the average compensation in a non Right-to-Work state was $27,892 while it was $23, 549 in Right-to-Work states.[147] The AFL-CIO notes that nine Right-to-Work states have minimum wages at or above the federal minimum wage, while twenty-three non Right-to-Work states have minimum wage rates at or above the federal minimum wage.[148] The federation further notes that non Right-to-Work states had poverty rates averaging 14.2 percent in 1993, while Right-to-Work states had poverty rates averaging 16.3 percent in the same year.[149] Infant mortality rates are somewhat lower in non Right-to-Work states at 8.2 percent, while Right-to-Work states have an average infant mortality rate of 8.7 percent.[150] Workplace fatality is also higher in Right-to-Work jurisdictions. Eight Right-to-Work states have workplace fatality rates below the national average, while twenty-four non Right-to-Work states have workplace fatality rates below the national average.[151] It can be determined from the last statistics presented that thirteen Right-to-Work states had workplace fatality rates above the national average, while only seven non Right-to-Work states had workplace fatality rates above the

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[147] American Federation of Labor-Congress of Industrial Organizations (AFL-CIO), *What's Wrong With Right-to-Work: A Tale of Two Nations* (Washington, D.C.: AFL-CIO, 1995), 9.
[148] AFL-CIO, *A Tale of Two Nations*, 13.
[149] AFL-CIO, *A Tale of Two Nations*, 15.
[150] AFL-CIO, *A Tale of Two Nations*, 16.
[151] AFL-CIO, *A Tale of Two Nations*, 23.

national average.[152] There were twenty-one Right-to-Work states and thirty-one non Right-to-Work states at the time that the AFL-CIO compiled the statistics cited above.

The statistics presented by the AFL-CIO definitively show that there is a disparity between Right-to-Work and non Right-to-Work states. The reason that indicators such as infant mortality are higher in Right-to-Work states, and minimum wages are lower, is that labor is weak in these states and cannot act as a countervailing political force to business and conservative interests. Conservatives, of course, do not consider this argument as they tend to be anti-labor. A main reason that states such as New York are more liberal is because labor in these states has been able to promote a progressive agenda that includes better health and safety laws and higher minimum wages. Progressive government intervention in society generally results in better workplace health and safety, a higher minimum wage, and better child welfare. Conservative groups generally dominate the debate on social issues in a Right-to-Work state. For example, it is widely known that the religious right exerts considerable social influence in the South and South-Western United States. The presence of a viable labor movement in these areas would not necessarily inhibit conservative movements, but it would help balance the social agenda. It is obvious that progressive social groups such as labor have not influenced the social and political agendas in Right-to-Work states, otherwise these states would have better rankings in indicators such as workplace fatality and minimum wages.

The information presented thus far further shows that there are certain factors that influence a person's decision to become a free rider. The Right-to-Work states are Alabama, Arizona, Arkansas, Florida, Georgia, Idaho, Iowa, Kansas, Louisiana,

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[152] Author's calculation: 21 Right-to-Work states minus 8 equals 13, 31 non Right-to-Work states minus 24 equals 7.

Mississippi, Nebraska, Nevada, North Carolina, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, and Wyoming. The total workforce in these states totals approximately 39,686,000. There are approximately 3,843,000 workers represented by unions in these states. Of these workers, 3,193,000 are actual union members. The difference between those who are union members and those who are simply represented by unions equals 650,000. This figure means that approximately 17 percent of those who are covered by collective agreements in Right-to-Work states do not actually pay anything for union protection.[153]

The numbers mentioned above may seem trivial to the casual observer. The reality is that these statistics reveal a considerable problem with free riding. On a practical level, there is the problem of lost dues. For example, the labor movement would collect an additional $234,000,000 per year if every one of the 650,000 riders paid regular dues of $30 per month.[154] This is an enormous amount of money. Making note of the amount of lost dues may seem like validating the business unionism approach. However, unions face considerable administrative costs. Organizing and political lobbying are particularly expensive and time consuming. The economic problem of lost dues leads to the greater problem of diminished legitimacy. Academic sources do not detail the amount of revenue that organized labor loses as a result of Right-to-Work.

Unions in Right-to-Work states are deprived of considerable income due to free riding. Free riding in turn affects membership levels. For example, the workforce in Texas increased from approximately 8,725,000 in 1999 to 8,755,000 in 2000. The

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[153] Calculation and statistics based on information presented by the Bureau of Labor Statistics at www.stats.bls.gov/news/release/union2.t05.htm. A table showing union membership and union density in Right-to-Work states is found on page 49.

[154] Author's calculation: 650,000X$30X12=$234,000,000.

number of workers covered by collective agreements increased from 611,000 to 645,000 between 1999 and 2000, but the number of dues paying union members declined from 520,000 to 505,000 during the same period. Ed Sills of the Texas AFL-CIO pointed out that membership numbers matter when politicians consider the bargaining strength of unions. Sills also noted that unions would be able to mount more programs if they could collect the full amount of dues that they should be collecting.[155]

The loss of dues money puts unions in Right-to-Work states in a disadvantageous position in relation to their non Right-to-Work counterparts. Union officials in Right-to-Work states are quite certain of the difficulties that they face. Sills said that every phase of union operations are more difficult to conduct in a Right-to-Work state. Sills made an interesting point with regards to organizing. He said that there is no real difference between Right-to-Work states and non Right-to-Work states when it comes to external organizing. Unions must all deal with the process of organizing and filing applications with the National Labor Relations Board. The difference comes with internal organizing and free riders. Sills indicated that management has an advantage going into a strike in a Right-to-Work state, and can be fairly sure that free riders will cross a picket line. Most union officers who have led strikes will attest to the fact that it is difficult enough to get union members to support a strike without having to deal with a dedicated core group that are virtually guaranteed to cross a picket line. Sills noted that it is difficult to organize free riders as they are often recalcitrant.[156]

The continued weakness of unions in Right-to-Work states helps sustain Right-to-Work legislation. Sills noted that repeal of Right-to-Work in Texas is hypothetical at this

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[155] Ed Sills, Communications Director for the Texas AFL-CIO. Phone Interview with the author on January 24, 2001.

point.[157] The Texas AFL-CIO concentrates its efforts on ensuring that Right-to-Work is not expanded through an action such as an amendment to the state's constitution.[158] Right-to-Work has become ingrained in Texas politics. Sills said that it would be difficult to repeal Right-to-Work, even with a Democratic controlled legislature.[159] Texas politicians do not feel compelled to repeal Right-to-Work because Texas's union density is only 6 percent.[160] The situation in other states is even worse. North Carolina has the lowest union density in the United States at 3.2 percent.[161]

Right-to-Work clearly has a significant, measurable impact on the operation of unions in Right-to-Work states. To suggest that it does not have an impact would involve ignoring some fundamental points. Unions are weak in Right-to-Work states and cannot act as a countervailing political force. The argument that Right-to-Work does not matter misses a significant issue. The fact that American labor law applies at the national rather than state level means that unions across the United States generally operate under the same law, mainly the National Labor Relations Act. Right-to-Work changes the scenario in those states that have it. It is not coincidental that states with Right-to-Work laws also have low union density and weak labor movements. This may seem like an obvious statement, but some commentators do not consider this fact.

Those people who say that Right-to-Work laws do not matter would also probably agree that labor does not need to be a social movement. In a political system that promotes interest group lobbying it is necessary for labor to be able to participate in the

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[156] Sills.
[157] Sills.
[158] Sills.
[159] Sills.
[160] Bureau of Labor Statistics, www.stats.bls.gov/news.release/unions2.t05.htm.
[161] Bureau of Labor Statistics, www.stats.bls.gov/news.release/unions2.t05.htm.

process. Conservatives could argue that labor does not act as a countervailing force in society as there is no need for it to occupy this role. It is obvious from some of the statistics presented in this chapter that there are problems in Right-to-Work states such as higher workplace fatality. A strong labor movement can successfully lobby to improve social conditions. At one time there were no unions in any states. Unions developed and were granted legitimacy because they acquired political influence. Unions are weak in the South and South-West because they lack political power in these areas. They in turn lack political power because of their inability to expand their numbers. Organizing is impeded due to Right-to-Work. Right-to-Work is the product of reactionary conservative politics. This entire process is self-perpetuating.

The level of union membership is an important consideration for politicians. Republicans and Democrats in Right-to-Work states would be more attuned to union concerns if there was double digit union density in these areas. Republicans in states such as New York and Michigan do not advocate the introduction of Right-to-Work as they are aware of the political strength of the labor in these states. A strong labor presence also helps to ensure that Republicans in these states do not move too far to the right of the political spectrum. It is reasonable to expect that Southern and South-Western politicians would behave in the same manner as their North Eastern counterparts if they were given the proper incentive.

The information that I have presented confirms the chapter thesis that Right-to-Work has a negative effect on the states that have it, and on the labor movements in those states. Right-to-Work is clearly intended to weaken labor. As Sills noted, the people

UNION MEMBERSHIP AND UNION DENSITY IN RIGHT-TO-WORK STATES IN 1999

State	Total State Workforce	Total Union Members	Percentage of Workers Who are Union Members	Workers Represented by Unions	Percentage of Workers Represented by Unions
Alabama	1,830,000	201,000	11.0	225,000	12.3
Arizona	2,047,000	137,000	6.7	168,000	8.2
Arkansas	1,058,000	79,000	7.5	91,000	8.6
Florida	6,263,000	410,000	6.5	543,000	8.7
Georgia	3,483,000	253,000	7.3	313,000	9.0
Idaho	527,000	48,000	9.2	59,000	11.3
Iowa	1,334,000	184,000	13.8	209,000	15.7
Kansas	1,224,000	119,000	9.7	141,000	11.5
Louisiana	1,795,000	145,000	8.1	180,000	10.0
Mississippi	1,086,000	67,000	6.2	94,000	8.6
Nebraska	748,000	66,000	8.8	92,000	12.2
N.Carolina	3,359,000	109,000	3.2	132,000	3.9
N.Dakota	268,000	25,000	9.3	27,000	10.1
Oklahoma	1,403,000	124,000	8.8	140,000	10.0
S.Carolina	1,716,000	61,000	3.5	65,000	3.8
S.Dakota	332,000	20,000	6.0	26,000	7.8
Tennessee	2,411,000	181,000	7.5	213,000	8.8
Texas	8,725,000	520,000	6.0	611,000	7.0
Utah	935,000	60,000	6.4	70,000	7.5
Virginia	3,107,000	204,000	6.6	249,000	8.0
Wyoming	212,000	19,000	9.1	23,000	10.8
Totals and Average Percentages	39,686,000	3,193,000	7.3	3,843,000	8.8

Source: Table derived from information provided by the Bureau of Labor Statistics at www.bls.gov/news.release/union2.t05.htm.

who passed Right-to-Work knew exactly what they were doing.[162] Conservatives in Right-to-Work states are in a position to formulate social policy without having to face opposition from strong unions. The existence of a large, anti-union region has also had major national implications. I will discuss this idea in detail in the next chapter.

CHAPTER THREE –
THE NATIONAL IMPACT OF RIGHT-TO-WORK

In this chapter I will discuss the national impact of Right-to-Work. I will build upon the preceding chapters and will further emphasize the negative impact of Right-to-Work on American labor's legitimacy. The main thesis of this chapter is that Right-to-Work has been one of the major contributors to labor's decline in the post Second World War era. This is because Right-to-Work has fragmented American labor and made it a regional rather than national movement. I will discuss several different aspects of Right-to-Work in order to substantiate this thesis. The primary emphasis of the chapter will be on the impact of Right-to-Work on the American political landscape. Virtually every problem with Right-to-Work laws is related to the impact that these laws have had on national politics. The legislative process is dependent on the political process, and labor's legislative difficulties will be discussed. The secondary emphasis of the chapter will be on the economic impact of Right-to-Work on American labor. I will also discuss how American labor may successfully resist Right-to-Work.

The most significant direct impact that Right-to-Work has had on the American labor movement was to make it a regional rather than national movement. Right-to-Work laws at the state and federal level have caused American labor's strength to be concentrated in certain areas. More that half of America's 16.3 million union members lived in seven states as of January 2001.[163] The average union density in these states is

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[162] Sills.
[163] Bureau of Labor Statistics, stats.bls.gov/news.release/union2.rr0.htm.

19.6 percent.[164] These states are California, Illinois, Michigan, New Jersey, New York, Ohio, and Pennsylvania. These seven states represent 14 seats in the Senate, and 172 seats in the House of Representatives.[165] The Senate seats that these states have represent 28 percent of the total seats in the Senate, and the seats that these states have in the House represent approximately 40 percent of the total seats in the House.[166] Unions can be fairly certain of receiving support from the legislators from these seven states. The liberal wing of the Democratic Party is generally based in these states, and in a few other more pro-labor states. The problem is that labor cannot easily extend its influence beyond these seven states. The labor movement may be concentrated in seven states, but these states account for only 38 percent of wage and salary employment nationally.[167]

American labor has a strong regional mandate and can easily claim to represent the interests of workers in states such as California and New York. Labor cannot claim to have a mandate to represent workers in the South and Mid-West as it has no tangible strength in these areas. There is a direct link between the strength of a state's labor movement and the existence of Right-to-Work laws in a state. For example, there are other states currently considering the introduction of Right-to-Work. These states include Connecticut, Colorado, Hawaii, New Hampshire, and New Mexico.[168] In 2000 Connecticut, Hawaii, and New Hampshire all had union densities over 10 percent.[169] It is

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[164] Author's calculation based on information presented by the Bureau of Labor Statistics at www.stats.gov/news.release/union2.t05.htm.
[165] Author's calculation based on information presented by the House of Representatives at www.clerkweb.house.gov/107/olm107_1.htm. A list of Governors and Congressional Representatives is found on pages 76 to 77.
[166] Author's calculation based on information presented by the House of Representatives at www.clerkweb.house.gov/107/olm107_1.htm and the Senate at www.senate.gov.
[167] Bureau of Labor Statistics, www.stats.bls.gov/news.release/union2.rr0.htm.
[168] AFL-CIO. "Working Families Battle Anti-Worker Measures in State Legislatures." Found at www.aflcio.org/news/2001/0215_rtw.htm.
[169] Bureau of Labor Statistics, www.stats.bls/news.release.unions2.t05.htm.

therefore unlikely that Right-to-Work will be passed in these states. Colorado and New Mexico had union densities of less than 10 percent, and it is more likely that these states will implement Right-to-Work.[170]

Oklahoma passed Right-to-Work on September 25, 2001.[171] It is the twenty-second Right-to-Work state. The fact that Oklahoma passed a Right-to-Work law illustrates the fact that conservative groups still successfully promote such laws. The introduction of a Right-to-Work law in Oklahoma also demonstrates that Right-to-Work should not be viewed as something that was introduced thirty or forty years ago, but is no longer a threat today. Right-to-Work is still a significant threat to organized labor, and it is possible that it may yet be introduced in other states.

Right-to-Work laws have significantly affected the place that unions occupy in American society. Labor's role is in many dependent on the state, because the state legalized unions and provided the legislative framework in which unions operate. It can be argued that this framework is not particularly beneficial for labor, but it is still better than having no legal legitimacy. Business also relies on the state as the latter guarantees property rights, but labor's dependency is greater. Charles Lindbom and Edward Woodhouse note that business can be regarded as a policy making rival to government.[172] Labor does not rival government as a policy making influence, but it is the major countervailing force to business. Right-to-Work laws impede labor's ability to challenge business because these laws diminish labor's legitimacy in society.

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[170] Bureau of Labor Statistics, www.stats.bls/news.release.unions2.t05.htm.
[171] National Right-to-Work Committee, www.nrtwc.org.
[172] Charles Lindblom and Edward Woodhouse, *The Policy Making Process, third ed.* (Englewood Cliffs, New Jersey: Prentice-Hall, 1993), 90.

Right-to-Work has a substantial effect on the political process. This is an aspect of it that appears to have been overlooked by most analysts. The fact that Right-to-Work exists in 22 states ensures that there will be 22 governors operating under this legislation. There are also 44 senators from Right-to-Work states. The House of Representatives contains 145 members from Right-to-Work states.[173] It is interesting to note who is most often elected in Right-to-Work states. Republican governors are in power in 27 states and 16 of them come from Right-to-Work states.[174] Democratic governors are in power in 22 states, but only 7 of them come from Right-to-Work states.[175] These numbers reflect the results of widely known Democratic victories in gubernatorial elections held in New Jersey and Virginia in November 2001. Right-to-Work states represent approximately 44 percent of the states in the union.[176] Almost 60 percent of the Republican governors are drawn from 44 percent of the states in the union.[177] In contrast, only 32 percent of Democratic governors are drawn from 44 percent of the states in the union.[178] It can be concluded from these statistics that Republican gubernatorial candidates are more successful in Right-to-Work states.

