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Ownership Cures for Inequality

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If all power be suffered to slide into hands not interested in the rights of property … either they will … become dupes and instruments of ambition, or their poverty and dependence will render them mercenary instruments of wealth. … In either case liberty will be subverted; in the first by a despotism growing out of anarchy, in the second by an oligarchy founded on corruption … in which it may be said … that laws are made for the few, not for the many.

—James Madison

What, if anything, can the United States do to reverse the upward trend in inequality and the danger that it will lead to populist despotism or a corrupt oligarchy with laws made for the few, not for the many?

I propose two sets of policies. The first requires reforms in labor laws and regulations to better enable workers to organize and bargain collectively with employers. The second requires tax and procurement policies to encourage firms to develop employment ownership programs so that workers own some of the capital that employs them and additional policies that increase worker investments in capital more broadly. By operating on ownership of both labor and capital, the policies can modernize American economic institutions to fit the coming world of artificial intelligence (AI) robotics and avoid Madison’s Scylla and Charybdis choice between anarchy and corruption.

Strengthening the Voice of Labor at Work

Given the parlous state of US unions, strengthening legal protections for collective action may strike many as unrealistic and backward looking. The proportion of workers in unions has fallen for over half a century.[[1]](#endnote-1) In 2018, 6.4% of private sector workers were in unions—compared to 16.5% in 1983, when the Current Population Survey began asking about unions and collective bargaining, and the 35% or so unionized in the 1950s. Public sector unionism zoomed in the 1970s but then leveled off and fell, with public sector collective bargaining coverage dropping from 45.5% in 1983 to 37.2% in 2018. The Supreme Court’s (2018) Janus decision outlawing public sector labor contracts that require workers who are not union members to pay union fees will likely reduce unionism in the public sector.[[2]](#endnote-2) When nonunion teachers in West Virginia, Oklahoma, and Arizona struck in 2018–2019 over low compensation and poor funding of education, they acted with little input from teachers unions. Supported by parents, school boards, and principals, the striking teachers won their demands without organized labor.

Given their weaknesses at the outset of the 2020s, why should anyone concerned with American workers and democracy seek ways to resuscitate trade unions? The principal reason is that unions have historically been the only institutional force in capitalist economies able to limit inequality and assure that workers share in a growing economy.[[3]](#endnote-3) The inverse relation between union density and inequality is one of the strongest empirical regularities in economics, found in comparisons across countries, industries, and skilled and unskilled workers with differing levels of unionism and over time as union density changed. Unions reduce inequality within firms by negotiating a narrower distribution of pay among the firms’ employees. Unions reduce inequality among firms by negotiating agreements that cover most firms in a sector—by multi-employer agreements or pattern bargaining and by inducing nonunion firms to copy union settlements to keep their workers from unionizing. The lower dispersion of wages around the average in union settings than in nonunion settings shows that the “going union wage” is closer to the “invisible hand’s” single price equating supply and demand than are wages in markets without unions. Indeed, most of the increase in inequality from the 1980s to 2010s occurred between the country’s more and less successful firms, as the most profitable firms shared some of their economic rents with workers while the less profitable squeezed wages to remain in business. The union decline appears to have opened the door for monopsony to play an increased role in determining pay rather than to create an ideal neoclassical market.[[4]](#endnote-4)

Looking beyond collective bargaining, unions have been the major political force pressing for legislation that protects workers in all areas of workplace life: health and safety, social security and pensions, hours worked, and discrimination. Social protests—such as the 2011 Wall Street Occupiers against the financial collapse and the 2019 Extinction Resisters against the sluggish response to climate change—make headlines but rarely move policy. Rolling back inequality requires not just citizen protests but also strong bureaucratic organizations continually pressing decision makers to choose the many over the few—the trade unions of yore.

The union impact on inequality is not, however, reason enough to seek legislation that would help unions recover some of their strength. If the decline in representation reflected a growing sentiment against unions, changing laws to favor them would be an antidemocratic exercise that would almost surely end in failure. Surveys of attitudes toward unions show, however, that as inequality has grown and unions have lost their power, more Americans have come to view unions positively. In January 2019, a Rasmussen survey found that 57% of American adults favor private sector unions, while 29% oppose them. In August 2019, Gallup reported the highest rate of approval of unions since the 1970s: 64% approving compared to 32% disapproving. Responses to a question by Pew about the decline of unions tell the same story. In 2018, the proportion of respondents who viewed the decline as mostly bad exceeded the proportion who viewed it as mostly good by a greater number than in 2015 and 1994. Why the growing support for unions? The likely reason is that Americans recognize that unions, whatever their flaws, are indeed a force against inequality. If not unions of the many, who will stand up against the billionaires?

Favorable attitudes toward unions in the abstract does not, however, necessarily translate into workers voting for union representation in elections at their workplace—much less that the union would gain the majority necessary to become the legal representative of workers. Asking private sector workers how they would vote in a National Labor Relations Board (NLRB) election in a 1994 survey (when attitudes toward unions were less favorable than in the 2010s) , Freeman and Rogers (1999) found that the vast majority of those with a union would vote union, while 32% of those without a union would vote union, and that the vast majority of those who would vote union believed that their co-workers would also support the union. The reason is that workers who seek unions are concentrated in companies with bad labor practices, low pay, and poor conditions. If it were the workers’ choice and theirs alone, these voting patterns imply a union density two to three times the current 6.4% in the private sector. Massive employer opposition to organizing, often led by union-busting firms that specialize in persuading workers to reject unions, is prima facie evidence that there is indeed a substantial desire for unions at some nonunionized workplaces.

