Sources of Change in Right to Work Laws

Matthew M. Bodah
University of Rhode Island
mbodah@uri.edu

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I. Introduction

A. Overview

The recent passage of so-called right-to-work (RTW) laws in Indiana and Michigan have again stoked the debate in the United States over union security provisions in collective bargaining agreements. This has been a remarkably—and surprisingly—persistent issue in American history. In 1942, an observer wrote: "Seldom in the history of the United States has a problem attracted so much attention—pro and con—as the question of the closed shop (Toner, 1942: 1)." And, in fact, many of the nation's earliest labor disputes and much of its early labor litigation concerned the extent of a union's jurisdiction in the workplace (Tomlins, 1993: 107-127). While this aspect of the "labor question" may not have quite the urgency today as when unions were ascendant, union security remains an important and contentious issue (Devinatz, 2011).

As the title of this paper—"Sources of Change in Right to Work Laws"—suggests, its purpose is to gain a deeper understanding of the current debate by looking back at a selected history of union security and examining the development of legislation, litigation, and debates over the issue. After presenting a conceptual model, I first consider the roots of union security and some of the early litigation in this area. Second, I turn to the development of union security as a truly national-level issue. Finally, I look at how partisan alignments around the issue have shifted over the years, and end with a discussion of recent events.

B. The conceptual model

In this paper, I argue that fights over union security have had both historically specific proximate causes and more time-invariant underlying causes.

For the most part, the early disputes were local matters that involved struggles for control of the shop floor at the enterprise level. There was very little interest in union security issues by federal courts, Congress, the executive branch, or the national political parties. The lack of truly national-level labor organizations or employer associations before the latter part of the nineteenth century served to keep these as essentially local disputes over shop floor control.

At the beginning of the twentieth century, however, the issue of union security became a national one. This followed a couple of decades of labor movement support, particularly by the AFL and its member unions, and federal court and legislative attention to issues that either directly addressed or indirectly affected union security (such as, for example, antitrust). The broadening of the issue occurred particularly after a number of large employer associations, including the National Association of Manufacturers and National Metal Trades Association, took official positions against the closed shop. At this point, the issue became not just a struggle for the control of the shop floor at the local or enterprise level, but a national fight at the public policy level. Yet the matter was still not truly a partisan one, and Republicans and Democrats could be found on either side of the issue.

Political polarization on union security issues began after passage of the Wagner Act and the sharp increase in both unionization, particularly of the industrial kind, and union militancy. The drift began with Republicans becoming more solidly opposed to union security, but with Democrats divided between southern conservatives, who became the leading proponents of RTW laws, and progressive members of the party in other parts of the country. Following the defection of most southern Democrats to the Republican Party after the civil rights era, Democratic sentiments concerning union security became more uniformly supportive.

Hence, in the contemporary environment, the issue of union security is as much about partisan politics as it is about control of the workplace or public policy. Republicans support RTW laws as a signal of their conservatism, their alliance with business, and to burnish their credentials with like-minded constituents and donors. Democrats, on the other hand, oppose limits on union security in order to help the generally supportive labor movement and appeal to their core of voters. The recent proliferation of deep-pocketed super PACs following the U.S. Supreme Court's decision in *Citizens United v. Federal Election Commission* (558 U.S. 310, 2010) will likely add fuel to the partisan fire. Now the erosion of union security can be seen by Republicans and their allies as a way to weaken unions and lessen their ability to support Democratic office seekers, while Democrats continue to rely on the financial and organizational strength of the labor movement.

While the proximate causes of struggles over union security can be found in these historically specific phenomena, two further points must be made. First, there is some level of historical persistence. That is, the proximate causes of earlier times never disappear completely, but rather combine with those of the current period. Hence, individual employers may still see union security as a threat to their power in the workplace and elected officials may view it as a *bona fide* public policy issue affecting, for example, state-level economic development. But I argue that the principal issue of each time period subordinates those of earlier times.

Second, however, I acknowledge that there are time-invariant, good faith, ideological differences on this issue. Positions on union security are neither completely pragmatic nor cynical. Libertarians, for example, see union security as step away from a free society and a move toward unjustly privileging certain organizations—i.e. unions—over individuals or employers (Epstein, 1983; Hutchison, 2006; Leef, 2005; Reynolds, 1982). Defenders of both

unions and collective bargaining see security provisions as necessary in preserving a process that extends liberty for individual workers by balancing power and giving rights within the employment relationship, which is otherwise inherently coercive (Dannin, 2005; Hogler, 2005).