The trend shown at the gubernatorial level is also found at the federal level. The House is currently comprised of 435 members.[179] There are 221 Republicans, 212 Democrats, and 2 independents.[180] Of the 145 house seats assigned to Right-to-Work

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[173] United States House of Representatives. www.clerkweb.house.gov/107/olm107_1.htm.
[174] Republican Governors Association. www.rga.policy.net.
[175] Republican Governors Association.
[176] Author's calculation: 22 Right-to-Work states divided by 50 equals 44 percent.
[177] Author's calculation: 16 Right-to-Work states with Republican governors divided by 27 states in total with Republican governors equals 59 percent.
[178] Author's calculation: 7 Right-to-Work states with Democratic governors divided by 22 states in total that are governed by Democrats equals 32 percent.
[179] House of Representatives, www.clerkweb.house.gov/mbrcmtee/stats.htm
[180] House of Representatives, www.clerkweb.house.gov/mbrcmtee/stats.htm.

states, Republicans hold 94 and the Democrats hold 51.[181] In fact, approximately 43 percent of the Republican strength in the House comes from Right-to-Work states, while only 24 percent of Democratic House membership comes from Right-to-Work states.[182] The situation in the Senate is similar to the situation in the House. The Democrats currently control the Senate. Of the Senators from Right-to-Work states, 27 are Republicans and 17 are Democrats.[183] More than half of the Republican Senate membership comes from Right-to-Work states, while 34 percent of Democratic Senate membership comes from Right-to-Work states.[184]

Congressional representatives from Right-to-Work states are quite involved in the legislative process. Both the Senate Minority and Majority leaders are from Right-to-Work states. The Republicans are currently lead by Trent Lott of Misssissippi and the Democrats by Tom Daschle of South Dakota. The political power of Right-to-Work states can also be seen at the Presidential level. John Kennedy was the last Democrat to be elected from a non Right-to-Work state. The presidents who have been in power since Kennedy have either been Republicans from the South or West, or Democrats from Right-to-Work states. Gerald Ford was from Michigan, but was not elected. Indeed, all of the elected presidents since Kennedy have either been from the South or from California. For example, both a president and a vice-president who came from Right-to-

[181] Author's calculation: 94 Republican House Members from Right-to-Work states divided by total Republican House Membership of 221 equals 42.5 percent, 51 Democratic House Members from Right-to-Work states divided by total Democratic House Membership of 212 equal 24 percent.
[182] Author's calculation: Statistics derived from an analysis of House membership. Membership lists and party affiliation found at www.clerkweb.house.gov/107/olm107_1htm.
[183] Author's calculation: Statistics derived from analysis of Senate membership. Membership lists and party affiliation found at www.senate.gov.
[184] Author's calculation: Statistics derived from an analysis of Senate membership. Membership lists and party affiliation found at www.senate.gov.

Work states led the Clinton administration. A president and a vice-president who come from Right-to-Work states also lead the current Bush administration.

There is a worthwhile point to be made about the fact that Republican strength is based in Right-to-Work areas. Labor may not be able to claim a national mandate as its strength is regionally concentrated, but the Republican party is also in many ways regionally concentrated. This suggests that it too lacks a true national mandate. American political parties are different from those in other countries in that they are not particularly doctrinaire, and may include varying viewpoints. For example, a New York Republican may have a political outlook similar to that of a Texas Democrat. Right-to-Work and the structure of the party system compounds labor's political problems. It is not uncommon for Southern Democrats to vote against pro-labor legislation. It was publicly reported that Southern Democratic senators recently voted to overturn the Occupational Safety and Health Administration's ergonomics standard despite heavy lobbying from the AFL-CIO.

All of the statistics presented above clearly indicate that the Republican party's support is based in Right-to-Work states. The Republicans passed Taft-Hartley and Right-to-Work with the support of conservative Southern Democrats. Those Southern Democrats may not have supported Taft-Hartley had they realized that doing so would help strengthen the Republican party. It is obvious that the Republicans have benefited enormously from the passage of Right-to-Work. This argument may be refuted by saying that there are other factors that have lead to the Republican ascendancy in the South and South-West, the primary Right-to-Work areas. References could be made to individualistic tendencies among the populations of these regions. The reality is far

different. The American political system is heavily influenced by interest groups, and has always been influenced by interest groups. James Madison noted in the Tenth Federalist Paper that "the latent causes of faction are sown in the nature of man."[185] Indeed, Madison appeared to believe that factions were an essential part of the democratic process. He wrote that "liberty is to faction, what air is to fire."[186] The purpose of quoting Madison is to illustrate that even the founders of the American republic were well aware of the role of interest groups and that the political system that they were founding would involve these groups. Labor must operate under this system if it is to further its aims. Labor can be regarded as a successful interest group as it has been able to maintain some of the legal framework in which it operates. It would be more effective if it could operate as a national movement instead of a regional interest group. Right-to-Work prevents labor from assuming the latter role as it diminishes labor's legitimacy.

It is probably not unusual that the so-called Gingrich revolution largely originated in the South and South-West. Newt Gingrich and the Republicans elected in 1994 were interested in eliminating or reducing government spending in many areas. This included imposing lifetime limits on welfare. This legislative agenda was vigorously opposed by labor. The reason that labor could not prevent a lot of the conservative agenda from being implemented is that unions had absolutely no influence over the politicians introducing these changes. Labor is indeed a social and political factor in free bargaining states, but not in Right-to-Work states. Conservatives can claim to have greater national influence.

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[185] The Claremont Institute, www.claremont.org/publications/jaffa000209.cfm.
[186] The Claremont Institute.

Labor has chosen to pursue its political objectives through its alliance with the Democratic party. This alliance is based less on mutual interest and more on necessity. Labor needs to ally itself with a political party in order to protect its interests. The lack of a viable national third party has been a problem for American unions. The Democrats benefit considerably from the resources that labor makes available to the party. The Democratic Party is not social democratic, even though it has supported progressive legislation. The Democratic Party embraces capitalism, although not always with the same fervor shown by the Republican party.

Southern Democrats supported the introduction of Right-to-Work and labor has historically been unsuccessful with getting them to support repeal of Section 14b. The fact that Right-to-Work becomes part of the political consensus is part of the reason for this situation, however continued support for Right-to-Work is also based on conservative support of these laws. Labor's interaction with the political process influences every aspect of its operations. Unions can pursue a broad social agenda, or an agenda that is more focused on objectives that more purely benefit labor. For example, Family and Medical Leave is a broader policy objective as it also benefits workers who are not union members. Reversing Section 14b is ostensibly a policy objective that would only benefit unions. In reality, strengthening unions benefits all of society as there needs to be a viable force to counter the influence of business.

There are commentators who believe that there has been continuity to the relationship between labor and the Democrats. In assessing the decline of labor and the idea of a decline in the relationship between the unions and the Democrats it is important to differentiate between a decline in union membership and a decline in influence.

Taylor Dark notes that union density was only approximately 14 percent in 1997.[187] Dark further discusses the difference between a Centralized Pluralist system of collective bargaining and a Fragmented Pluralist system.[188] Bargaining power is concentrated in the hands of a relatively small number of groups in the former system, while it is shared among a larger number of groups in the latter system. Labor has unfortunately found itself operating under fragmented pluralist conditions more often than under centralized pluralist conditions.

Labor has had success when the Democrats are in control of Congress, even with a Republican president in power. The AFL-CIO was successful with getting its agenda presented in Congress during the Reagan years, and there was considerable co-operation between federation lobbyist Robert McGlotten and Democratic House Speaker Jim Wright.[189] Laws such as the Family and Medical Leave Act passed with the support of the Clinton administration.[190] The Clinton administration also increased the minimum wage.[191] The extent of the relationship between labor and the Clinton administration can be seen in the fact that AFL-CIO officials were involved in discussions regarding the 1996 Democratic presidential election campaign.[192] The problem with the legislative success that labor has enjoyed deals with the kind of legislation that was actually passed. The passage of broad legislation, while part of labor's agenda, has not been accompanied by the passage of narrow legislation that is specific to labor.

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[187] Taylor Dark, *The Unions and the Democrats: An Enduring Alliance* (Ithaca: Cornell University Press, 1999), 15.
[188] Dark, 39.
[189] Dark, 146.
[190] Dark, 165.
[191] Dark, 170.
[192] Dark, 185.

Labor needs to have Section 14b repealed in order to become a truly national movement. The Democrats cannot get this part of Taft-Hartley repealed as this would incur the wrath of conservative elites, particularly in the South. The Democrats did not get Section 14b repealed during the 1960s despite an attempt to do so during Lyndon Johnson's Democratic administration. Johnson did not press for the repeal of Section 14b as this could have hampered the war in Vietnam and some components of the Great Society Program.[193] The Democrats were also unable to get a relatively moderate labor law reform bill through Congress in 1977.[194] This bill had been intended to revive union organizing, particularly in the South.[195] A major reason for the difficulties that labor has had with the Democratic party involves the difference between the aims of a political party and those of labor. William Form notes that unions want to pass legislation that is important to them, and otherwise protect the commercial interests of organized and unorganized workers.[196] A political party will pursue an agenda that will get it elected. A party must consequently adopt an agenda that has the approval of at least some members of the socio-economic elite if it is to gain power.

There is a link between Right-to-Work and American labor's avoidance of third parties. There were other parties such as the Socialists and Communists that labor could have supported, but did not. The American Labor Party (ALP) that existed in New York state from 1936 to 1956 was a viable, pro-union party.[197] Much of labor did support the

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[193] James A. Gross, *Broken Promise: The Subversion of U.S. Labor Relations Policy, 1947-1994* (Philadelphia, Pennsylvania: Temple University Press, 1995), 191.
[194] Gross, *Broken Promise: The Subversion of U.S. Labor Relations Policy*, 237.
[195] Gross, *Broken Promise: The Subversion of U.S. Labor Relations Policy*.
[196] Form, 263.
[197] Gerald Meyer, "The American Labor Party, 1936 to 1956" in *The Encyclopaedia of Third Parties in America*, vol. 1, 132.

ALP.[198] The party's stance was basically anti-capitalist and socialist in nature, and it was modeled after the British Labor Party.[199] New efforts are being made to form political parties that are more pro-labor. New York state is the home of the Working Families party. Joe Jamison of the New York state AFL-CIO notes that the Working Families party represents a break from the pragmatic political approach that labor has employed in recent decades, and that this approach has frequently involved supporting Republicans. The idea behind the Working Families party is to pull the Democratic party to the left. Jamison notes that party allegiances are trending downward and union members are not receptive to messages from their leadership advising them how to vote, but they are receptive to comparisons of candidates' positions on issues. Labor can draw comparisons that will illustrate to workers the need to support pro-labor candidates. It should be noted that Working Families is in many ways dependent on a widely known aspect of New York electoral law that permits different parties to nominate the same candidate. This enabled Working Families to nominate Hillary Clinton for the Senate even though she was a Democrat.[200]

There are unions that are not receptive to the Working Families concept. Unions such as the American Federation of State, County, and Municipal Employees (AFSCME) feel conflicted about Working Families.[201] AFSCME needs to get legislation passed every year as it represents large numbers of government employees, but the union also rejects the bi-partisan consensus on tax cuts and spending freezes.[202] Other state labor federations also have differing views on third parties. Sills said that the results of the last

[198] Meyer.
[199] Meyer, 133.
[200] Jamison.
[201] Jamison.

presidential election showed that the United States is still a two-party system.[203] This is a reference to the negative impact that Ralph Nader and the Green Party had on Democratic candidate Al Gore's vote count. Indeed, Sills believes that it is dangerous for labor to contemplate the third party option.[204] Union voters in Texas tend to vote Democrat, with 60 percent choosing that party.[205] Sills believes that a 10 percent union voter for Nader would not have shown widespread support for his candidacy.[206]

The environments in which they work can partly explain the difference in outlook between Jamison and Sills. Their views could be considered as reflecting the views of a labor movement that operates in non Right-to-Work conditions as opposed to a labor movement that operates in a Right-to-Work environment. The New York state labor movement is the strongest in the United States. Jamison believes that it is highly unlikely that the Republicans in New York State would ever seriously consider passing Right-to-Work.[207] Sills believes that the repeal of Right-to-Work in Texas is hypothetical at this point.[208] Texas is also the home of Republican president George W. Bush, who is an ardent supporter of Right-to-Work. The fact that New York state labor has chosen to pursue the Working Families option will probably help ensure the longevity of the movement in that state.

Political conservatism has manifested itself in attacks on the collective bargaining process and further legislative attacks on labor's position in society. Efforts made to undermine collective bargaining can be see in capital's attacks on the NLRB. The NRLB

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[202] Jamison.
[203] Sills.
[204] Sills.
[205] Sills.
[206] Sills.
[207] Jamison.
[208] Sills.

came under attack from the moment it was created and the attacks have continued for the past sixty years. The board is heavily influenced by whatever political party currently controls the executive branch, and during the Reagan and first Bush administrations the National Right-to-Work Committee believed that it had a virtual veto over NLRB appointments.[209] William B. Gould IV, who served as NLRB chairperson during the Clinton administration, believes that the board has been weakened by the Democratic Party's loss of the South and the general decline of unions in American society.[210]

Problems with the NLRB represent a serious challenge for labor. The board's members are all political nominees. The best that unions can expect from a Democratic administration is a neutral board that attempts to maintain a balance between management and labor. Republican nominees to the board will show the party's anti-union bias. For example, Ronald Reagan appointed Donald Dotson to the position of NLRB chairperson.[211] Dotson pursued a policy of freeing employers from the most important constraints of collective bargaining in cases involving Otis Elevator and Milwaukee Springs.[212] Reagan's dismissal of the entire membership of the Professional Air Traffic Controllers Association (PATCO) set the labor relations tone of his administration.

Anti-union legislation such as Right-to-Work leads to the introduction of more conservative, anti-union legislation such as Paycheck Protection. Paycheck Protection restricts the use of union dues for political purposes. The original Hartley act contained Paycheck Protection provisions, but these provisions were not included in the final

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[209] William B. Gould, *Labored Relations: Law, Labor, and the NLRB – A Memoir* (Cambridge, Massachusetts: The MIT Press, 2000), 73.
[210] Gould, 1.
[211] James A. Gross, *Broken Promise: The Subversion of U.S. Labor Relations Policy, 265.*

version of Taft-Hartley.[213] Paycheck Protection proposals usually prohibit the use of dues for political purposes without the written permission of union members. These laws are supposedly intended to protect individual choice, but Paycheck Protection measures are really intended to undermine workers' collective political voice.[214] It is interesting to note that conservatives never propose requiring corporations to obtain written permission from shareholders before corporate profits are devoted to political causes.

Paycheck Protection is similar to Right-to-Work as it is linked to judicial action. Paycheck Protection became a significant issue in the late 1980s and the early 1990s as a result of the *Beck vs. Communication Workers of America* decision issued by the Supreme Court in 1988.[215] Gould notes that the real impetus behind *Beck* was the fact that unions give most of their political contributions to the Democratic party.[216] He further notes that the NLRB has not pushed for the enforcement of the Beck decision, even though enforcement has been a political issue.[217] It is not surprising that the Supreme Court upheld *Beck*. The judicial nominating process must pass congressional scrutiny, and it is unlikely that a conservative dominated legislature would confirm a Supreme Court nominee who is pro-labor. The situation may have been different had their been more pro-union representatives in Congress to vote in favor of pro-labor judicial nominees. The difficulties with the NLRB and with judicial decisions are the kind of the developments that Senator Glen Taylor predicted during the debate over the passage of Taft-Hartley.

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[212] James A. Gross, *Broken Promise: The Subversion of U.S. Labor Relations Policy*.
[213] Raymond L. Hogler, "Unions, Politics and Power: The Ideology of Paycheck Protection Proposals" *Labor Law Journal*, vol. 49, no.8 (December, 1998), 1198.
[214] Hogle, 1196.
[215] Gould, 73.
[216] Gould.
[217] Gould.

Right-to-Work laws are not restricted to the states that have directly implemented them, as the federal government is the nation's largest open shop employer.[218] In 2000 there were approximately 1.7 million workers who were represented by a union without actually being union members.[219] Half of these people were employed in government jobs.[220] Title VII of the 1978 Civil Service Reform Act prohibits contractual obligations requiring payment of union dues.[221] Title VII also severely restricts the scope of bargaining in the public sector.[222] This legislation is not explicitly referred to as a Right-to-Work law, but it has led to widespread free riding in the federal public sector. The experience of the American federation of Government Employees (AFGE) illustrates the effect of Title VII. In 1986 the AFGE represented 700,000 government workers.[223] A total of 126,666 AFGE members paid full dues, while another 196,437 members paid 66 percent of full dues.[224] This meant that only approximately 46 percent of the union's membership was paying any dues.[225] This led to situation whereby the AFGE could barely operate.[226] It is obvious why other unions have cultivated alternative sources of revenue, as they could have experienced the same difficulties as the AFGE. Right-to-Work has clearly led unions to adopt a business approach to their operations.

Title VII should also be considered from a political perspective. This law receives less attention than Taft-Hartley, but it is still damaging to labor. Title VII in effect moves Right-to-Work beyond the South and South-West because it is national

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[218] Marick F. Masters and Robert Atkin, "Bargaining Representation and Union Membership in the Federal Sector: A Free Rider's Paradise" *Public Personnel Management*, vol.19, no.3 (Fall, 1989), 313.
[219] Bureau of Labor Statistics, www.bls.gov/news.release/union2.rr0.htm.
[220] Bureau of Labor Statistics, www.bls.gov/news.release/union2.rr0.htm.
[221] Masters and Atkin, 312.
[222] Masters and Atkin, 313.
[223] Masters and Atkin, 311.
[224] Masters and Atkin, 319.
[225] Author's calculation: 126,666+196,437/700,000=46 percent.

legislation. It is also an example of the type of anti-union legislation that has been introduced in the years since the passage of Taft-Hartley. Title VII passed during a Democratic administration, and its passage reflected conservative views in Congress. Labor should work to have Title VII revoked along with Section 14b of Taft-Hartley.

There is every reason to expect that legislative attacks on labor will continue. In March 2001 Republican Representative Bob Goodlatte of Virginia introduced a national Right-to-Work law in the House of Representatives. This bill was sponsored by 29 other members of the House. The level of support that Goodlattte managed to raise for this bill illustrates that he is not alone in his objective of further weakening American labor. This bill is supposedly meant to protect the rights of individual workers, but it is blatantly intended to weaken labor.[227]

Right-to-Work has had a significant impact on the American economy, as it has led to the creation of an internal low wage labor market. The creation of this labor market represented the beginning of the globalization process. Local Southern Chambers of Commerce used the appeal of cheap labor and an absence of unions, with assurances that these conditions would persist, in order to attract industry to the South.[228] Efforts were made to attract business from areas of the country where unions were strong, and where workers enjoyed better wages and employment conditions. Labor attempted to counter these efforts by trying to have local Chambers of Commerce legally recognized as employer representatives and consequently subject to legal sanction, but this effort did not succeed.[229] The legal system in the South was biased against practically every group

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[226] Masters and Atkin, 320.
[227] National Right to Work Committee, www.nrtwc.org/279.html.
[228] Gross, *Broken Promise: The Subversion of U.S. Labor Relations Policy*, 155.
[229] Gross, *Broken Promise: The Subversion of U.S. Labor Relations Policy*.

but capital. NLRB Chief Investigator Odell Clark remarked in the 1950s that Southern judges were so "dominated by the power structures in their communities" that they would issue injunctions against anyone but employers and the Klu Klux Klan.[230] Globalization in a sense began with the transfer of jobs to the South as capital has continued to transfer work to low wage labor markets. Northern manufacturing jobs were first transferred to Southern Right-to-Work states, then from these states to Mexico and other lower wage jurisdictions. This transfer of work to low wage jurisdictions is therefore not a new phenomenon and has in fact been occurring for several decades.

The conservative shift in American politics that was facilitated by Right-to-Work has also been accompanied by attempts to negatively portray labor to the public. A number of lobbying groups such as the National Association of Manufacturers', the United States Chamber of Commerce, and the National Right-to-Work Committee began to push an anti-labor agenda during the 1950s and 1960s. In the 1950s the National Right-to-Work Committee actually produced a film titled "And Women Must Weep" as a tool to dissuade people from joining unions.[231] In this film, a labor dispute was featured in which "Americanism, religion, family, motherhood, and innocent children are on one side while goons, brutes, and murderers are on the other pro-union side."[232] Negative depictions of unions also appeared in mainstream entertainment. The film "On the Waterfront" by director Elia Kazan, for example, portrayed union racketeering in New

[230] Gross, *Broken Promise: The Subversion of U.S. Labor Relations Policy*, 178.
[231] Gross, *Broken Promise: The Subversion of U.S. Labor Relations Policy*, 169.
[232] Gross, *Broken Promise: The Subversion of U.S. Labor Relations Policy*.

York City.[233] Much of the negative imagery associated with unions came out of the McClelland hearings of the 1950s, and labor had difficulty refuting this image.[234]

Right-to-Work has an interesting impact on the manner in which American unions operate, including business unionism. Business unionism did not begin with the passage of Right-to-Work, but it has been partially perpetuated by Right-to-Work. It is a system whereby union membership is viewed as a commodity. A worker pays a fee in the form of dues, and in return receives union representation. This is not unlike purchasing insurance. It is reasonable to expect that unions will take on some of the characteristics of a business since they operate in a capitalist system, and there is evidence to support the idea that unions operate like businesses.

In analyzing the financial operations of unions it is important to differentiate between union operating income and total income. In 1993, twenty-eight large American unions had a total income of $2,905,000,000 with $1,253,000,000 of this as operating come.[235] Operating income appears to refer to union dues, while total income includes all sources of revenue. On average, 28 large national unions derived 57 percent of their incomes from transmittals or sales of investments and fixed assets.[236] Transmittals include fees such as fines and assessments.[237] Transmittals and membership income averaged $1,330,000,000 per year between 1979 and 1993, or slightly less than 40 percent of total union income during this period.[238] The rest of labor's income came from investments and sales of assets. The AFL-CIO has a $3.4 billion credit card

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[233] Gross, *Broken Promise: The Subversion of U.S. Labor Relations Policy*, 206.
[234] Gross, *Broken Promise: The Subversion of U.S. Labor Relations Policy*, 279.
[235] Marick F. Masters, *Unions at the Crossroads: Strategic Membership, Financial and Political Perspectives* (Westport, Connecticut: Quorum Books, 1997), 91.
[236] Masters, 92.
[237] Masters, 93.
[238] Masters.

portfolio from which it was estimated the federation would derive $300 million in royalties over a five year period commencing in 1996.[239] Membership based income was a fourth lower in 1993 than it was in 1979.[240] It is obvious that dues are not financing union operations.

Unions chose to curtail their expenditures at the same time as they were making most of their revenues from non-dues sources. Disbursements by major unions dropped from $92 per member to $87 per member between 1979 and 1993.[241] Union reserves of working capital never fell below 50 percent of their operating disbursements between 1986 and 1993.[242] Private sector unions also tended to have higher liquidity during this period.[243] Six of the seven unions that had deficits during these years were from the public sector.[244] Private sector unions apparently fared better financially. Labor has continued to spend on political causes. In 1994 it gave $40 million of the $42 million it raised in political action committee money (PAC) to the Democrats.[245] Business evenly split its $68 million in political contributions between the Democrats and the Republicans.[246]

Marick Masters argues that labor increased its political expenditures in order to maintain its existing legislative gains.[247] Unions would have been spent $6.6 billion on organizing between 1979 and 1993 if they had followed AFL-CIO president John

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[239] Masters, 178.
[240] Masters, 105.
[241] Masters, 92.
[242] Masters, 109.
[243] Masters, 110.
[244] Masters, 111.
[245] Masters, 123.
[246] Masters.
[247] Masters, 168.

Sweeney's guideline and spent 30 percent of their revenues on it.[248] Unions have not devoted considerable resources to organizing. In 1993 labor spent only $5 per member on organizing.[249] This would have been approximately $80 million.[250] Labor would have perhaps had more organizing success if it had devoted all of its credit card royalties to organizing. The fact that unions have been successful with raising revenues through other sources has undoubtedly helped create the perception that they are not suffering from the effects of Right-to-Work, when in fact the impact of Right-to-Work has been profound.

Another unusual aspect of the financial state of American unions is the high concentration of assets between a few unions. Five of twenty-eight national unions controlled two-thirds of labor's financial assets between 1979 and 1993.[251] The UAW alone controls more than $1 billion in Treasury securities.[252] The level of wealth concentration between a few unions, and the extent of these assets, raises the issue of what exactly will be done with these assets? It seems that those unions that control the bulk of labor's funds should use these resources to organize, particularly in Right-to-Work states. Labor has obviously concentrated on resisting any further erosion of its position in society, rather than on expanding membership. Organizing should improve if more resources are devoted to it. AFL organizing expenditures between 1938 and 1941 constituted half of all expenditures by the federation during this period.[253] These years are generally known to have been a period of major increases in union membership.

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[248] Masters, 169.
[249] Masters, 145.
[250] Author's calculation: 16 million national members multiplied by $5 per member equals $80 million.
[251] Masters, 206.
[252] Masters, 207.
[253] Masters, 35.

American unions have had to take a more corporatist approach to their operations and use various other revenue sources to finance their operations. This fact can undoubtedly be attributed to an inability to collect full membership dues. This in turn is linked to the fact that Right-to-Work inhibits the collection of dues.

Unions have three basic strategies for furthering their aims. These strategies are collective bargaining, legal or legislative enactment, and organizing.[254] Right-to-Work has a negative impact on all three strategies. Richard W. Hurd and Joseph B. Uehlein propose that efforts be made to curtail employer interference in a workers' decision to join a union.[255] They also propose that the cost of non-compliance with the law be raised for employers.[256] A further idea involves curtailing the use of consultants in union avoidance campaigns.[257] Masters notes that more than seven thousand attorneys and consultants participate in a union busting industry that is worth $1 billion.[258] Sweeney outlined the federation's ambitions in his book *America Needs a Raise*. He refers to the success that labor had in the 1930s when it employed large numbers of organizers.[259] Sweeney further believes that there is considerable interest in union membership within every sector in society.[260]

The negative impact of Right-to-Work can be particularly seen in diminished union organizing, and unions will have to organize significant numbers of workers if they are to reverse their decline. The AFL-CIO has identified professional workers in

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[254] Masters, 25.
[255] Richard W. Hurd and Joseph B Uehlein, "Patterned Responses to Organizing: Case Studies of the Union Busting Convention" in Sheldon Freeman and associates ed., *Restoring the Promise of American Labor Law Reform* (Ithaca, New York: ILR Press, 1994), 73.
[256] Hurd and Uehlein.
[257] Hurd and Uehlein.
[258] Masters, 159.
[259] John J. Sweeney, *America Needs A Raise* (New York, New York: Houghton-Mifflin Company, 1996), 126.

different occupations as a segment of the workforce that may be receptive to unionization. Professional workers comprise 15 percent of the American labor force.[261] White collar workers comprise a significant percentage of union membership, with 7.79 million of 16.5 million union members coming from white collar occupations in 1999.[262] The problem that may arise with this approach is that free riders are more often in technical or professional jobs.[263] There will not be much benefit to organizing workers if they are going to become free riders. In fact, they will be a drain on labor's resources because they will not help bear the cost of supporting unions.

Unions need to organize large number of women, minorities, and young workers if they are to expand their membership numbers. Right-to-Work impacts efforts to organize workers from these groups. Chaison and Dhvale have found that younger workers are more likely to be free riders.[264] They have also found that women are more likely to be free riders and receive lower pay.[265] These observations should not be considered discriminatory or sexist, or taken to suggest that workers from these groups are somehow unwilling to bear the full responsibility of union membership. The reason that younger workers or women may be less inclined to be pay dues is that they may view dues payment as an economic hardship. It is generally known that workers from these groups tend to be poorly paid in relation to older, male workers. Unions are thus confronted with the challenge of convincing women and younger workers that dues are not a hardship.

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[260] Sweeney, 137.
[261] American Federation of Labor-Congress of Industrial Organization (AFL-CIO), *The Professional and Technical Workforce: A New Frontier for Unions* (Washington, DC: AFL-CIO, 2000), 1.
[262] AFL-CIO, *The Professional and Technical Workforce*, 5.
[263] Chaison and Dhvale, 357.
[264] Chaison and Dhvale.
[265] Chaison and Dhvale.

There is a positive correlation between the number of minority workers in a geographic area and support for unionization. Ellwood and Fine have found that a greater percentage of minority workers will lead to an increase in organizing.[266] It was noted earlier that minority workers derive greater wage gains from unionization than do non-minority workers. The positive attitude that minority workers have regarding unionization is beneficial for labor. Unions should devote more resources to organizing minority workers.

Unions will need to address the manner in which race is linked to Right-to-Work. In the 1960s, Southern employers told their workers that "if the union won, colored people would get promotions instead of white people."[267] A posting was put up in some Southern workplaces showing International Union of Electrical Workers President James Carey dancing with an African-American woman over the caption "race mixing an issue as workers vote."[268] These were obvious examples of using race baiting to fight unions. Arguments such as these were also used to implement Right-to-Work in the South. American labor would probably have done better in the South in the 1960s if it had more closely aligned itself with the Civil Rights movement. The fact that the American workforce is more racially diverse should mean that racism is now a less effective tool to resist unionization.

It is worthwhile to summarize the arguments that have been made in this chapter. Right-to-Work has made the American labor movement a regional interest group rather than national movement. Right-to-Work contributed to a conservative shift in American politics, and the strengthening of the Republican party. This ideological shift occurred

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[266] Ellwood and Fine, 263.
[267] Gross, *Broken Promise: The Subversion of U.S. Labor Relations Policy*, 155.

because labor was removed as a countervailing social force in a considerable part of the United States. The rightward shift in American politics led to conservative attacks on agencies that were supposed to balance the interests of labor and capital, such as the NLRB. Increased conservatism also led to further legislative efforts to weaken labor. The American economy was significantly impacted by Right-to-Work laws as they led to the perpetuation of a large, anti-union region in the United States. Labor has also been negatively portrayed in the media.

The operations of American unions have been negatively affected by Right-to-Work laws. The experience of the AFGE illustrates the full effect that Right-to-Work can have on a union. Labor has had to find other sources of revenue, and reliance on other sources of revenue helps perpetuate business unionism. There is a definite link between Right-to-Work and union organizing. Unions will have to intensify their organizing efforts, particularly with women and minorities. Minority workers would be particularly receptive to joining a union as they derive greater wage gains from union membership. Race has been an organizing issue in the past, but may be less so now that the American workforce is much more diverse.

Sweeney and others have presented an ambitious program to renew the labor movement, and these ideas are certainly worthwhile. Labor's major objective should be to reverse Right-to-Work and in the process strengthen unions across the South and South-West. Labor can then claim to be a truly national movement, rather than a regional interest group. Jamison noted that there is currently a debate within the AFL-CIO national leadership regarding a new Southern Strategy.[269] Focusing on organizing in

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[268] Gross, *Broken Promise: The Subversion of U.S. Labor Relations Policy*.
[269] Jamison.

areas such as the North may lead to short term increases in membership, but there are arguments in favor of organizing the South.[270] Jamison believes that the core political party system is dependent on the South and Mountain states, areas where union membership is at "medieval" levels.[271] This situation has helped ensure control of Congress by Republicans and conservative Democrats.[272]

There is no reason to believe that it is impossible to reverse Right-to-Work. There are historical instances where Right-to-Work has been repealed, such as in Indiana and briefly in Louisiana. The Louisiana experience is worth examining. Right-to-Work initially failed in Louisiana in 1942 because the AFL and CIO joined with the Catholic Church to oppose it.[273] Right-to-Work was passed in 1946, but was repealed in 1954 after the AFL and CIO joined to push for the re-election of Earl Long for governor.[274] Right-to-Work eventually passed in Louisiana in 1976.[275] Business groups had become more vociferous in their support for Right-to-Work and labor's important alliance with the Catholic Church weakened between the 1950s and 1970s.[276]

The Louisiana example is important to consider for a number of reasons. Firstly, it shows that it is possible to resist Right-to-Work even in a state that it is in the Deep South. Secondly, this example shows that labor can resist Right-to-Work when it is united and co-operates with other social groups. It may prove difficult to again repeal Right-to-Work in Louisiana, but the tactics used by unions in 1954 could again be

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[270] Jamison.
[271] Jamison.
[272] Jamison.
[273] William Canak and Berkely Miller, "Gumbo Politics: Unions, Business, and Right-to-Work Legislation" *Industrial and Labor Review*, vol.43, No.2 (January 1990), 261.
[274] Canak and Miller, 264.
[275] Canak and Miller, 268.
[276] Canak and Miller, 269.

utilized in other repeal campaigns. In particular, labor needs to form alliances with other left-leaning groups and convince these groups of the need to strengthen labor law.