II. Union security as a local issue.

Contemporary labor law and labor relations textbooks define the types of union security provisions typically found in collective bargaining agreements today, including union shop, agency shop, maintenance of membership, dues check off, etc. (Fossum, 2012: 316-315; Cox, et.al., 2006: 1159-1193). Our current understanding of these terms has developed since the 1935 passage of the National Labor Relations Act (NLRA) and, particularly, the 1947 Taft-Hartley amendments and ensuing case law. Prior to the 1940s, however, the only real issue was whether a union could enforce a "closed shop" at the workplace (Stockton, 1911; Toner, 1942). At the time, a closed shop was an agreement by an employer—under duress or otherwise and rarely formal or written—to hire only members of a particular union or require union membership shortly after hiring as a condition of continued employment.[1]

The idea of the closed shop preceded industrialization and had its origins in the guild system when master craftsmen sought to monopolize the regional production of a good or service (Webb & Webb, 1897: 214). When workshops expanded and a permanent class of journeymen developed, the tactic was adopted by unions to achieve essentially the same objective, but with the sale of their members' labor power (Commons, et. al. 1918). As early as 1689, the motto of the Philadelphia rope makers was: "May the production of our trade be the neckcloth of him who attempts to untwist the political rope of our union (Bishop, 1868: II, 59)."

[1] Today the former is illegal and the latter referred to as a "union shop."

Obviously this system was fancied neither by employers nor nonunion workers, both of whom occasionally took their grievances to court. In some of the earliest cases, many of which involved cordwainers (i.e. shoemakers), courts frequently held that even peaceful attempts at a achieving a closed shop were criminal conspiracies. So, for example, as the judge stated in the *Pittsburgh Cordwainers* case of 1815 (Commons, 1958: 81):

> It is in the interest of the public, and it is the right of every individual, that those who are skilled in any profession, art, or mystery should be unrestrained in the exercise of it…Did they conspire to compel an employer to hire a certain description of person? If they did, they are endictable [sic].

This is not to say that prosecutors won convictions in every case. In the 1836 cases of *Hudson Shoemakers* and *Philadelphia Plasterers*, sympathetic juries acquitted union members of conspiracy charges—despite highly prejudicial comments from the judges in the cases (Haggard, 1977: 14). But the real breakthrough came in 1842 in *Commonwealth v. Hunt* when Justice Shaw of Massachusetts determined that merely attempting to gain a closed shop was not a criminal activity, since the closed shop was not, *per se*, illegal. Rather one had to look at the totality of conduct to see if criminal means were used to obtain an otherwise lawful end (Tomlins, 1993: 180-219).

Commonwealth v. Hunt did not end the use of the criminal conspiracy doctrine completely; it was still employed from time-to-time through the end of the nineteenth century. What did happen, however, was that the tactic was largely abandoned in favor of civil suits for damages and injunctions against actions undertaken to achieve the closed shop (Gould, 2012: 13). The courts, however, were divided on how they handled such matters. Haggard (1977: 17-24) illustrates these differences by comparing the approaches of the New York, Massachusetts, and New Jersey courts. In New York, the courts took a hands-off approach and rarely issued injunctions against a union's actions unless the closed shop demand was merely subterfuge for

some other purpose, such as "to gratify malice and injury on nonunion [workers] (Haggard, 1977: 19)." While in Massachusetts the courts "evidenced considerable hostility toward the achievement and enforcement of closed shop arrangements (Haggard, 1977: 23)." Finally, the New Jersey courts generally held that attempts to enforce a closed shop on an entire industry or region was enjoinable, but not actions directed only at individual employers.

This history suggests that throughout the nineteenth century struggles over the closed shop were largely fought at the local level between unions, employers, and nonunion workers whose employment opportunities were limited by their lack of union membership. Disagreements in such cases were litigated before state, county, or municipal courts. But as we see below, the issue began to develop a broader significance in the early twentieth century.

III. Union security as a national public policy issue.

By the beginning of the twentieth century, employers, whose power rose with the size of their businesses, became increasingly concerned with and hostile toward the closed shop (Montgomery, 1979: 57-63). Toner (1942: 75) argues that the seminal event was the Homestead Strike of 1892 when Henry Clay Frick "changed [the Carnegie Steel Company's] policy of friendliness toward organized labor and smashed the union by the use of armed Pinkerton agents…" But, more broadly, employers were concerned with the acceptance of the legality of closed shops by many courts, the acquiescence of an increasing number of employers, and the rising militancy of now-national labor organizations in support of the cause. The AFL, for example, at its 1892 convention supported a boycott "against firms that refused to operate union shops or that use any supplies but those made by union labor (American Federation of Labor, 1892: 5)."