Labor must at least make a strong attempt to reverse Right-to-Work as it will eventually weaken other state labor movements that are as vibrant as New York's. Labor will not be able to rely on its regional strength indefinitely as conservatives have a greater base of support, even if they too lack a national mandate, and will continue to challenge labor. Indeed, revoking Right-to-Work laws would enable labor to acquire a national mandate that conservatives lack. Labor would thus be in a more advantageous position than its adversaries. Sweeney notes that labor is the only force in society that expressly represents working families despite its shortcomings.[277] This is in many ways a political slogan, but it is also quite correct. He also notes statements made by the American Catholic Bishops, who declared that "the economy exists for the human person, not the other way around."[278] Unions agree with this sentiment.

Labor must dispel the perception that repealing Right-to-Work laws is something that will only benefit unions. Capitalist ideology maintains that unions frustrate democracy by interfering with workers' choice in jobs and politics.[279] This view only serves to perpetuate corporate power.[280] Hogler notes that, from a Jeffersonian perspective, unions perform a central role in creating the conditions needed for a democratic society.[281] This is absolutely correct. The automatic deduction of dues compels workers to equally contribute to the union, and in the process strengthen society. Union membership involves obligations and dues are part of that responsibility. Right-

[277] Sweeney, 4.
[278] Sweeney, 14.
[279] Hogler, 1202.
[280] Hogler, 1203.

CURRENT COMPOSITION OF GOVERNORS AND CONGRESSIONAL REPRESENTATIVES
FROM RIGHT-TO-WORK STATES

State	Governor	Senate	House of Representatives
Alabama	Democrat	2 Republicans	5 Republicans and 2 Democrats
Arizona	Republican	2 Republicans	5 Republicans and 1 Democrat
Arkansas	Republican	1 Republican and 1 Democrat	3 Democrats
Florida	Republican	2 Democrats	15 Republicans and 8 Democrats
Georgia	Democrat	2 Democrats	8 Republicans and 3 Democrats
Idaho	Republican	2 Republicans	2 Republicans
Iowa	Democrat	1 Republican and 1 Democrat	4 Republicans and 1 Democrat
Kansas	Republican	2 Republicans	3 Republicans and 1 Democrat
Louisiana	Republican	2 Democrats	5 Republicans and 2 Democrats
Mississippi	Democrat	2 Republicans	3 Democrats
Nebraska	Republican	1 Republican and 1 Democrat	3 Republicans
Nevada	Republican	1 Republican and 1 Democrat	3 Republicans
North Carolina	Democrat	1 Republican and 1 Democrat	7 Republicans and 5 Democrats
North Dakota	Republican	2 Democrats	1 Democrat (member at large)
Oklahoma	Republican	2 Republicans	5 Republicans and 1 Democrat
South Carolina	Democrat	1 Republican and 1 Democrat	4 Republicans and 2 Democrats
South Dakota	Republican	2 Democrats	1 Republican (member at large)
Tennessee	Republican	2 Republicans	5 Republicans and 4 Democrats

[281] Hogler, 1202.

Texas	Republican	2 Republicans	13 Republicans and 17 Democrats
Utah	Republican	2 Republicans	2 Republicans and 1 Democrat
Virginia	Republican	2 Republicans	7 Republicans and 4 Democrats
Totals	14 Republicans and 7 Democrats	26 Republicans and 14 Democrats	97 Republicans and 59 Democrats

The information in this table is derived from information by the Republican Governors' Association at www.rga.policy.net, the House of Representatives at www.clerkweb.house.gov/mbrcmtee/stats.htm, and the Senate at www.senate.gov.

to-Work has deprived American unions of legitimacy and would do the same to Canadian unions. I will discuss this idea in detail in the next chapter.

CHAPTER FOUR –
THE POTENTIAL IMPACT OF RIGHT-TO-WORK ON CANADIAN LABOR

The discussion in the preceding three chapters has focused on the American experience with Right-to-Work laws. I have shown that there are several negative aspects of Right-to-Work, but that the most significant threat that it poses involves labor's position in society. In this chapter I will argue that Right-to-Work may be even more detrimental for Canadian labor than it has been for American labor. I will address why Right-to-Work would be introduced in Canada and the impact that it would have on Canadian labor. Canadian and American unions do generally represent a specific constituency and perform a servicing function, but Canadian unions also act as a social movement. Right-to-Work would jeopardize these roles. I will refer to the arguments made in the preceding chapters in order to support the chapter thesis.

There are several sub-issues associated with this chapter, including structural differences between the United States and Canada. The post-war development of Canadian labor will also be contrasted with that of American labor. I will further discuss the development of right-wing politics in Canada and the growing interest in Right-to-Work among right-wing groups. I will also discuss strategies that Canadian labor may employ in order to resist the introduction of Right-to-Work laws. I will conclude with a summary of the information presented and will confirm the initial thesis of the chapter.

The Canadian labor movement emerged from the Second World War with the same degree of social legitimacy that American labor had acquired. The Wagner Act had a significant impact on Canadian labor relations and many provinces had introduced legislation similar to this act between 1937 and 1939.[282] The federal government of

[282] Heron, 66.

Liberal prime-minister Mackenzie King initially recognized collective bargaining through Privy Council order 1003.[283] PC 1003 became permanent in 1950 with the passage of the Industrial Relations and Disputes Investigation Act.[284] Workers in Canada basically had the same legal rights as workers in the United States. The legislative difference in the immediate post-war era was that Canada did not revert to an anti-labor stance, as did the United States. It was noted earlier in the thesis that Taft-Hartley represented an anti-labor counter reaction. There was no similar reaction on the part of Canadian governments or elites.

The Canadian labor relations system involves several features that are different from the American system. There are eleven different labor relations boards in Canada, but only one in the United States. Labor relations coverage is consequently less uniform than coverage in the United States. Unions enjoy greater security despite the lack of uniform legislation as in British Columbia and Quebec, both of which are known to prohibit the use of replacement workers during strikes. It is commonly known in Canadian labor circles that workers will either fall under the jurisdiction of a provincial labor board or the federal labor board depending on the industry in which they are employed. Generally speaking, workers engaged in inter-provincial trade fall under the jurisdiction of the Canada Labor Code. These features of Canadian labor law can be traced to the introduction of PC 1003, and the effect of these laws has been to encourage collective bargaining.[285]

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[283] Heron, 72.
[284] Heron, 76.
[285] Pradeep Kumar, *From Uniformity to Divergence: Industrial Relations in Canada and the United States* (Kingston, Ontario: IRC Press, 1993), 127.

Anti-Communism was a feature of American and Canadian labor during the Second World War and post Second World War era. It was not as prevalent in Canadian society as it was in American society. The Canadian Communist party was outlawed following the passage of the Molotov-Ribbentrop pact, and the party responded by renaming itself the Labor Progressive Party.[286] The main beneficiaries of anti-Communism in the United States were those groups who were on the right of the political spectrum. In Canada, the Co-Operative Commonwealth Federation (CCF) was the main beneficiary of anti-Communism. The CCF was constituted in 1932 and was the forerunner of the New Democratic Party (NDP).[287] The American political system did not include a left-leaning party that operated on a scale similar to the CCF during the 1930s and 1940s. The CCF's original platform, known as the Regina Manifesto, had pledged to "eradicate capitalism."[288] It spent much of the 1930s opposing the Communist party.[289] The CCF was not originally allied with labor, but this alliance was formally initiated in 1942.[290] Canada also occupied a position in the post Second World War era that was different from the role occupied by the United States. Canada certainly participated in the Cold War, but it was a small participant when compared to the United States. Elites in Canada may not have felt the same need to solidify control over potentially subversive social elements as was felt by elites in the United States.

The importance of Canadian labor's alliance with the CCF and the NDP cannot be overstated, and this association is the major difference between the American and

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[286] Heron, 74.
[287] Norman Penner, *From Protest to Power: Social Democracy in Canada, 1900-Present* (Toronto, Ontario: James Lorimer and Company, 1992), 64.
[288] Penner, 66.
[289] Penner, 68.
[290] Penner, 77.

Canadian labor movements. It is unlikely that the Canadian labor movement would have achieved many of its objectives without the NDP. The NDP would probably not have become a viable provincial and national party without the support of the labor movement. The American labor movement's involvement with the Democratic party has been discussed in previous chapters. In Canada a similar alliance would have involved labor allying itself with the Liberal party.

The fact that the CCF continued to exist after the decline of the Communist party meant that people on the left of the political spectrum did not need to abandon the political process or ally themselves with a party with which they had little ideological affinity, as was the apparent case with many left-leaning voters in the United States. Instead, a significant political presence on the left of the spectrum emerged into the post war era. This helped to ensure that a right-wing reaction of the sort that occurred in the United States could not occur in Canada. This further meant that anti-union legislation such as Taft-Hartley would not become part of the Canadian political agenda. It can be argued that the absence of Right-to-Work laws in Canada is the major difference between that country and the United States. The fact that Right-to-Work was not on the Canadian political agenda in the past can be partly attributed to the presence of a party such as the NDP that would protect labor's interests. Canadian labor's alliance with the NDP should consequently be regarded as the major difference between it and the American labor movement.

Labor's integration with the political process accelerated in 1961 when the CCF and the CLC jointly formed the NDP.[291] The NDP is different from the other main parties. The federal and provincial Liberal and Progressive Conservative parties have

historically set party policy with the expectation that they would form a national government. As James Laxer notes, the most that a person running for the NDP can expect is to win a seat in parliament or perhaps leadership of the national party. He also notes that the party has formed provincial governments, and this implies that an NDP politician could aspire to being a provincial premier. The same conditions are also true of the regional Alliance and Bloc Quebecois parties. The former party was until recently considered a contender for national government, but it seems likely that the Alliance will collapse. The Bloc is a regional party that is dedicated to promoting Quebec nationalism at the federal level and has virtually no chance of forming a government.[292]

The presence of the CCF facilitated the passage of a considerable amount of legislation that favored workers. The Saskatchewan CCF government of Tommy Douglas introduced a medicare plan, and it was also the first social democratic government elected in North America.[293] One of the main accomplishments of the CCF, and later the NDP, was to pressure the Liberal party to adopt more left-leaning social policies. The Liberals introduced old age pensions and national health insurance between 1965 and 1968.[294] These policies were adopted largely due to pressure from the NDP. The Liberals feared that the electorate might have voted NDP had these policies not been passed. The NDP was also in a crucial position to influence policy between 1963 and 1968, and again between 1972 and 1974.[295] The Liberals were in a minority governing position during these periods and the NDP supported them. In return for their support,

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[291] Heron, 99.
[292] James Laxer, *In Search of a New Left: Canadian Politics After the Neo-Conservative Assault* (Toronto, Ontario: Penguin Books, 1996), 43.
[293] Laxer, 96.
[294] Heron, 99.
[295] Heron.

the NDP extracted the aforementioned legislation from the Liberals. This pattern of pushing the Liberal party worked well for the CCF and the NDP and enabled these third parties to significantly influence the Canadian political agenda. The main point to note is that the federal and provincial New Democratic parties influence the policy making process more through their role as parliamentary opposition than as a governing party. This is a contrast to most attempts that are made at the federal and state levels in the United States. The political efforts made by labor unionists in New York State were noted in the last chapter, but these efforts have not been reproduced at the federal level. Canadian labor has had a consistent political ally at the federal and provincial levels instead of having to rely on sporadic political efforts.

A minority of Canadian union members has traditionally voted for the NDP, and support for the party among union members never exceeded 25 percent in elections between 1968 and 1984.[296] This is a contrast to the 1984 presidential election in the United States, when 56.8 percent of union members voted for Democratic candidate Walter Mondale.[297] At the 1987 federal NDP convention, 17.3 percent of delegates were from affiliated unions and 5.2 percent were from affiliated central labor bodies.[298] Union members comprised approximately one fourth of the delegates at the 1988 Democratic convention.[299] American union members vote in greater numbers for the Democratic party and have a higher proportion of delegates at Democratic conventions. It may seem that American labor is more closely linked to the Democrats than Canadian labor is to the NDP. Canadian labor has still achieved more with the NDP, even with lower party

[296] Keith Archer, *Political Choice and Electoral Consequences: A Study of Organized Labor and the New Democratic Party* (Montreal, Quebec: McGill-Queen's University Press, 1990), 57.
[297] Dark, 132.
[298] Archer, 28.

support among union members, than American unions have with the Democrats. This information shows that a social democratic third party need not receive a high proportion of working class support in order to positively influence the political process.

The nature of the Canadian political system is important to consider when drawing comparisons with the United States. Canada and the United States are both federal systems, and each province or state has a legislature. The Canadian and American electoral systems are both first past the post. There is political party discipline in both systems. It is difficult for any one party to dominate the legislative agenda in the American system. It can instead be argued that the two main parties vie for control of the legislative agenda. In Canada, the majority party in the legislature dominates the legislative agenda. The majority party may pass virtually any legislation it wishes provided that the party leadership can maintain control of its caucus. Another further difference between the American and Canadian system is extent of partisanship. In the American system, a great deal of attention is paid to the idea of bi-partisanship. The Canadian system is based almost entirely on partisanship. The opposition is obligated to criticize every action taken by the government and will rarely say anything positive about the government's agenda. There are procedural methods that the opposition may use to delay passage of a new law, but there is nothing equivalent to a filibuster. The main opportunity that third parties have in the Canadian political system occurs when they have a chance to extract concessions from a minority government in return for support in parliament, which is what happened when the NDP supported Liberal minorities.

The Canadian parliament is comprised of a House of Commons and a Senate. The Senate is not elected and is instead appointed by the governing party on the basis of

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[299] Dark, 135.

regional representation.[300] The powers of the Canadian prime-minister are not clearly delineated in the constitution, but he or she wields considerable power over the political system.[301] For example, the government appoints judges without any parliamentary oversight. This is a marked difference from the American system, which mandates considerable legislative scrutiny of judicial appointees. Provincial premiers also wield substantial power and can make appointments without legislative oversight.

The point of discussing the nature of the Canadian political system is to illustrate the fact that it is easier for legislation to be passed in this system without any amendments being made to it. Further, this legislation may run entirely contrary to the interests or opinions of the opposition parties. This system can consequently lead to the relatively unfettered introduction of positive legislation such as medicare and old age pensions, but it can also lead to negative legislation. This is a marked contrast with the American political system, as it seems that few pieces of legislation move through Congress or a state legislature without some alteration. The importance of this fact will be further examined later in the chapter when the current Ontario provincial government is discussed.

There are differences in the manner in which governments are lobbied in the Canadian and American political systems. The nature of the American system ensures that labor needs to lobby legislators from both major parties, while lobbying efforts in Canada tend to focus on the governing party. Keith Newman of the Communications', Energy and Paperworkers Union of Canada (CEP) notes that labor lobbies political

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[300] Stephen Brooks, *Canadian Democracy: An Introduction, third ed.* (Don Mills, Ontario: Oxford University Press, 2000), 172.
[301] Brooks, 155.

parties in power.[302] As an example, Newman noted that the CEP lobbied the federal Liberal party over budget cuts to the Canadian Broadcasting Corporation (CBC).[303] The Canadian labor movement consequently does not need to maintain a lobbying apparatus that is on the same scale as the lobbying operation maintained by American labor.

The Canadian labor movement was split up until the 1950s in the same manner as American labor was divided. The Trades and Labor Congress and the Canadian Congress of Labor merged in 1956 to form the Canadian Labor Congress.[304] One major difference between Canadian and American labor involves the status of Quebec within Canada. Quebec unions formed the Confederation of National Trade Unions in 1960.[305] It is important to note that the formation of a separate congress in Quebec coincided with the onset of the Quiet Revolution in that province. This process is generally known to have involved a change in political leadership in the province and change to virtually every social institution. It also helped initiate the creation of the sovereignty movement in the 1970s.

The information presented to this point in the chapter shows that there are structural differences between Canada and the United States, and these differences help explain the greater effectiveness of Canadian unions. These differences include the manner in which the Canadian legislative processes functions and the existence of a viable social democratic party. The importance of the environment in which Canadian labor developed can be seen by contrasting the change in union density that has occurred between Canada and the United States. American union density was 30.4 percent in

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[302] Keith Newman, Research Director with the Communications', Energy and Paperworkers Union of Canada. Phone interview by the author on May 23, 2001.
[303] Newman.
[304] Heron, 87.

1945, while it was 24.2 percent in Canada in the same year.[306] The two labor movements had approximately equal union density in 1965, with the United States at 30.1 percent and Canada at 29.6 percent.[307] The situation had changed considerably by 1992, with the United States at 15.1 percent union density and Canada at 37.4 percent.[308] American union density has fallen over the years, while Canadian union density has risen. Canadian public sector unions have grown at a particularly significant rate. For example, 68 percent of education workers in Canada belonged to unions in 1988 while 35 percent were union members in the United States in the same year.[309] Kumar notes that virtually every government employee in Canada is unionized.[310]

I will now discuss the reasons that Canadian labor is under threat and why Right-to-Work may be introduced to Canada. I will also show why Right-to-Work could have a more profound impact on Canadian labor than it has had on American labor. Right-to-Work has been an exclusively American phenomenon. It is true that other countries such as France prohibit mandatory union membership.[311] The difference between continental European countries that prohibit mandatory membership and North American countries is that workers in the former jurisdictions generally have a greater level of class consciousness than their North American counterparts, and understand the need to voluntarily support unions. North American unions need the legislative protection of union security in the absence of widespread class consciousness. On the matter of class consciousness, it is correct to refer to North American labor rather than American or

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[305] Heron.
[306] Kumar, 12.
[307] Kumar.
[308] Kumar, 13.
[309] Kumar, 27.
[310] Kumar, 26.
[311] M.G. Mitchnick, *Union Security and the Charter* (Toronto, Ontario: Butterworths, 1987), 68.

Canadian labor exclusively, since the level of class consciousness is similar and the continent is becoming increasingly integrated economically and socially.

Canadian society has acquired some of the characteristics of American society. The richest fifth of Canadian income earners receive about 44 percent of the available wealth, while the poorest fifth receives just under 5 percent.[312] The United States and Canada have entered into economic agreements such as the Free Trade Agreement (FTA) that the two countries signed in the late 1980s, and the North American Free Trade Agreement (NAFTA). Approximately 40 percent of Canada's gross domestic product is based on trade, and 80 percent of this trade is done with the United States.[313] There is also the cultural aspect of North American integration. For example, Canadians spend two-thirds of their television viewing time watching American programs.[314] Those in elite positions tend to approve of Canada's closer association with the United States. In fact, there are certain groups who have promoted the idea of Canada adopting the American dollar in the popular media.

It is important to note Ontario's place in Canada. Indeed, the entire issue of Right-to-Work in Canada is in many ways dependent on Ontario. In 1999, Ontario's population totaled approximately 11,517,000 out of a national population of 30,493,000.[315] The unionized workforce in Ontario totaled 1,264,000 in 1999, out of a total national union membership of 3,595,000.[316] These figures indicate that over a third of Canada's population and unionized workforce resides in Ontario.[317] It is the second

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[312] Brooks, 63.
[313] Brooks, 77.
[314] Brooks, 78.
[315] Statistics Canada, www.statcan.ca/englinsh/Pgdb/People/Population/demo02.htm.
[316] Ernest B. Akyeampong, "Non-Unionized but Covered by a Collective Agreement" *Perspectives on Labor and Income* vol.12, no.3 (Statistics Canada), 34.
[317] Author's calculation: 11,517,000/30,493,000=37 percent, 1,264,000/3,595,000=35 percent.

largest jurisdiction in North America for automotive assembly and it exports more cars to the United States than all other auto exporting jurisdictions combined.[318] Ontario accounts for 80 percent of all manufacturing activity in Canada.[319] In terms of financial services, Toronto has the third largest concentration of financial activity in North America after New York and San Francisco.[320] There is no single American state that occupies a role in the United States that is similar to the role that Ontario occupies in Canada. A labor policy decision that is made in Ontario will have major ramifications for the rest of Canada.

Canada may appear to be far more social democratic than the United States, but it has in recent years become much more conservative. The western Canadian based Reform party, which is now the Alliance party, elected representatives to the House of Commons in the early 1990s. The Reform party pulled the political agenda to the right in the same manner that the NDP had pulled the agenda to the left in preceding decades. The Liberals responded to the emergence of Reform by adopting fiscally conservative deficit reduction policies. The Liberals also introduced some conservative employment policy changes such as restricting access to employment insurance benefits.

Brooke Jeffrey notes that Canada's political culture has traditionally been more left-wing than American political culture.[321] This trend has changed in recent years. Neo-conservatism became dominant at the provincial level in the 1990s, particularly in Alberta and Ontario. Alberta is somewhat unique in relation to the other provinces. It is

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[318] Thomas J. Courchene, *From Heartland to North American Region State: The Social, Fiscal and Federal Evolution of Ontario* (Toronto, Ontario: University of Toronto Press, 1998), 298.
[319] Courchene, 297.
[320] Courchene, 298.
[321] Brooke Jeffrey, *Hard Right Turn: The New Face of Neo-Conservatism in Canada* (Toronto, Ontario: Harper-Collins, 1999), 45.

the wealthiest province, but it also has the lowest expenditures on social services.[322] The current Conservative government has moved farther to the right of the political spectrum. Alberta is also the only province to have established an official review of Right-to-Work in order to determine the effect that it would have on the province's economy. It is pertinent to examine the findings of the committee that discussed Right-to-Work and the study that the committee produced.

The study on Right-to-Work was conducted by the Alberta Economic Development Authority, and its purpose was to determine if any economic benefit would be derived from the introduction of Right-to-Work in Alberta. The review committee invited a variety of groups to present evidence, including organized labor. Several interveners made reference to the AFL-CIO study *A Tale of Two Nations* during their submissions.[323] The committee concluded that there was little competitive advantage to be gained from introducing Right-to-Work in Alberta.[324] The committee further concluded that employment and business growth in the United States had been improved by Right-to-Work, but that business costs were lower in Canada.[325] The Joint Review Committee also noted that Right-to-Work has negatively impacted union density in the United States, but that private sector union density in Alberta is already low at 13 percent.[326] This rate of unionization is close to the levels found in some Right-to-Work states. Alberta labor law is unique as it permits employers and unions to jointly agree on union security clauses but does not require such a clause if the union simply requests that

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[322] Jeffrey, 120.
[323] Alberta Economic Development Authority, *Joint Review Committee Right-to-Work Study Final Report*, November 30, 1995, 18.
[324] Alberta Economic Development Authority, iv.
[325] Alberta Economic Development Authority.
[326] Alberta Economic Development Authority.

one be included in a collective agreement.[327] It is important to note Alberta's low union density, as Ontario's union density is higher. The Joint Review Committee also cited the need to maintain peaceful industrial relations in Alberta and recommended that the province not adopt Right-to-Work as it would cause labor unrest.[328]

One of the main reasons that the Joint Review Committee appears to have not recommended the introduction of Right-to-Work involves the manner in which the Canadian judiciary has viewed union security. The Supreme Court of Canada dealt with a case referred to as *Lavinge vs. Ontario Public Service Employees* Union in 1991.[329] Francis Lavigne was a member of the Ontario Public Service Employees Union (OPSEU), and was employed at a community college called the Haileybury School of Mines.[330] A conservative group called the National Citizen's Coalition financed his case.[331] The use of union dues for purposes other than collective bargaining was challenged in this case and the court upheld the right of unions to use dues for political purposes.[332] The court also spoke on the use issue of dues deduction in general and made reference to the Rand Formula, which was named after Justice Ivan C. Rand.[333]

The Rand Formula was part of an arbitration decision that originated from a lengthy strike against Ford Motor Company in 1945.[334] It does not mandate compulsory union membership, and instead mandates that unionized workers either pay dues or make an equivalent contribution to a charity. The Rand Formula is incorporated into Section

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[327] Alberta Economic Development Authority, 34.
[328] Alberta Economic Development Authority, v.
[329] Supreme Court of Canada, *Lavgine vs Ontario Public Service Employees Union* www.lexum.umontreal.ca/csc-scc/en/pub/1991/vol2/html/1991scr2_0211.html.
[330] Supreme Court of Canada, 8.
[331] Supreme Court of Canada, 11.
[332] Supreme Court of Canada. 4.
[333] Supreme Court of Canada, 33.
[334] Heron, 76.

52 of the Ontario Labor Relations Act, which provides that a person may refrain from paying dues and instead have a donation made to a charity mutually agreed upon by the employer and the union.[335] The act further specifies that an employee may only opt to use this provision after he or she has demonstrated to the labor board that paying dues violates a strong religious conviction or belief.[336] This provision may be construed as a form of Right-to-Work. The reality is that the Rand Formula does not permit a form of Right-to-Work as it still imposes a duty to make a contribution equal to dues. There is no possibility of becoming a free rider, and there is also no discussion of the difference between agency fees and maintenance of membership fees.

The Supreme Court noted that Justice Rand was aware of the CCF's affiliation with the UAW and that this did not prevent him from making his ruling.[337] Justice Rand knew that dues money would be used for political purposes. The court further noted that the Rand Formula prevents free riding, assists in building employee solidarity, and inhibits employer attempts to undermine trade unions.[338] The arguments presented by the plaintiff in *Lavigne* were based largely on foreign precedents, particularly American precedents such as *Abood vs Detroit Board of Education*.[339] The court noted the difficulty with citing foreign precedents due to the problems that arise with trying to apply laws developed in different political, social, and historical traditions.[340] The *Abood* case also revolved around what constituted legitimate collective bargaining activities, and

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[335] Government of Ontario, *Ontario Labor Relations Act*. www.192.75.156.68/Dblaws/Statutes/English/95|01_e.htm.
[336] Government of Ontario, *Ontario Labor Relations Act*.
[337] Supreme Court of Canada, 39.
[338] Supreme Court of Canada, 38.
[339] Supreme Court of Canada, 5.
[340] Supreme Court of Canada, 46.

the court noted that *Abood* weakened American unions.[341] The court additionally noted that a legislature may in the future decide to differentiate between what constitutes legitimate and illegitimate use of union dues.[342]

The Supreme Court made references to industrial peace and labor's involvement in the political process and generally recognized the need for a strong labor movement. The justices noted that union participation in activities and causes beyond the workplace fosters collective bargaining.[343] The court also noted that it is difficult to differentiate between collective bargaining and non-collective bargaining activities. This opinion is contrary to the view stated in the *Abood* decision. In that case, the American court said that "funds of dissenting employees may not constitutionally be spent on ideological causes not germane to its duties as collective bargaining representative."[344]

The Canadian labor movement is allied with a social democratic party that protects its legislative interests. The most socially and economically conservative of the provinces has conducted a study that rejects Right-to-Work, and the Supreme Court has upheld the Rand Formula and union security. These variables may suggest that there is no reason to expect that Right-to-Work would be introduced in Canada. The reality is that there are reasons to suspect that Right-to-Work may yet be introduced, at least in Ontario. Ontario is governed by a Progressive Conservative government lead by Mike Harris. Premier Harris has moved his party much farther to the right of the political spectrum and it is now motivated by anti-union, neo-conservative ideology.

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[341] Supreme Court of Canada, 47.
[342] Supreme Court of Canada, 65.
[343] Supreme Court of Canada, 43.
[344] Supreme Court of Canada.

It is relevant to this discussion to briefly discuss the government that preceded the Progressive Conservatives, who are also referred to as the Tories. The NDP formed Ontario's only social democratic government in 1990. NDP premier Bob Rae believed that a sense of populism contributed to the party's victory.[345] He is correct to note this fact, as nobody in Ontario initially anticipated an NDP victory. The NDP came to power with a lot of expectations placed upon it. One aspect of third parties that differentiates them from more mainstream parties is that they seem to come to power with a lot of expectations placed upon them. This may be because supporters of third parties tend to be people who have spent much of their lives opposing mainstream politics and wish to push as much of their agenda as they possibly can when their party actually gains power. The Ontario NDP had supported minority governments in the past, but in 1990 it found itself in the position of forming the government.

The Rae government attempted an ambitious legislative plan, including progressive labor law reform. The NDP also introduced a version of Affirmative Action called Employment Equity. Employment Equity did not actually mandate hiring quotas based on demographics, but rather required organizations to make every effort to have their work forces reflect the demographic composition of the communities in which they operated. The recession of the early 1990s was the main problem faced by the NDP. Rae felt that no one government could have prevented the effects of the 1989 to 1992 recession.[346] The NDP was also elected at a time when the radical right was coming to national political prominence.

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[345] Bob Rae, *From Protest to Power: Personal Reflections on a Life in Politics* (Toronto, Canada: Viking Books, 1996), 8.
[346] Rae, 138.

Rae lost the 1995 election, but he had lost the support the labor movement prior to the election. The labor movement split into unions that opposed the NDP and unions that supported the party. Former British Columbia Federation of Labor president Ken Georgetti supported Rae, as did the Steelworkers.[347] Georgetti is widely known to have left the British Columbia federation to succeed Bob White as president of the Canadian Labor Congress (CLC). Public service unions and the Canadian Auto Workers (CAW) opposed the NDP platform. The main reason for the split in the labor movement involved the NDP's Social Contract. The Social Contract was a response to the province's growing fiscal deficit and it involved renegotiating public sector collective agreements in order to avoid widespread workforce reductions. Rae attempted to negotiate with representatives from all parts of the public sector.[348] The negotiations were not successful and the government acted unilaterally to open the collective agreements. Rae believed that the Social Contract was an opportunity to exchange a few unpaid days off, or "Rae Days" as they became known, in return for more power sharing and greater job security.[349] The public sector unions and the auto workers viewed this as a betrayal and did not support the NDP during the 1995 election. There was no other social democratic party to which labor could have thrown its support. The 1990 election illustrates what can happen when labor fails to fully support a social democratic party. In retrospect, it is likely that the labor leaders who opposed Rae would have acted differently had they had fully realized what would replace his government.

The years that the Harris Tories have been in power illustrate what can happen when a neo-conservative political party has the benefit of a parliamentary majority. The

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[347] Rae, 206.
[348] Rae, 209.

Tories went from being the third party in the legislature to forming a majority government. The NDP went from being the governing party to third party status, and it has not yet risen above this point. Political commentator John Ibbitson believes that a lack of union support during the election helped put the NDP into third place in the legislature.[350] It can be construed from this observation that the NDP would have done better if the entire labor movement had given the party support during the 1995 election.

The impact of the Republican party on Tory policy cannot be over emphasized. Mike Harris ran on a platform called the Common Sense Revolution, and it was quite similar in tone to the Republican Contract With America. Harris actually traveled to New Jersey in March 1994 to meet Republican governor Christine Todd Whitman.[351] The Tory platform involved cutting income taxes by 30 percent, reductions in education spending, introduction of workfare, and the elimination of 15,000 public sector jobs.[352] The tax cut was a copy of a policy implemented in New Jersey.[353] The Tories also campaigned against what they called the "quota bill" or Employment Equity.[354]

Bob Rae was a Rhodes Scholar and many of the people who were part of his circle were intellectuals.[355] He had also worked with the United Steelworkers of America (USWA) early in his career.[356] The Tories are anti-intellectual and disdainful of what they regard as intellectual elites. This is a trait that they share with Republicans. A senior Tory party official referred to the "self reinforcing, center-left consensus among

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[349] Rae, 210.
[350] John Ibbitson, *Promised Land: Inside the Mike Harris Revolution* (Scarborough, Ontario: Prentice-Hall Canada, 1997), 210.
[351] Jeffrey, 166.
[352] Courchene, 175.
[353] Jeffrey, 166.
[354] Rae, 262.
[355] Rae, 36.
[356] Rae, 51.

influential members of the media, the political and business elite."[357] The Harris government is motivated by ideology rather than pragmatism, and believes in simple policy solutions instead of complex policy discussions. Right-to-Work is a complex policy issue, and the arguments that have been presented against Right-to-Work in Canada are also complex.

The labor movement was the first major adversary that the Harris government faced. Rae notes that the same people who opposed his government also opposed the Tories.[358] Labor allied itself with other groups and conducted rotating city wide protests across Ontario with the protest in Hamilton, Ontario actually attracting 100,000 demonstrators.[359] Ibbitson notes that by 1996 a variety of groups including welfare recipients, natives, women's organizations, and the intelligentsia had all opposed the Harris government without successfully changing its agenda.[360] The Canadian parliamentary system ensured that opposition parties and groups such as labor could not alter the Tory agenda. The government repealed the NDP's Bill 40, which had prohibited the use of replacement workers, despite determined opposition from labor.[361] Changes to labor and employment legislation made during the government's first term were significant, and these changes intensified after the Tories were re-elected in 1999.