By the first year of the new century, the National Metal Trades Association, which had previously supported closed shop agreements, took an official position against them (Montgomery, 1979: 57). Soon after—and encouraged by the decision of a commission established by Theodore Roosevelt to resolve a 1902 coal strike, and which insisted that anthracite mines be open shops—the National Association of Manufacturers (NAM), at its 1903 convention, adopted a resolution against the closed shop, lifting its language directly from the commission's decision (Lieberman, 1950: 331). The NAM was followed in 1906 by the National Erectors Association and a bit later, in 1913, by the U.S. Chamber of Commerce, which had been founded in 1912 (Toner, 1942: 125-132).

Therefore, within about a decade, and by the beginning of the Wilson administration, nearly all of the large employers' associations had come out formally and forcefully against the closed shop. This, in turn, led to the creation of a number of spinoff organizations, such as the Citizens' Industrial Association of America and, eventually, the post-WWI development of the American Plan, which used overtly patriotic rhetoric against the closed shop and promoted such tactics as yellow dog contracts (i.e. pledges by workers to remain nonunion), blacklists (of union members) and whitelists (of nonunion workers), and nonunion representation plans (i.e. company unions) as a form of union substitution (Jacoby, 1985: 180-189).

It was also during the first decade of the twentieth century that both the federal courts and Congress became more involved with issues that either directly concerned or indirectly affected union security. For example, in *Loewe v. Lawler* (aka the Danbury Hatters case), the U.S. Supreme Court held that the Sherman Antitrust Act's proscription against actions "in restraint of trade" applied to unions as well as employers. Therefore, the United Hatters' boycott of the firm of Dietrich Loewe and Martin Fuchs to attain a closed shop was found unlawful and subject to

injunction and damages. Tellingly, and unknown to the unions at the time, competitors of Loewe and Fuchs had contributed $20,000 to help them fight unionization (Lieberman, 1950: 57). In another union security case, *Hitchman Coal*, the Supreme Court upheld the legality of yellow dog contracts (Cox, et. al., 2006: 50).

The Danbury Hatters case, in particular, caused the labor movement to appeal to Congress for relief. The response was the passage of the Clayton Act (38 Stat. 730 (1914)), which unions had hoped would place them beyond the Sherman Act's provisions. This victory proved fleeting, however, when the Supreme Court in *Duplex Printing* interpreted the Clayton Act very narrowly, rendering its purpose, as far as labor was concerned, largely meaningless. It is noteworthy that the incident that gave rise to the case concerned the International Association of Machinists attempt to bring Duplex Printing, the nation's only nonunion manufacturer of printing equipment at the time, into the union fold (Lieberman, 1950: 96-107).

During the next several decades union security became a frequent subject of federal and state legislation. The Norris-LaGuardia Act made yellow dog contracts unenforceable in court and prohibited injunctions against most strikes, including, specifically, those in support of the closed shop (47 Stat. 70 (1932)). The 1934 amendments (48 Stat. 1185 (1934)) to the Railway Labor Act (44 Stat. 577 (1926) (later repealed in 1951 (64. Stat. 1238 (1951)) expressly prohibited union security provisions in collective bargaining agreements on the railroads.

The NLRA (49 Stat. 449 (1935)) allowed for closed shops by stating in Section 8(3) that "Nothing in this Act…shall preclude an employer from making an agreement with a labor organization…to require as a condition of employment membership therein." However, the 1947 Taft-Hartley Act (61 Stat. 139 (1947), under Section 14(b), prohibited union security agreements "in any State or Territory in which such execution or application is prohibited by

State or Territorial Law." In addition, Taft-Hartley ended the closed shop by adding language to Section 8(3) of the NLRA prohibiting any requirement that a person be a union member as a condition of employment prior to the thirtieth day of employment.[2] The Act also stated that union shop clauses were enforceable only if union membership was available to all workers on the same terms and if no one was denied membership for a reason other than "the failure of the employee to tender the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership." Originally, Taft-Hartley also included a section requiring NLRB elections as a precondition of having a union shop clause, but this requirement was dropped in 1951 (65 Stat. 601 (1951) since nearly all such elections were won by unions. Nonetheless, "deauthorization elections," which remove union security provisions from a contract, are still available to workers today.

After the NRLA was found constitutional in 1937, and prior to Taft-Hartley, it may have seemed that there was strong federal government support for the closed shop. This did not, however, dissuade legislators and voters in a number of states from passing statutes and constitutional amendments prohibiting union security agreements.[3] The first was Florida, whose entirely Democratic legislature (Gall, 1988: 21), passed a proposed constitutional amendment by a vote of 90 to 35, with 55 percent of voters subsequently ratifying the measure. Arkansas followed soon after, and, by 1947, eleven states had adopted statutes and/or passed constitutional amendments restricting union security provisions. And, after questions about the states' ability

[2] Therefore, what we now know as a "union shop" was granted some standing in law, but the closed shop was prohibited.

[3] In 1948, the Supreme Court in *Algoma Plywood v Wisconsin Board* held that the states did have the authority to act in this area and that Section 8(3) of the NLRA, read in its totality, "merely disclaims a national policy hostile to the closed shop," but does not legally affirm closed shops if contrary to state law. By the time of decision, however, the issue was largely moot in light of the passage of Section 14(b).

to pass such laws was resolved by Section 14(b), many more states passed RTW laws, joining the eleven that had done so prior to Taft-Hartley. These included, in the 1950s, Alabama, Indiana (later repealed), Kansas, Louisiana (later repealed), Mississippi, Nevada, South Carolina, and Utah; in the 1960s, Wyoming; in the 1970s, Louisiana (reinstating its earlier repealed law); in the 1980s, Idaho; in the 1990s, Texas; and, since 2000, the Territory of Guam, Oklahoma, Indiana (reinstating its earlier repealed law), and Michigan (National Council of State Legislatures (NCSL), 2012). Delaware and New Hampshire had RTW laws, but repealed them in 1949 (Gall, 1988: 45). As noted, Indiana and Louisiana had previously repealed their RTW laws (in 1965 and 1956, respectively), but have since reinstated them. Currently, 24 states and the Territory of Guam have RTW laws (NCSL, 2012). Colorado is the only state that permits a union shop, but only if 75 percent of workers in a bargaining unit vote approval in an election supervised by the state's labor department (Hogler & Shulman, 1999). In a number of other states, including California and Massachusetts, RTW measures have been before either the legislature or voters, but have not, thus far, passed.

A serious attempt to repeal Section 14(b) failed in the mid-1960s. After passing the House by a vote of 221 to 203, advocates were unable to overcome a filibuster in the Senate (Gall, 1988: 155-188). Conversely, a 1996 attempt to enact a national RTW law also failed by filibuster, with 21 Republicans voting with the entire Democratic caucus against cloture (Leef, 2005: 241-248). Very recently Senators Mitch McConnell and Rand Paul attempted unsuccessfully to attach a national RTW law to the Employment Non-Discrimination Act, which is intended to end workplace discrimination based on sexual orientation or gender identity. As evidence of the greater partisanship surrounding the issue, McConnell had voted against cloture in 1996 (Leef, 2005: 247), but apparently now supports a national RTW law.

This history shows that during the twentieth century, union security became a truly national public policy issue. Although battles lines were beginning to be drawn by the 1940s, it was not until more recently that the issue became a truly partisan one.