Unions initially attempted to organize welfare recipients who were forced into workfare programs. The government responded by introducing the *Prevention of Unionization Act*, which prohibited workfare participants from joining unions.[362] This

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[357] Jeffrey, 161.
[358] Rae, 269.
[359] Ibbitson, 214.
[360] Ibbitson, 206.
[361] Courchene, 176.
[362] Government of Ontario, *Prevention of Unionization Act*. www.ontla.on.ca/documents/Bills/36_Parliament/session2/SECTION1.stat.htm.

law was passed during the Tories' first term. The Tories have introduced further changes since their re-election. The Employment Standards Act was amended to permit a person to work up to sixty hours a week including overtime, in addition to permitting an employer to average a workers' overtime hours over a four week period.[363] For example, a person can be scheduled to work twenty hours one week, then sixty hours the next. The two work weeks would still average out to forty hours, and overtime would not be paid. An employer could previously not require employees to work in excess of forty-eight hours a week without a permit, but can now have a person work up to sixty hours a week including overtime. The Tories publicly rationalized these changes by saying a worker would have to agree to work up to sixty hours, but it is unlikely that an individual worker will be able to resist employer pressure to work a sixty-hour week. It is also likely that employers will seek to include provisions for a sixty-hour work week in collective agreements. The government also passed a law requiring the public disclosure of the wages paid to union officials who make $100,000 or more per year.[364]

There is one major exception to the manner in which the Tories have dealt with labor and employment issues. The Ontario Medical Association (OMA) is arguably the most powerful employee organization in the province. The OMA does not consider itself a union, but it is a union nonetheless. The association instead refers to itself as a voluntary organization that represents Ontario's 24,000 physicians.[365] It negotiates the fee schedule that physicians charge under the publicly funded Ontario Health Insurance Plan (OHIP). This is the same as a union negotiating a wage scale. The OMA invoked the Rand Formula in 1991 and required membership dues from all physicians licensed to

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[363] Government of Ontario, *Employment Standards Act*.
[364] Government of Ontario, *In The Work(s)* May 2001, Issue#2 www.gov.on.ca/LAB/itw/01-may2e.htm.

practice medicine in Ontario.[366] The Harris government removed the OMA's representation rights in 1996.[367] The association's Council voted to suspend the Rand Formula following the government's action.[368] The OMA was again granted representation rights in 1997, and it resumed using the Rand Formula.[369]

Some commentators may view the fact that the Tories enabled the OMA to resume using the Rand Formula as the main reason that Right-to-Work would not be introduced in Ontario. The argument would be that the Rand Formula has been re-extended to the OMA and it must therefore continue to be available to other unions. There are some difficulties with this view. The OMA is arguably the most powerful employee organization in Ontario because it has the power to significantly affect the health care system. There are few other organizations that can impact any sector of the economy with the same effect. The Tories have avoided making radical changes to health care partially because they wish to avoid confronting Ontario's doctors. This is undoubtedly the main reason that the OMA was again given the ability to use the Rand Formula.

The government does not consider the OMA to be a union and it is not covered under labor or employment legislation. The Rand Formula was invoked for the OMA in 1991 through the Ontario Medical Association's Dues Act.[370] The Tories could possibly rationalize removing the Rand Formula from the Ontario Labor Relations Act while still enabling the OMA to use it. The argument would be that the OMA is not a union and it

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[365] Ontario Medical Association, www.oma.org/join/whyjoin.htm.
[366] Ontario Medical Association, www.oma.org/pcomm/pressrel/1997/pr120197.htm.
[367] Ontario Medical Association.
[368] Ontario Medical Association.
[369] Ontario Medical Association.
[370] Ontario Medical Association.

has a right to charge dues like any other professional association. Labor could pursue this issue through the courts and argue that the government's action was discriminatory. There is no guarantee that the courts would agree with labor's position. It is possible that the courts would ignore the OMA's bargaining function and instead agree with the view that the association is simply another professional association that should have the right to charge dues. It would be imprudent to believe that the Ontario labor movement would be able to keep the Rand Formula because the Tories re-extended it to the OMA. The Harris government has shown a pattern of implementing increasingly negative labor and employment law. Its relations with the OMA represent the exception rather than the norm.

The Tory caucus includes individuals who have already expressed an interest in Right-to-Work. In 1997 a Tory backbencher introduced a private member's bill called the Employee's Rights and Freedoms Act.[371] A private members' bill is one that a backbench member of the legislature initiates, while most legislation is initiated in the cabinet. The proposed act was not passed, but it would have prohibited mandatory union membership and elimination of the Rand Formula from Ontario labor law had it been implemented.[372] The government may have felt that Right-to-Work should not be on the political agenda in 1997. This may have been another reason that the OMA was again permitted to use the Rand Formula. A letter written to Premier Harris in December 1998 concerning the possible introduction of Right-to-Work in Ontario received a response which said "amendments such as this are not actively under consideration at this time, our government remains committed to ensuring that Ontario's labor laws maximize

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[371] Government of Ontario, *Employee's Rights and Freedoms Act, 1997*. www.ontla.on.ca/Documents/documentsindex.htm.

competitiveness and job creation."[373] The letter included references to "improvements" to labor law that the Harris government had introduced including replacement of the NDP's Bill 40.[374] A June 2001 letter from Ontario Labor Minister Chris Stockwell maintained that "the Government of Ontario has not advocated either 'Right-to-Work' laws or revocation of the Rand Formula."[375]

The Canadian labor movement is aware of efforts to bring Right-to-Work to Canada. Newman believes that there is no economic incentive to the introduction of Right-to-Work, and that there does not appear to be any demand for Right-to-Work among employers.[376] Legislation banning the use of replacement workers is the sort of legislation that employers are more focused upon.[377] This is a contrast to the experience in the United States, where capital has vigorously promoted Right-to-Work.

Ian Urquhart of the *Toronto Star* recently discussed the potential course of the Harris government. Urquhart noted that Harris has stripped unions of hard won rights, while previous governments made deals with labor.[378] He further notes that there are some elements of American conservatism that the Harris government has not adopted including time limits on welfare and a flat income tax.[379] He believes that the Harris Tories would be viewed as moderate or even liberal in the United States.[380] This last observation is not accurate, as no liberal government in the United States seems to show much interest in reversing gains made by organized labor. Urquhart concluded his

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[372] Government of Ontario, *Employee's Rights and Freedoms Act, 1997.*
[373] Office of Ontario Premier Mike Harris to the author, February 12, 1999.
[374] Office of Premier Mike Harris.
[375] Office of Ontario Labor Minister Chris Stockwell to the author, June 9, 2001.
[376] Newman.
[377] Newman.
[378] Ian Urquhart, "He Established That Things Can Change" *Toronto Star*, June 9 2001, section K, 1.
[379] Urquhart, 3.
[380] Urquhart.

comments by noting that the Tories resumed implementing major policy changes in June 2001 after having refrained from implementing such change in the previous two years.[381]

Canadian business may not agitate for the introduction of Right-to-Work, but there are organizations that do advocate introduction of it. Buzz Hargrove notes that the Fraser Institute is the main proponent of introducing Right-to-Work in Canada. This organization was started in 1974 with corporate support and is modeled after the Heritage Foundation in the United States.[382] Hargrove believes that the Fraser Institute receives more media attention than any other think tank.[383] The Fraser Institute's scholarly efforts have been called into question by some commentators. Jeff Rose notes in an analysis of the institute's research on Right-to-Work that it is less concerned with scholarly punctiliousness than with proselytizing.[384] He further notes that the institute has a goal of restructuring Canada along laissez-faire economic lines.[385] Rose believes that the Fraser Institute tries to cultivate a scholarly image in order to influence the Canadian mainstream.[386] The fact that Right-to-Work is receiving public attention indicates that the institute has had some success with promoting its ideological agenda.

It is necessary to review the variables that have been presented in order to determine if Right-to-Work will be passed in Canada. Newman is correct to note that there is no economic gain from Right-to-Work, and that business is not pressing for the passage of this legislation. On one hand, Canadian business enjoys considerable

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[381] Urquhart.
[382] Buzz Hargrove with Wayne Skene, *Labor of Love* (Toronto, Canada: Macfarlane, Walter and Ross, 1998), 224.
[383] Hargrove, 225.
[384] Jeff Rose, *Introduction* in Lynn Spink, ed. *Bad Work: A Review of Papers from a Fraser Institute Conference on "Right-to-Work" Laws* (York University: Center for Research on Work and Society, working paper number 16, 1997), 6.
[385] Rose, *Introduction*, 4.
[386] Rose, *Introduction*, 9.

competitive advantages over its American rivals including publicly funded health care and lower labor costs due to the value of the Canadian dollar. The Supreme Court of Canada has upheld union security and a review conducted by the province of Alberta rejected implementation of Right-to-Work on economic grounds. The Tories have also re-extended the Rand Formula to the OMA, and commentators in the popular press believe that the Harris government would be considered liberal in the United States. On the other hand, the most economically influential province in Canada is becoming more integrated with the United States while being governed by a political party that is heavily influenced by neo-conservative ideology. Organized labor has consistently opposed the Ontario Progressive Conservative party, and this party has introduced legislative changes than harm both organized and unorganized workers.

The correspondence from Premier Harris and Labor Minister Stockwell may indeed say that the government has not officially endorsed Right-to-Work. However, there is clearly support for Right-to-Work within the government as a Tory backbencher attempted to implement it through a private members' bill. The possibility of Right-to-Work being introduced in Ontario will also be affected by the results of a leadership vote to replace Mike Harris as premier. Harris publicly announced his resignation in September 2001, and there is a major possibility that a person who would move the Tories even further to the right of the political spectrum could replace him. There is also the fact that the nature of the legislative process in Canada is such that a majority party may essentially pass any legislation that it chooses, including Right-to-Work.

The arguments in favor of the Tories implementing Right-to-Work outweigh the arguments against them implementing Right-to-Work. The variables discussed above

lead to the conclusion that it is reasonable to expect that Right-to-Work may be introduced in Ontario at some point if the Tory government continues to be elected. The argument by the Alberta Joint Review Committee that Right-to-Work would not be beneficial economically is correct. The arguments that Newman makes against the introduction of Right-to-Work are also correct. All of these arguments are pragmatic and based on sound knowledge of labor relations in Canada. The problem is that those who would introduce Right-to-Work in Canada are motivated more by ideology than pragmatism.

The Tories would not introduce Right-to-Work for economic reasons, but might do so for ideological reasons. Right-to-Work could be gradually introduced. Section 2 of the Ontario Labor Relations Act states that this act is intended to promote collective bargaining.[387] The government could choose to change this section and remove the idea of promoting collective bargaining. Section 47 of the act indicates that a collective agreement will contain a provision requiring the deduction of dues if the union requests that such a clause be included.[388] Removal of this provision would require unions to negotiate union security provisions. The Tories have shown a pattern of introducing increasingly restrictive labor legislation, and the next step to take after revoking of Section 47 might be prohibition of automatic dues deduction.

The Alberta committee that studied Right-to-Work concluded that such a law was not needed as the province's union density was already as low as that of some Right-to-Work states. Ontario's union density is higher than that of any American state. The Ontario labor movement has also been a major opponent of the Harris government, while

[387] Government of Ontario, *Ontario Labor Relations Act*.
[388] Government of Ontario, *Ontario Labor Relations Act*.

the Alberta labor movement has not been nearly as active in opposing the Progressive Conservative government in that province. Right-to-Work would seriously weaken labor, which is the Harris government's major social opponent. The government may even feel bold enough to again remove the OMA's representation rights if it feels that doctors are too much of an obstacle to changing the health care system. The labor movement would be unable to support the NDP in the same manner as it has in the past, and this would further diminish the party's position in Ontario politics. These developments would enable conservatives to move the political agenda even further to the right of the political spectrum, just as conservatives have done in Right-to-Work states.

The Alberta study noted that the Rand Formula was also in place to avoid labor conflict. The American experience with Right-to-Work suggests that introduction of such laws does not lead to labor conflict, as the passage of Taft-Hartley did not lead to general strikes or civil disobedience. Instead, the American labor movement became more conservative and concerned with pursuing a business unionist model. Ontario unions would oppose Right-to-Work and there would undoubtedly be public demonstrations against it. There is no reason to believe that such demonstrations would lead to the revocation of a Right-to-Work law. Indeed, the Ontario labor movement has mounted major protests against the Tory agenda, but has been unsuccessful with getting it changed. It is more likely that, like the American labor movement, the Ontario labor movement would become weaker and more conservative.

Right-to-Work would still pose a threat to Canadian labor even if the Harris government was not in power. Canadian unions enjoy a significant level of union security and it is questionable if this level of union security can be preserved. Indeed, it

can be argued that Right-to-Work already poses a threat to the long-term security of Canadian workers as they compete with workers in Right-to-Work jurisdictions. A significant weakening of union movements around the world has accompanied increased globalization. The Canadian dollar and other investment incentives may eventually not be enough of an inducement for capital to invest in Canada. Canadian businesses may feel that Canadian governments need to copy the policies of Right-to-Work jurisdictions in order to be economically competitive. The Harris Tories represent a more immediate Right-to-Work threat, but there will always be an underlying threat as the desire to break unions may eventually prove irresistible for Canadian capital.

The reasons why Right-to-Work may come to Ontario have been noted. I will now discuss the reasons why Right-to-Work could be even worse for Canadian labor than it has been for American labor. There are three main reasons why Right-to-Work would be more harmful for Canadian labor. The first reason is that it would probably be introduced in Ontario, which is the most economically and socially important province in Canada. The second reason is that Right-to-Work would impair labor's ability to maintain its crucial alliance with the NDP. The third reason that Right-to-Work would be more detrimental is that it would reverse sixty years of legitimacy and put labor into the same legal position that it was in during the 1940s.

Right-to-Work was implemented in the United States in the most agrarian states that had relatively weak labor movements. Ontario is a large, industrialized province with a substantial labor movement. In fact, introduction of Right-to-Work in Ontario would imperil the largest provincial labor movement in Canada. The size of Ontario and the place that it occupies within Canada would ensure that the impact of Right-to-Work

would be more consequential than in the United States. In terms of economic influence, Ontario's adoption of Right-to-Work would be equivalent to California and New York both adopting similar laws. Canada also does not have a low wage region that is equivalent to the American South. Introduction of Right-to-Work in Ontario would immediately create another low wage, anti-union region within North America. Capital would undoubtedly take advantage of this situation, and the transfer of jobs to anti-union jurisdictions would continue.

Right-to-Work would have a profound effect on the Canadian political process. Labor was so determined to remove Harris from office during the 1999 election that some unionists advocated strategic support, if not outright support, of the Ontario Liberal party. Strategic voting involved supporting either the NDP or Liberal candidate who had the best chance of winning his or her riding. A stronger political threat would push labor further toward an association with the Liberals and further marginalize the NDP. Unions would probably be able to get the Liberals to adopt some progressive positions on issue that concern labor, but the pattern would be similar to the one that American unions have experienced with the Democratic party. Labor would not get as much out of the alliance as it was contributing.

It could be argued that Right-to-Work was as detrimental politically for American unions as I am suggesting that it would be for Canadian unions. American unions, however, never had an alliance with a third party like the alliance that Canadian unions have with the NDP. Some Canadian unionists believe that labor is not deriving many rewards from its alliance with the NDP. Canadian labor is still doing better with the NDP

than American labor is with the Democrats. Indeed, the fact that Canadian labor acquired legitimacy can in many ways be attributed to its alliance with the CCF and the NDP.

Right-to-Work would lead to the entrenchment of neo-conservative influence in Ontario politics in much the same way that the Republican party has become entrenched in the American South and South-West. The neo-conservative Alliance party has considerable support in Western Canada, but has been unable to form a national government as this base is insufficient to win a national election. The Alliance was formerly the Reform party. It is probably not coincidental that the Alliance party began in Alberta. The province has the lowest union density in Canada, and Alberta unions cannot fully function as a countervailing social influence. An entrenched neo-conservative movement in Ontario that does not have to deal with a social democratic opposition might be able to eventually support a neo-conservative effort to form a national government. Conservatives have also become entrenched in Right-to-Work states, but they are not dominant in crucial states such as California and New York. Right-to-Work would enable conservatives to become dominant in what is arguably the most influential province in Canada.

Union organizing in Canada would decline under Right-to-Work conditions in the same manner that organizing has declined in the United States. Right-to-Work markedly reduces organizing in American states in the first few years following its introduction, and a similar effect may occur in Canada. Masters estimates that American unions devoted an average of 3 percent of their budgets to organizing between 1979 and 1993.[389] Canadian unions devote more resources to organizing. For example, Newman noted that the CEP's national constitution requires that 6.6 percent of per capita resources be

devoted to organizing.[390] This greater emphasis on organizing and more favorable Canadian laws that apply to organizing might help alleviate the negative impact of Right-to-Work, but would not erase it altogether. Organizing laws may also be weakened at the same time that Right-to-Work laws are introduced. It could be argued that Canadian union membership is extensive enough to withstand Right-to-Work. However, American union density was roughly the same as Canadian union density when Taft-Hartley was introduced. American union density has fallen since the passage of Taft-Hartley and Canadian union membership would also fall following the passage of a Right-to-Work law at the federal or provincial levels.