IV. Union security as a partisan issue.

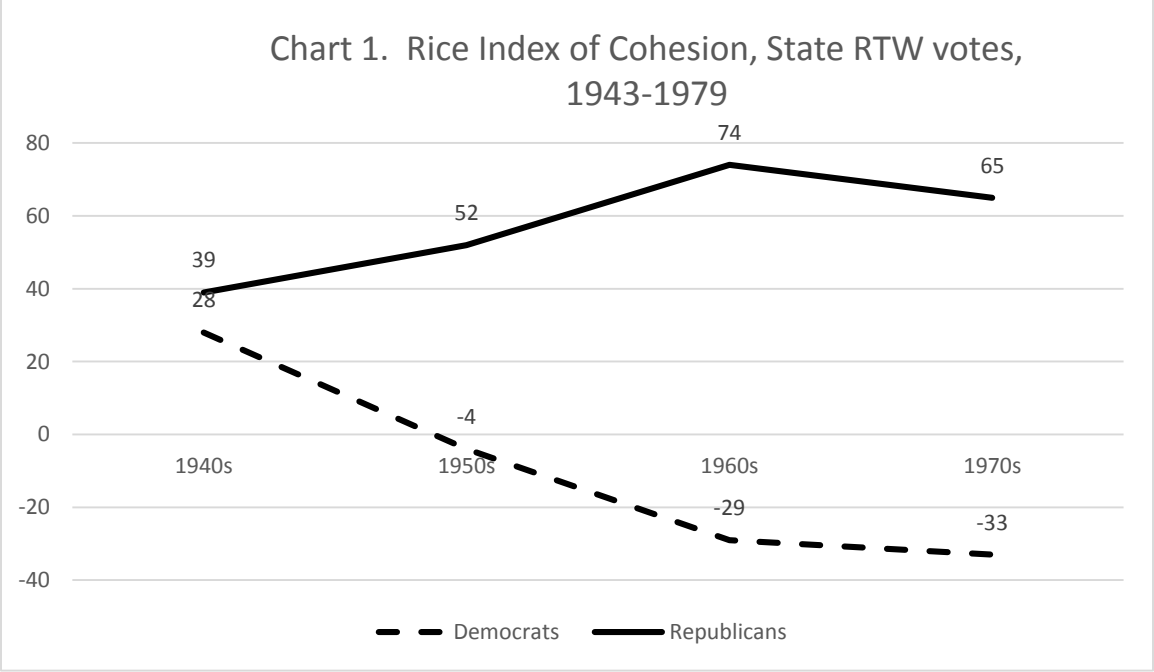
Prior to the Taft-Hartley Act, issues of union security were generally not partisan matters. After all, the law that truly ended the use of the injunction—after the false promise of the Clayton Act—and outlawed the yellow dog contract was co-authored by two Republicans, Frank Norris of Nebraska and Fiorello LaGuardia of New York. The Norris-LaGuardia Act passed the House by a vote of 363 to 13, the Senate 75 to 5, and was signed into law on March 23, 1932 by Republican President Herbert Hoover, suggesting its broad bipartisan appeal (Reynolds, 1982: 231). And even the Wagner Act, which pushed the issue much further, passed by a vote of 63 to 12 in the Senate and by voice vote (!) in the House (Reynolds, 1982: 238).

By 1947, however, the climate had changed. The vote on Taft-Hartley showed nearly unanimous Republican support for the Act. Two hundred and fifteen Republicans voted yea to only 22 nays in the House, while Senate Republicans supported the Act 47 to three. It is true that Democrats were also supportive, but much more tepidly, with 93 yeas to 84 nays in the House, and with the Senate Democratic caucus evenly divided, 21 to 21 (Gall, 1988: 42). With a few exceptions,[4] the vote on Taft-Hartley set a pattern that was to remain for some years. That is, the overwhelming majority of Republicans and Southern Democrats supported limits on union security, while Democrats outside the South and some Republicans, mainly in the Northeast, opposed such measures. We see this pattern clearly replicated in the vote for Section 14 (b) repeal in 1965 and 1966. In the House, 201 Democrats and 21 Republicans voted for repeal,

[4] As with the 1951 bill that allowed union shops under the Railway Labor Act and the vote against cloture on the 1996 national RTW bill.

while 87 Democrats and 116 Republicans voted against it. The issue was never voted on in the Senate, but on the final motion for cloture, the vote was 51 to 48, with 45 Democrats and six Republicans voting to end debate and 26 Republicans and 22 Democrats (17 of whom were from the South) voting against cloture (Gall, 1988: 170).

Gall's (1988) study of RTW laws from 1943 to 1979 shows that the issue became increasingly partisan from 1943, when Florida passed the first RTW law, through the 1970s. Chart 1 displays Gall's data (1988: 216-218) using the Rice Index of Cohesion.[5] What Chart 1 shows is that the difference between the parties on this issue was small in the 1940s, but grew larger by the 1970s. Much of this can be explained by the growing conservatism and cohesion on union security issues by the Republican Party, and the fact that RTW votes in the formerly heavily Democratic South occurred, for the most part, in the earlier period.



[5] The index is calculated by subtracting the percentage of votes against an RTW law by the percentage for by political party. A score of 100 would indicate that all members of a political party voted in favor of an RTW measure and a score of -100 would indicate unanimous opposition.

Updating the time series to examine the period since 1980 is in progress. Chart 2 and 3, however, give us a glimpse of the current situation by focusing on Indiana's and Michigan's recent adoption of RTW laws, and by comparing Indiana's recent adoption of an RTW law with its similar action in 1957. As we can see, cohesion among Democrats in both Indiana and Michigan was total; not a single Democrat in either legislature voted in favor of the RTW measures. Republicans in both states were less, but still highly, cohesive: a total of fourteen Republicans in both chambers voted against the RTW law in Indiana and ten in Michigan. The Republican cohesion scores of 71 and 78 are around the highpoint found by Gall for the 1970s (see Chart 1). The Democratic scores of -100 are much greater than the averages previously seen.

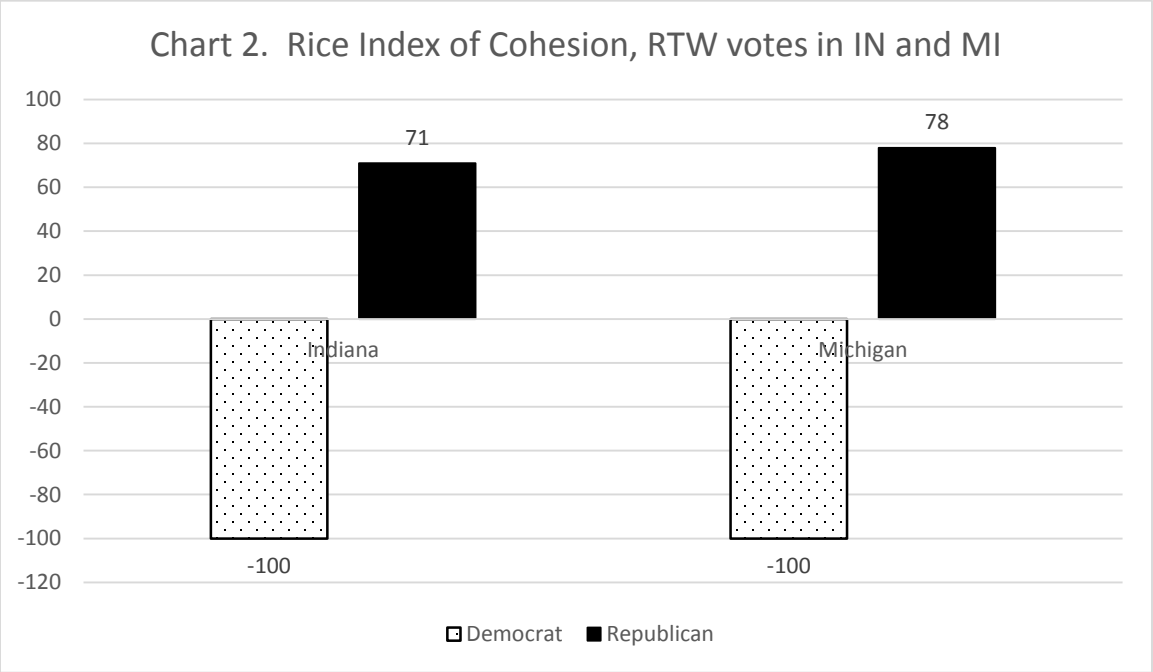
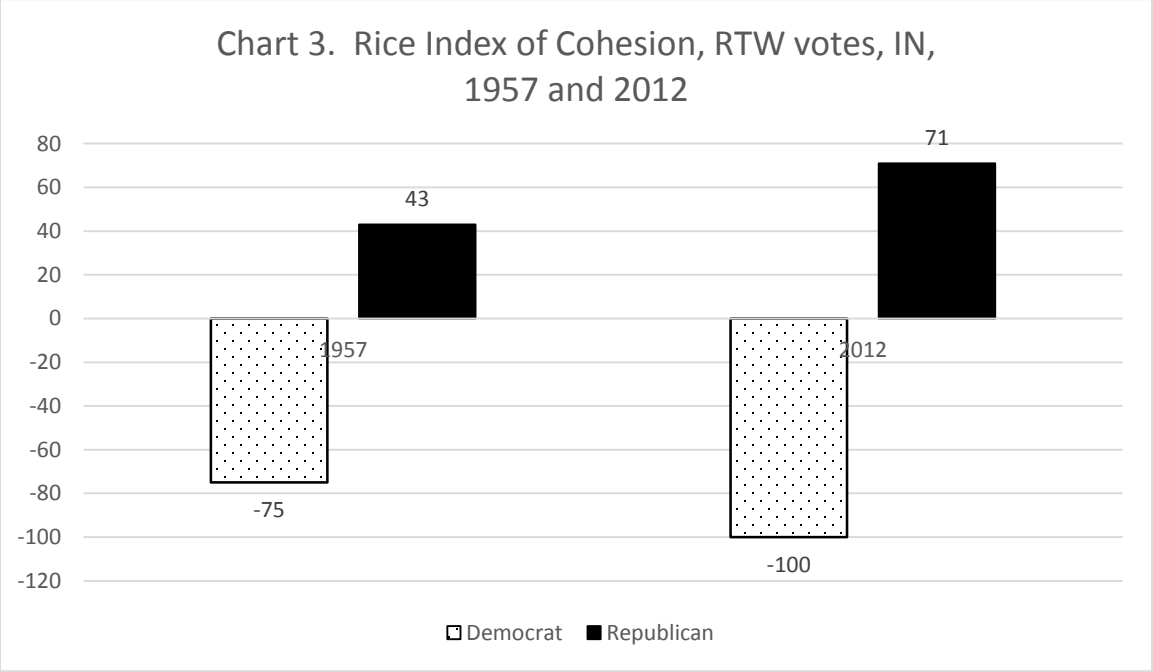