Canadian unions act as servicing organizations in the same manner as American unions, but they do not seem to be as oriented towards business unionism. Newman indicated that he would be surprised if more than a small amount of a union's revenue came from sources other than dues.[391] He also noted that the money is supposed to be used for servicing local unions and defending workers' interests in general, not for investments.[392] This is a contrast to the approach used by American unions. It is likely that Canadian unions would pursue other sources of revenue if they encountered difficulties collecting dues. The example of the American Federation of Government Employees shows that Canadian unions might be forced to adopt more business unionism practices, such as making money through investments, or face the prospect of being unable to operate. Right-to-Work would also have a more injurious effect on Canadian labor than on American labor as a higher percentage of Canadian union members are

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[389] Masters, 161.
[390] Newman.
[391] Newman.
[392] Newman.

employed in the public sector. The experience of the AFGE demonstrates the possible effect of a Right-to-Work law on a public sector union. Right-to-Work could seriously damage Ontario public sector unions such as the Canadian Union of Public Employees (CUPE) and the Ontario Public Service Employees Union (OPSEU).

The idea of losing sixty years of legitimacy can be seen when comparing the gains that Canadian unions have made in relation to the progress of American unions. Canadian unions have managed to successfully support a third political party. This party has formed provincial governments and successfully influenced the federal political agenda. Canadian labor laws are much more favorable for unions. Canadian workers have become accustomed to these social and political norms. Right-to-Work would definitely return the legal framework in which labor operates back to the middle of the last century.

It is important to note that there are unionized workers in Canada who do not pay dues. Statistics Canada is the Canadian equivalent of both the Census Bureau and the Bureau of Labor Statistics. It identifies four groups of workers that are considered to be covered by collective agreements but do not pay dues. The first group is comprised of those people who use the Rand provisions and have their dues go to a charity. Statistics Canada does not specify how many people fall into this category, but the agency believes that few people actually use this provision. The second group is comprised of supervisors and low-level managers who are accorded the same terms as those contained within collective agreements that their employers have negotiated with bargaining unit workers. The third group consists of newly hired employees who are serving their probationary period. The fourth group consists of employees who are given the same

benefits that are given to unionized workers, even though they are not unionized. This last group is presumably comprised of workers who are employed in jobs that are similar to those in which unionized workers are employed.[393]

In 1999, approximately 7.4 percent of employees who were considered to be covered by collective agreements were not union members.[394] The definitions that Statistics Canada has used to determine who is covered by a union without union membership are different from the criteria used by the Bureau of Labor Statistics. The last three groups mentioned by Statistics Canada would probably not be regarded as enjoying union coverage in the United States. The categories that Statistics Canada uses also appear to overlap.

Statistics Canada does not specify the exact number of people who exercise their rights to avoid paying dues under the Rand Formula, but it is still relevant to this discussion to estimate how many people in Canada may exercise this right. In 1999 there were 287,000 workers in Canada who Statistics Canada regards as having collective bargaining coverage, with total national union membership of 3,595,000.[395] Statistics Canada further identified 91,000 people who were coverage only employees in management, professional, financial and administrative, social and public service legal or religious work, and contractor or supervisory positions.[396] It is reasonable to conclude that these are people who are in the second category identified by Statistics Canada. A total of 196,000 workers remain if these 91,000 people are subtracted from the 287,000

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[393] Akyeampong, 33.
[394] Akyeampong, 34.
[395] Akyeampong. A list of some of the employment categories used by Statistics Canada can be found on pages 121 to 122.
[396] Based on Akyeampong, 35.

national coverage only employees.[397] Statistics Canada further identified 63,000 coverage only employees with one to twelve months work tenure.[398] These people can be regarded as probationary employees, and 133,000 workers remain if these 63,000 probationary employees are subtracted from the 196,000 mentioned above.[399]

It is possible to estimate roughly how many people are coverage only workers who fall under the third category and receive union benefits even though they are not in unionized jobs. If all of the 133,000 workers mentioned above exercised their right to divert their dues to a charity they would have represented approximately 3 percent of all workers in Canada who are covered by a collective agreement as defined by Statistics Canada.[400] It is likely that Statistics Canada is correct, and that only a percentage of the 133,000 actually exercised their right to divert their dues to a charity in accordance with the Rand Formula. For example, if one third of the 133,000 people actually diverted their dues to charity they would have represented approximately 1 percent of those workers that Statistics Canada regards as being covered by a collective agreement.[401]

It is important to again note that the figures presented above are only an approximation as the categories used by Statistics Canada overlap. Statistics Canada probably does not feel obliged to collect data on the number of people who exercise their Rand Formula rights, as it is believed that few workers actually choose this option. It is likely that more workers would choose this option if they worked under Right-to-Work legislation, and were not required to make even a charitable donation that was equal to the amount that they would have paid in union dues. There is no reason to believe that

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[397] Author's calculation: 287,000-91,000=196,000.
[398] Akyeampong, 35.
[399] Author's calculation: 196,000-63,000=133,000.
[400] Author's calculation: 133,000/3,882,000X100=3.4%.

Right-to-Work in Canada would lead to a smaller percentage of free riders than is found in the United States. A calculation that I used in Chapter Two showed that approximately 18 percent of people covered by collective agreements in Right-to-Work states are not union members.[402] It is possible that a total of 227,000 Ontario workers would represent a similar percentage if Right-to-Work is introduced in that province.[403] It is possible to use the example cited in Chapter Two to calculate approximately how much dues revenue would be lost in Ontario because of Right-to-Work.[404] If all of the potential 227,000 free riders in Ontario avoided paying $30 per month in dues the result would be $81,720,000 in lost dues revenue.[405]

It is important to estimate how many people make the decision not to pay dues and instead make a contribution to a charity as this decision represents a loss for the labor movement. The ability of a worker to exercise his or her right to avoid dues payment under the Rand Formula may also be expanded in the future so that a strongly held religious conviction may no longer be the only pretext under which dues need not be paid. It is not inconceivable that a legislature may decide that any conscious objection to paying dues is sufficient. A court may also arrive at the same conclusion in the future, regardless of the decision that the Supreme Court of Canada made regarding *Lavigne*.

A further problem with Right-to-Work involves the role that it occupies in political culture. Right-to-Work became part of the political landscape in the American jurisdictions that implemented it, and it is also likely that it would become part of the

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[401] Author's calculation: 133,000/3=44,333/3,882,000X100=1.1 percent.
[402] See page 44.
[403] Author's calculation based on Akyeampong, 34: 1,264,000 Ontario union members multiplied by 18 percent equals 227,520.
[404] See page 44.
[405] Author's calculation: 227,000X$30X12=$81,720,000.

political landscape in Canada. There is also the manner in which Right-to-Work would alter public perception of unions. A survey of Canadians conducted by John Goddard suggests that unions are viewed as "trying hard" to pursue other activities such as political involvement, but are not viewed as accomplishing that much.[406] Goddard also found that unionized workers have a more favorable view of unions than do non-unionized workers.[407] The public does not appear to regard participation in elections as a high priority for unions.[408] Instead, the public is more interested in an organic labor relations model that involves unions helping workers find collective solutions to their work related concerns.[409] Goddard's study suggests that the Canadian public is more interested in a narrow business unionism approach rather than social unionism.

A survey conducted by the Work Research Foundation further illustrated the Canadian public's attitude towards unions. Contact with the Work Research Foundation revealed that it received a grant from the Donner Foundation in order to conduct this study.[410] The Donner Foundation is linked to the Fraser Institute. The fact that the research was done by what is undoubtedly a right-wing foundation does not necessarily invalidate the research results as the study is unlike much of the ideological biased analysis that is done on labor issues. Professor Reginald Bibby of the University of Lethbridge conducted the study.[411] Bibby found that half of Canadians believe that 50 percent of workers are union members.[412] His study also found that 57 percent of

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[406] John Goddard, "Beliefs About Unions and What They Should Do: A Survey of Employed Canadians" *Journal of Labor Research* vol. XVIII, No. 4 (Fall, 1997), 629.
[407] Goddard, 628.
[408] Goddard, 631.
[409] Goddard, 635.
[410] Phone call by the author to the Work Research Foundation June 1, 2001.
[411] Reginald Bibby, *Canadians and Unions: A National Survey of Current Attitudes* (Mississauga, Ontario: Work Research Foundation, 1997), 1.
[412] Bibby, 2.

Canadians approve of unions, while 39 percent disapprove of them.[413] Approval of unions was highest is Atlantic Canada at 66 percent, and lowest is Ontario at 51 percent.[414]

Canadians have views that seem at odds with their overall approval of unions regarding the issue of mandatory membership. A majority of 61 percent does not believe that a person should be required to join a union in the workplace.[415] A further finding was that 60 percent of respondents thought that money that would otherwise be paid in union dues should be kept by the individual, while 30 percent thought that the money should go to a charity as is mandated under the Rand Formula.[416] With regards to the use of dues for "non-union activities" 82 percent of respondents felt that contributions for such activities should be voluntary.[417] Presumably, an overwhelming majority of the public would have agreed with the plaintiff in *Lavigne*.

It could be argued that introducing Right-to-Work in Ontario would be contrary to the political culture of the province. It is indeed true that legislated protection of union security has been a social and political norm in the province since the introduction of the Rand Formula. The Tories have shown a pattern of challenging the existing political culture in Ontario. They have in some ways altered the province's political culture. For example, they have successfully made unionized workers and welfare recipients into objects of public scorn. It is possible that Ontario's political culture may have been altered to an extent that introduction of Right-to-Work would not violate social and political norms.

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[413] Bibby.
[414] Bibby, 3.
[415] Bibby, 4.
[416] Bibby, 5.

The information presented by both Bibby and Goddard suggests that the public generally approves of labor, but opposes political action and mandatory dues. The surveys should have asked if people understood labor's dependence on the political system and dues money for its continued existence. The findings of these two studies indicate that the public would not react negatively to Right-to-Work. Indeed, a conservative government may successfully convince the electorate that Right-to-Work is a good idea and is in accord with public sentiment. The information presented by Bibby and Goddard further shows that the political culture in Canada may have altered so that union security is no longer an accepted norm. Right-to-Work could become a social and political norm as the information presented suggests that the public already basically agrees with the idea.

Newman believes that most union members would continue to pay dues even if they were not compelled to do so.[418] He noted that a nurses union recently managed to get 95 percent of its membership to pay dues without having the Rand Formula in its collective agreement.[419] This view is close to the results of the Work Research Foundation's Study that 80 percent of current union members believe that a person should have to become a union member if there is one in the workplace.[420] Union operations would still be difficult as attempts would have to be made to collect money from the 20 percent of union members who do not believe that dues should be paid.

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[417] Bibby, 8.
[418] Newman.
[419] Newman.
[420] Bibby, 4.

Newman noted that the role of local stewards would change in a Right-to-Work system, as they would become responsible for dues collection.[421]

Newman's views are correct. It was noted earlier in the thesis that a small percentage of union members do not pay dues, with the apparent exception of AFGE members. The problem is that, in the event of a strike, this sector of the workforce is likely to cross a picket line and will undoubtedly side with management. As Sills noted, this group also tends to be recalcitrant. It becomes difficult for a union to claim to be the sole representative of workers when a group that should be union members opts of out paying dues. Canadian unions do, however, operate under a legal obligation to provide fair representation. Canadian free riders would undoubtedly be willing to expect union protection even if they had not paid dues.

Newman's views are similar to those of most people in the Canadian union movement who believe that union members are enlightened enough to understand the need for collective contributions in order to promote collective gain. It is regrettable that these views are not universally accepted among union members and society as a whole. Indeed, part of the purpose of this thesis is to present the idea that union members should make a financial contribution to their union in return for representation. The unfortunate reality is that a percentage of the public is unwilling to accept this concept, and this same group is susceptible to neo-conservative appeals to narrow individualism.

It is possible that Right-to-Work can be resisted in Canada by utilizing different strategies, and it is not definite that Right-to-Work will be introduced in Canada. Canadian labor should continue to support the NDP. Newman does not believe that labor should support the Liberal party, and instead should support a party that represents

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[421] Newman.

workers.[422] There is currently a public discussion regarding labor's association with the NDP, and if this association should continue. Newman noted that labor will have to do something else if the NDP abandons it, and that it is difficult to take a uniform position on what political position labor should take.[423] These observations are correct, and labor should endeavor to ally itself with a party that will represent it. Labor's association with the NDP should be renewed, as an alliance with any of the other mainstream parties will not yield many rewards. The information presented in the first part of this chapter illustrates the success that labor has had with its alliance with the CCF and later the NDP, and it is possible that this alliance could yield future successes.

The payment of union dues is no different than paying taxes, and this idea was part of the rationale behind the Rand Formula. The report by the Alberta Economic Development Authority referred to the Supreme Court's opinion on this matter. The court concluded that "there is no distinction between our overall system of government and the role of taxation within it and the mini-democracy of the workplace."[424] The court's view on this matter reflects an egalitarian approach to social policy. The difficulty is that the court's view appears to run contrary to the public survey results presented in this chapter. Unions should educate their memberships about the purpose of union dues and the threat that Right-to-Work represents.

The most significant threat that Right-to-Work poses is to the legitimacy of labor in Canada. Canadian labor currently occupies a more advantageous place in society than does its American counterpart. Canadian unions frequently co-operate effectively with other social groups to advance progressive change. Newman is a supporter of alliances

[422] Newman.
[423] Newman.

between labor and other social groups.[425] He notes that there are downsides for the groups involved in these alliances, as labor can sometimes appear to be a fair-weather friend.[426] For unions, the difficulty is that a coalition may not last once the issue being contested is resolved.[427] Coalitions are issue based, and they can be very powerful.[428] With Free Trade, for example, the message from all of the groups opposing the issue was the same.[429] Labor's ability to create alliances with other groups could be jeopardized by Right-to-Work as these laws tend to make unions adopt a more defensive posture instead of a pro-active social unionist approach.

It would be unwise to rely on the judiciary to protect labor's rights. Three of the seven Supreme Court of Canada who ruled on *Lavigne* ruled in favor of the plaintiff and against the use of dues for political purposes.[430] The pro-labor majority was razor thin, and it is possible that a majority of the court may rule differently on a future case. There are typically few social democrats in the judiciary and judges instead tend to be ideologically conservative.

Canadian unions have been able to act as a social movement because they have enjoyed greater social legitimacy than their American counterparts. Labor is the only group that genuinely represents the average working person. Canadian unions have formed alliances with other social groups for many years and they have continued to participate in demonstrations such as those recently held in Quebec City to oppose the Free Trade Area of the Americas. Canadian labor has not had to adopt a defensive

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[424] Alberta Economic Development Authority, v.
[425] Newman.
[426] Newman.
[427] Newman.
[428] Newman.
[429] Newman.
[430] Supreme Court of Canada, 3.