Chart 3 compares the votes for the 1957 Indiana RTW law and the one passed in 2012. What we see is that both parties were less cohesive on the issue in 1957 than in 2012. In 1957, approximately thirty percent of Republican legislators in both chambers

voted against the RTW law while in 2012 only about fifteen percent did. In addition, a few Democrats supported the earlier RTW law, but none did in 2012.



So what underlies this increased partisanship? First, it is likely one part of a widely recognized broader trend. As Jill Lepore writes in the December 2, 2013 issue of *The New Yorker* (Lepore, 2013: 76):

> The Republican Party has moved to the right and, to a much lesser degree, the Democratic Party has moved to the left. In 1964, the ideological position advocated by Barry Goldwater was nearly beyond the realm of the GOP imagination; by 1980, Goldwater Republicanism was Reagan Republicanism; Newt Gingrich's 1994 Contract with America was well to the right of Reagan; and in 2012, Mitt Romney ran to the right of the breakdown lane.
>
> The changes with the Democratic Party are of a different nature. Ideologically, Democrats have not moved to the left; to the contrary, today's Democrats are significantly to the economic and social-welfare right of the antitrust Democrats of the eighteen-nineties, the New Deal Democrats of the nineteen-thirties, and the Great Society Democrats of the nineteen-sixties. Instead, the composition of the Party has shifted. In the civil rights era, when Southern Democrats who were conservatives, abandoned the Party; the Democrats left behind tended to be liberal.
>
> …The labels "conservative" and "liberal" did not formerly correspond especially well to the terms "Republican" and "Democratic." They do now.

But beyond the broader change noted by Lepore, forces more specifically focused on union security have come into play. The organization most active in this area is the National Right to Work Committee (NRTWC), which, among other things, promotes RTW laws at the national and state levels, both independently and in concert with other groups. Leef's (2005: 214-215) description of the Idaho Freedom to Work Committee (IFTWC) sheds light on the process:

> One piece that had to go was Senator Vern Bassey, an anti-Right to Work Republican who played a key role in sinking the 1977 bill. [IFTWC head] Wilson recruited Boise attorney Ron Carter to oppose Brassey in the Republican primary in 1978 and pulled off the upset. Similar primary challenges and general election wins greatly altered the legislative landscape in Idaho—Brassey and eight other legislators who had opposed Right to Work were out of office after the 1978 elections.
>
> …In 1980, Wilson [and staffer] Glenn further improved their position on the chessboard by replacing more members of the legislature who opposed Right to Work with those who favored it…As the legislature convened in 1981, twenty of the twenty-nine who voted against Right to Work in 1977 were no longer in office.
>
> …Early in the 1982 session of the legislature, the House passed Right to Work by a 50 to 20 margin and the Senate, this time without Republican obstructionism, passed 21 to 14.

More broadly Leef's book describes the NRTWC's efforts in running position ads, placing editorials, and generally lobbying in favor of RTW issues and publicizing where office seekers come down on the issue. Although the Committee does not endorse candidates, its opinions matter, particularly within Republican circles. And its goal is clearly to make the GOP purer on union security issues. As for Republicans who do not favor RTW laws, Leef (2005: 140) warns: "And in the long run, capitulation to the union bosses only strengthens their ability to elect Democrats who are loyal to their whole anti-capitalist agenda."

Of course, organized labor has also sought greater Democratic purity on the issue. *The New York Times* reported in the summer of 1972 that the labor movement's ambivalence about George McGovern's nomination was rooted in large part to his lack of support for 14(b) repeal. As relayed by Gall (1988: 190):

> 'I have heard from union presidents here who have never in years talked of anything but support of the Democratic party,' reported a veteran federation political operative during the convention in July, 'saying that maybe now is the time to have a labor party.' However, when McGovern won the nomination, instead of trying to found a labor party AFL-CIO chieftains largely sat out the presidential election. Withholding campaign funds from the top of the ticket, they then concentrated COPE activities on an attempt to keep the control of Congress in friendlier Democratic hands.

Finally, a string of laws dating back to the 1907 Tillman Act and continuing through the Bipartisan Campaign Reform Act of 2002 (BCRA, but more commonly known as the McCain-Feingold Act) regulated the conduct of unions, corporations, and interest groups in elections. In fact, the Taft-Hartley Act was the original piece of legislation prohibiting unions and corporations from donating money directly to political candidates, which led the CIO to establish what may have been the nation's first political action committee. The BCRA limited the ability of groups like the NRTWC from running position ads within 30 days of a primary or 60 days of general election. Leef (2005: 198) noted the effect that this had on the NRTWC's work when he wrote: "[Issue ads] have played a crucial role in the Committee's efforts against compulsory unionism in the past, but under the new law…the Committee will have to remain silent."

But, of course, that silence did not last long. On January 21, 2010, the U.S. Supreme Court issued its decision in *Citizens United v. Federal Elections Commission* and opened to the door for organizations to apply more pressure during political elections when RTW issues (among others) are at stake. Although, the Supreme Court's decision also permits unions to speak more freely, the resources available to those who oppose RTW laws are much greater. It is perhaps telling that no labor groups filed amicus briefs in favor of *Citizens United*, but business associations, such as the U.S. Chamber of Commerce, and notable RTW advocates, such at the Cato Institute, did.

More importantly, *Citizens United* and the subsequent decision by the DC Circuit in *Speechnow.org v. FEC* (599 F.3d 686, 2010, cert. denied) led to the establishment of a number

super PACs, formally known as "independent-expenditure only committees." These groups may not make contributions to, or coordinate with, candidates or political parties, but may raise funds not subject to the individual limits for contributions that traditional PACs face. Although more time is need to fully understand their impact, super PACs may have an important effect on RTW laws and may also serve to increase partisanship around the issue.

The deregulation of money will likely lead to two outcomes: First, super PACs will try to raise as much money as possible from sympathetic donors and, second, they will try to limit the resources available to opposing advocacy groups. If this is the case, RTW laws may kill two birds with one stone: they appeal to potential donors who oppose union security provisions—and likely unions and collective bargaining, in general—and they serve to erode the resources that unions have to support their own super PACs in the post-*Citizens United* world. Lichtenstein (2012), in a piece that appeared on a Reuters' blog, wrote:

> [A]s…the Michigan director of the Koch brothers-backed Americans for Prosperity told the 2011 Conservative Political Action Conference, 'We fight these battles on taxes and regulations, but really, what we would like to see is to take the unions out at the knees so they don't have the resources to fight these battles.'

Although more time is needed to see how this all plays out, the result will likely be more activity concerning RTW laws with the predictable partisan alignment.

V. Conclusions and further research.

The purpose of this paper was to examine the sources of change in RTW laws. I argue that what began as struggle for control of the shop floor in the nineteenth century, became national-level public policy issue in the twentieth century, and ultimately a partisan political issue in the twenty-first century. The current situation is the result of the reordering of the political parties and pressure from outside organizations, which is likely to grow in light of recent courts decisions.

The reemergence of RTW debates after a period of relative dormancy, and, particularly, the migration of activity into northern, industrialized states call for further research on issues raised in this paper. The empirical evidence on increased partisanship must be examined further through more complete data on RTW votes since Gall's (1988) earlier work. Second, the influence of super PACs and unregulated money needs more careful tracking. While we can offer plausible hypotheses of how this should work, and find much anecdotal evidence to support them, more data is needed to see what is actually occurring. Following *Citizens United*, for example, a number of states passed disclosure laws; it may, therefore, be possible to track the flow of money more closely. This work needs to be done to get a better idea of how recent policy changes may truly be influencing the renewal of activity in this area.

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