UNION MEMBERSHIP AND COLLECTIVE BARGAINING COVERAGE IN CANADA - CLASSIFIED BY GENDER, PROVINCE, OCCUPATION, AND EMPLOYMENT TENURE

	Total Collective Bargaining Coverage	Total Union Membership	Percentage Union Membership	Total Coverage Only	Percentage Coverage Only
*Total Workers-Male and Female	3,882,000	3,595,000	92.6	287,000	7.4
Men	2,078,000	1,919,000	92.3	159,000	7.7
Women	1,804,000	1,676,000	92.9	128,000	7.1
Province					
Newfoundland	71,000	69,000	96.5	2,000	3.4
Prince Edward Island	15,000	14,000	92.8	1,000	7.2
Nova Scotia	105,000	100,000	95.5	5,000	4.5
New Brunswick	80,000	75,000	94.0	5,000	6.0
Quebec	1,124,000	1,007,000	89.6	117,000	10.4
Ontario	1,345,000	1,264,000	94.0	81,000	6.0
Manitoba	165,000	156,000	94.2	10,000	5.8
Saskatchewan	127,000	118,000	93.1	9,000	6.9
Alberta	316,000	281,000	88.8	36,000	11.2
British Columbia	536,000	513,000	95.8	23,000	4.2
Occupation					
*Management	111,000	82,000	73.5	29,000	26.5
*Professional	57,000	51,000	89.3	6,000	10.7
*Finance and Administrative	176,000	157,000	89.2	19,000	10.8
Clerical	398,000	367,000	92.3	30,000	7.7
Natural and Applied Sciences	216,000	194,000	89.8	22,000	10.2
Health Professionals	31,000	26,000	85.7	4,000	14.3
Nursing	187,000	182,000	97.2	5,000	2.8
Health Technical	103,000	100,000	96.5	4,000	3.5
Health Care Support Staff	106,000	101,000	95.6	5,000	4.4
*Social and Public Service Legal, Social, and Religious	144,000	135,000	93.3	10,000	6.7
Secondary and Elementary Teachers	360,000	349,000	96.9	11,000	3.1
Other Teachers	87,000	77,000	88.0	10,000	12.0
Culture and Recreation	74,000	68,000	91.0	7,000	9.0
Wholesale	22,000	17,000	78.5	5,000	21.5

Retail	115,000	106,000	92.0	9,000	8.0
Food and Beverage	44,000	41,000	92.4	3,000	7.6
Occupation	Total Collective Bargaining Coverage	Total Union Membership	Percentage Union Membership	Total Coverage Only	Percentage Coverage Only
Protective Services	117,000	103,000	87.9	14,000	12.1
Child Care and Home Support	78,000	72,000	92.0	6,000	8.0
Travel and Accommodation	288,000	272,000	94.3	16,000	5.7
Operators	661,000	624,000	94.5	37,000	5.5
*Contractors and Supervisors	27,000	23,000	82.8	5,000	17.2
Construction Trades	83,000	81,000	97.5	2,000	2.5
Other Trades	287,000	272,000	94.8	15,000	5.2
Transport and Equipment Operators	170,000	160,000	93.9	10,000	6.1
Helpers and Laborers	93,000	89,000	95.1	5,000	4.9
Unique to Primary Industries	43,000	40,000	93.5	3,000	6.5
Machine Operators and Assemblers	378,000	351,000	92.9	27,000	7.1
Laborers	86,000	82,000	95.1	4,000	4.9
Job Tenure					
*1 to 12 Months	460,000	397,000	86.3	63,000	13.7
Over 1 year to 5 years	816,000	737,000	90.3	79,000	6.6
Over 5 years to 9 years	548,000	510,000	93.1	38,000	6.9
Over 9 years to 14 years	701,000	658,000	94.0	42,000	6.0
Over 14 years	1,357,000	1,292,000	95.2	65,000	4.8

Source: This information is derived from Akyeampong, pages 34-35.

* Denotes the statistics that are referred to directly in Chapter Four.

posture because of draconian labor laws and has instead been able to expand its membership and influence. This ability to form social alliances will become more important as efforts to resist globalization intensify. Canadian unions should make every effort possible to resist Right-to-Work and preserve the place that labor occupies in Canadian society.

CONCLUSION

The purpose of this thesis is to determine the effect that Right-to-Work laws have had on American unions, and the effect that such laws may have on Canadian labor. I have discussed the historical development of Right-to-Work laws in the United States, the effect that these laws have had on the states that have introduced them, the impact that Right-to-Work has had on American labor, and the effect that Right-to-Work could have on Canadian labor.

A variety of sub-themes have been discussed in the process of analyzing the two main problems presented in the thesis. In the first chapter I showed how Right-to-Work was in many ways the product of a right-wing, post-war reaction in the United States. Elites in America wished to ensure that labor would not disrupt the socio-economic order as the country entered the Cold War. The United States may not have had an official labor policy, but the unofficial policy was to marginalize labor and treat it as a narrow interest group rather than a broad social movement.

In the second chapter I discussed the impact that Right-to-Work has had on those states that have adopted it, particularly in the American South. Elite groups in Right-to-Work states were anti-union, and relied on violence and racism in order to ensure that unions were unable to establish themselves in the South and South-Western United States. These states became an internal low wage market and they used their non-union status to lure business away from more unionized North Eastern states. This phenomenon represented an early form of wage competition that became generalized under globalization.

In the second chapter I also discussed some of the academic and non-academic literature that has been published regarding the effects of Right-to-Work. The academic literature generally confirms or refutes the negative impact of Right-to-Work, but does not endorse or reject it. The non-academic literature on Right-to-Work tends to either strongly endorse or reject it. The non-academic sources moreover reflect the ideological positions of those who oppose Right-to-Work and those who promote it. The academic and non-academic arguments that dispute the negative effects of Right-to-Work are not as valid as the arguments that confirm the negative impact of it.

In the third chapter I discussed the impact that Right-to-Work has had on American labor on a national scale. American unions made impressive legislative gains during the 1930s and 1940s and their memberships expanded. The two major labor federations, however, did not maintain a united front in the face of conservative efforts to reverse the gains that labor made under the New Deal. Parts of labor participated in efforts to eliminate left-wing influences in American society and within the labor movement itself, without attempting to create a left-leaning political movement to replace these groups. Unions became involved in an alliance with the Democratic party, and this alliance has not rewarded labor with as much as it has contributed. Right-to-Work worsened these conditions as it caused unions to adopt a defensive stance. Labor became much more preoccupied with lobbying to maintain existing legislative gains. In the process unions developed the most sophisticated lobbying effort in Washington, while grassroots outreach withered.

The Right-to-Work states became the Republican party's base of support, while the Democratic party lost a lot of support in these states. Labor could not act as a

countervailing influence in these areas as it was weakened by Right-to-Work. Indeed, in recent decades the South and South-Western United States began to set the social and political agenda in the same manner that the North-East influenced the agenda fifty years ago.

Business unionism became the labor relations model in the United States during the post Second World War period, even among most CIO unions that originally had a more progressive outlook. Pradeep Kumar notes that business unionism is trade consciousness rather than class consciousness.[431] Business unionism also led unions to regard themselves as bargaining institutions.[432] It led American unions to glean more income from investments than they do from membership dues. Business unionism was fostered by Right-to-Work. The example of the American Federation of Government Employees shows that a union may not be able to operate in a Right-to-Work environment. Some American unions control considerable financial resources, yet they do not devote enough of these resources to organizing new members. Right-to-Work placed American labor in a defensive position in relation to capital.

Right-to-Work could be even more detrimental for Canadian labor than it has been for American labor because it would probably be introduced in Ontario, which is arguably the most important province in Canada. Ontario has the largest labor movement in Canada, and this movement would be imperiled by Right-to-Work. Right-to-Work would certainly lead to Canada having a regional labor interest group instead of a national movement. The problem is that the labor movement would gradually become weakest in the most economically and socially influential province. Right-to-Work has

[431] Kumar, 156.
[432] Kumar, 157.

become an issue in Ontario because neo-conservative politicians have assumed elected office in that province, and they have derived considerable inspiration from their ideological counterparts in the United States. This affinity of political ideas is rooted in close economic and cultural links between Canada and the United States. American social and political ideas are frequently discussed in the media and in Canadian society in general. Political ideas that originate in the United States are also often adopted for use in Canada.

Right-to-Work could still pose a threat to Canadian labor even if the Tories did not govern Ontario. The American and Canadian economies are also becoming more integrated. Globalization has also weakened labor movements around the world. It may become difficult to preserve legislated union security when the global trend is to diminish labor's legal protection. Capital may promote Right-to-Work as a measure that would enhance Canadian economic competitiveness.

Both Canadian and American unions are interested in organizing workers in new industries and within new demographic groups, but Right-to-Work frustrates efforts to organize these groups. Canadian unions have devoted more resources to organizing than American unions and it is possible that this would help compensate for the negative impact of Right-to-Work. It is still likely that Right-to-Work would have a negative impact on organizing particularly among younger workers, women, and those employed in white collar occupations. The size of Ontario's union movement would ensure that reduced organizing in that province would lead to reduced organizing in other provinces.

Right-to-Work can easily lead to other anti-union legislation such as Paycheck Protection. Ontario does not currently have any restrictions on the use of dues money for

political purposes, but the province has experienced a growing trend of anti-union legislation. The governing Progressive Conservative government has repealed progressive NDP legislation, and it has prevented those forced into workfare schemes from joining unions. The government has also introduced negative changes to employment standards legislation. The Tory caucus includes people who would like to introduce Right-to-Work in Ontario. Though some strong pragmatic arguments exist against the introduction of Right-to-Work, the Harris government is motivated more by ideology than pragmatism.

Right-to-Work would have a particularly negative impact on Canadian labor's political prospects. Canadian unions have an established association with the NDP, and this association has enabled labor to influence the political process. American labor has not had the benefit of a similar alliance. The NDP relies on labor for material and organizational support and Right-to-Work would impair labor's ability to support the party. Further, a Right-to-Work law could include Paycheck Protection provisions. Canadian unions have used the NDP to influence the political process, while American unions have relied on sophisticated lobbying efforts. In a sense, Canadian unions have had an easier time with lobbying because they have been able to rely on their association with the NDP to further their agenda. They have not had to develop sophisticated lobbying methods such as COPE. This would probably change under Right-to-Work. Canadian unions would probably have to further their political aims through an association with the Liberal party than through involvement with a third party like the NDP. An association with the Liberals would enable unions to protect existing gains in

the same manner that American labor has used its association with the Democrats. An alliance with the Liberals would probably not result in new legislative gains for labor.

The Canadian judiciary has shown more interest in protecting union security clauses than has its American counterpart. The fact that Canadian judges are appointed without legislative oversight should presumably lead to a more conservative judiciary, but the judiciary did not behave in a reactionary manner in assessing the constitutionality of the Rand Formula. The *Lavigne* decision illustrated that the court was not yet willing to change as essential component of the labor relations system in Canada. The Supreme Court of Canada's decision on *Lavigne* should still not be a source of reassurance to those who do not want to see Right-to-Work introduced in Canada. A bare majority of justices upheld the Rand Formula, and it is possible that the judiciary may change if conservatives remain in power.

The main issue surrounding Right-to-Work involves labor's legitimacy and the role that unions occupy in society. I have shown that the debate over Right-to-Work laws concentrates almost exclusively on the economic aspect of these laws and does not deal with the problem of lost legitimacy. Right-to-Work reduces union membership to being a commodity and leads unions to continue to behave like capitalist organizations rather than social groups. Union members begin to assess the value that they get for their dues money in the same manner that they would assess any other commodity. The economic consequences of Right-to-Work are indeed significant, but they lead to the greater problem of lost legitimacy. Lindblom and Woodhouse note that unions are not equal to business when it comes to influencing government policy making.[433] Right-to-Work

[433] Lindblom and Woodhouse, 96.

worsens this situation by depriving labor of the resources necessary to maintain solidarity and promote its agenda.

The eleven years following the passage of the Wagner Act was the period in which American labor had real legitimacy. Canadian labor has had more legitimacy than American labor for almost sixty years. The fact that Right-to-Work would reverse such a long tradition of labor rights is another reason that it would be more grievous for Canadian labor. Labor commentator Jeff Rose noted in an address to a union policy conference that Canadians and their governments have considered it normal and legitimate that unions would exert themselves on behalf of workers' interests.[434] He further noted that Canadian governments have acknowledged that it is only possible for a union to discharge its duties if it is the exclusive bargaining agent for the employees in a bargaining unit.[435] The introduction of Right-to-Work would change these basic assumptions.

Right-to-Work promoters are motivated by a belief that market forces must be given latitude to shape the economy and society.[436] Labor's efforts to challenge the unfettered operation of the market are viewed as a threat by elite groups. Right-to-Work helps solve the problem of union interference in the free market, and it is in many ways typical of right-wing ideology. The emphasis is on simple, selfish individualism rather than enlightened individual action that leads to collectivism. Appeals to individualism are easy to comprehend as a person need only think of him or herself. Thinking about collective contributions requires a degree of altruism. It is easier for a person to accept

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[434] Jeff Rose, *The 'Right-to-Work' Issue and its Impact in Canada: Policy, Politics and Ideology* (address to the Amalgamated Transit Union Can-Am Policy Conference. Raleigh, North Carolina, August 13, 1999) Newman Industrial Relations Library, Center for Industrial Relations, University of Toronto, 3.
[435] Rose, *The 'Right-to-Work' Issue and its Impact in Canada*.

getting union protection for nothing than it is to convince a person that he or she has an obligation to support an organization that is furthering his or her livelihood. As Rose noted, a Right-to-Work system enables workers to "share the cake without having to expend cash or conviction in obtaining it." He further noted that this system creates a disincentive for workers to join a union and stay organized.[437]

There is a major contradiction involved with Right-to-Work, particularly in the United States. Elites in America promote the idea of self-reliance and denigrate the idea of people getting any sort of benefits without making some form of contribution towards those benefits. These same elites promote Right-to-Work, which enables workers to get union protection for free. This hypocritical elite attitude regarding Right-to-Work further reinforces the idea that it exists to weaken unions rather than protect the individual. Canadian elites would probably be just as well disposed as their American opposites to adopting this picayune attitude.

The public does not support mandatory dues payment, and it is unclear why this view predominates. Lindblom and Woodhouse's theory of Impaired Inquiry may suggest an explanation. This theory suggests that people suffer from biological and behavioral limitations that inhibit their ability to comprehend complex issues.[438] For example, research has shown that the education system is used to control the populace.[439] The media also contributes to constraining rather than encouraging people to question issues.[440] It is certainly true that organized labor is almost always negatively portrayed in the popular media and that labor history is given scant attention in the public education

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[436] Rose, *The 'Right-to-Work' Issue and its Impact in Canada*, 8.
[437] Rose, *The 'Right-to-Work' Issue and its Impact in Canada*, 3
[438] Lindblom and Woodhouse, 115.
[439] Lindblom and Woodhouse.

system. People are not socialized to have a positive view of labor, nor are they encouraged to understand how the labor movement operates. The only way that an average worker may really learn about unions is by joining one.

Since the average person can understand the idea of making a contribution to a union if he or she is a member of that union, the idea of intellectual incapacity does not apply. Other aspects of Impaired Inquiry do help explain the reason that people do not accept the idea of union security, namely because they are not socialized to do so. Labor has difficulty presenting its views in the popular media. Major media sources are controlled by capital and these sources tend to reflect the ideological positions of capital. Information derived from media controlled by capitalists will generally not portray unions in a positive manner.

North American labor is more dependent on legislative measures protecting union security than unions in places such as Europe, and this is due to North America's relative lack of class consciousness. This lack of class consciousness affects the manner in which workers view payment of union dues. Hogler notes workers will support measures that will compel other workers to pay dues, but will not voluntarily support dues payment as part of the common good.[441] Workers would support the payment of dues for the common good if they had a higher level of class consciousness. Legislation requiring dues payment is consequently required as workers do not have a high enough level of class consciousness to support voluntary payment. Union membership and dues payment are really no different than citizenship and taxes. Union members are part of a labor community and it is reasonable to expect them to contribute the community's security.

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[440] Lindblom and Woodhouse, 117.
[441] Hogler, 1199.

It is unlikely that class consciousness will be increased as this would run contrary to the interests of elite groups. It is better for capital if the majority of the population believes that society is classless and egalitarian. Since governments created the legal framework in which unions operate, including the collective bargaining process, it could be argued that unions should not worry about Right-to-Work. Union security is simply one part of a labor relations system that was granted by the state. In reality, favorable labor legislation was in part the state's response to labor activism and was granted on the state's terms. Labor has fought for legal protection, and union security clauses form an essential part of this system. The labor relations systems in North America may not be completely advantageous for unions, but they are better than the alternative of having no legal legitimacy.

There are obvious options confronting Canadian labor. Canadian unions currently function as a national movement, while their American counterparts function as a regionally based interest group. The Canadian labor movement should exhibit greater solidarity and work to reverse the effects of neo-conservative ideology. The alternative is to suffer further from right-wing policies such as Right-to-Work and follow the path that American labor has taken. American labor's experience with policies such as Right-to-Work illustrates that the effects of such policies are detrimental to labor's longevity. The Canadian and American labor movements should work together to resist right-wing ideology and in the process revitalize the collective North American labor movement. They should also push for the introduction of legislation that will specifically strengthen unions, such better organizing laws and revocation of Right-to-Work. Organized labor in both Canada and the United States has been successful when it has acted as a social

movement rather than an interest group. North American labor can only act as a social movement if it has the legitimacy and resources to fulfill this role.

The information presented in this thesis has confirmed the initial hypothesis that Right-to-Work has been detrimental for American unions and could be more detrimental for Canadian unions. Organized labor is the only real advocate that workers have to represent them and every effort to diminish labor's role in society should be strongly opposed by all democratic groups. Unions have played important roles in both American and Canadian societies, and it is possible that they will continue to do so if they protect and expand their position within their societies. It is better for nations to have strong unions that can form social movements instead of marginalized unions that act as mere pressure groups. I hope that this thesis can help raise awareness of the dangers associated with Right-to-Work, and that the information presented here may assist both the Canadian and American labor movements with their efforts to protect the interests of working people.

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