Labor Law Reform to the Rescue?

So what can the United States do to give American workers the representation they want and that the country needs to roll back the tide of inequality? In 2019, Harvard Law School’s Labor and Worklife Program initiated the Clean Slate for Worker Power project, “to elicit the best ideas from a broad array of participants including advocates, activists, union leaders, labor law professors, economists, sociologists, technologists, futurists, practitioners, workers, and students from around the world.” Groups of industrial relations experts and law professors worked with others to examine how the United States might modernize labor law to resuscitate trade unions and collective bargaining.[[5]](#endnote-5) The Clean Slate for Worker Power project examined a far-ranging set of policy reforms to make the NLRB Act work better for workers and to strengthen the ability of unions to gain representation rights and bargaining power with employers. These reforms included: expanding labor law protection to workers historically left out—agricultural and domestic service workers, supervisors, and low- and middle middle-level managers; tightening the definition of employer and employee to prevent firms from evading the law by hiring workers under the guise of their being independent contractors or by subcontracting or franchising work; raising penalties on firms for violating the law; expanding the ways unions and community organizations can press firms to accept unions, including increasing the scope for secondary boycotts; while reducing management’s ability to pressure workers to reject the union. In an ideal world, labor and management would come together to discuss these proposed reforms and to consider changes in the law that might ease the administrative burden on management of following the law and/or of enhancing the ability of the NLRB to carry out its legal duties. But in a world where a large proportion of the business community seeks to be “union free” and where most Republicans view unions as a political enemy Democrats view them as a political ally, even modest reforms could create a political war.

The most far-reaching change in the United States’ labor relations system examined by Clean Slate for Worker Power were policies designed to widen the scope of United States collective bargaining and wage-setting from its historic reliance on agreements between local unions and individual establishments or firms to agreements between higher-level union groups and employer associations that would cover many firms in a market at once as in many European Union countries. Government agencies have a substantial role in developing and buttressing such arrangements. Legislature can give them legal rights to extend agreements to firms that were not party to the agreement, and to institute industry and/or regional boards that could legally determine pay for all workers in specified domains—say all persons cleaning buildings or houses in a given city – in the absence of a collective bargaining agreement covering those workers. By establishing a going rate of pay and work conditions, this centralized mode of pay setting would reduce inequality in pay and conditions among firms and lessen the willingness of firms to fight unions: why spend money fighting union organizing efforts if your firm will have to pay the union or government agency determined wages and benefits in any case?

But placing government in a key role in determining pay would surely touch off a firestorm of opposition in the United States. It would risk continual political conflict over workplace issues, with policies and practices depending more on who won the last election than the logic of economic rationality. Such has been the experience of the National Labor Relations Board (NLRB) the agency that oversees current labor law. When a Democrat is in the White House, the NLRB generally favors workers and unions. When a Republican is in the White House, the NLRB generally favors firms and management.

The European Union’s centralized bargaining arrangements work in part because firms voluntarily join employer associations that bargain for them, in the belief that “‘social partnership”’ is the best way to solve labor disputes. These firms want a level playing field in pay and work conditions so they can compete in other dimensions of business performance. The US’s weak employer associations and large number of businesses that survive via low wages suggests that any effort to move pay setting to higher-level bodies would meet massive employer opposition.

Finally, there is a chicken and egg problem in trying to change labor laws to strengthen unions without already having a more centralized wage setting system that reduces employer opposition since all firms will pay similar centralized wages and of trying to centralize the collective bargaining system without a stronger union movement to favor centralizing wage setting. Moving from a world of weak unions and decentralized wage-setting to one of strong unions and centralized wage-setting would require a simultaneous reform on both fronts at once against the opposition of the vast bulk of businesses and management. Historically, unions have grown in the United States and elsewhere in sudden sharp spurts when workers are sufficiently disgruntled with their economic lives to “go to war” against employers. Union growth during the Great Depression was sparked by sit-down strikes and protests not the legal reform of the Wagner Act, which the US government developed to offer a more orderly way for workers to unionize. The legal changes followed worker initiated mass actions rather than precipitated those actions.

If it were my choice and mine alone and everyone would go along with it, I would reform the US labor system in a different way – from the bottom up, albeit with some legal changes to encourage workers and firms to experiment with new modes of organizing labor-management relations. I would allow firms to set up committees of workers and managers to discuss labor issues (currently outlawed by section 8a3 of the National Labor Relations Act to prevent company-dominated unions) and would mandate that firms establish works councils when workers want one, as many European countries have done. I would expect unions to provide bargaining and other services to the councils, and for centralized agreements to emerge naturally from that bargaining. But while my reforms would not, I believe, lead to the opposition that the Clean Slate for Worker Power would almost surely arouse, I doubt that Congress will seek to reform the labor system even along the more consensual lines that I favor until an economic crisis brings workers “into the streets” demanding change.

2. Increasing Worker Ownership of Capital

My second set of policies, designed to increase worker ownership of firms, has a better chance of being enacted in non-crisis times, even though those policies could create more revolutionary democratic change in our economy than resuscitating unions and collective bargaining. Ownership policies have a better chance of being enacted because nearly everyone across the political spectrum considers employee ownership “a good thing”. On the worker side, the 2019 National Opinion Research Center survey of Americans found that 72% of workers said they preferred to work for an employee-owned firm rather than for a firm owned by a private investor or for a government agency.[[6]](#endnote-6) On the business side, many business leaders with an ownership or profit-sharing scheme in their firm favor employee ownership because their experience says that it works to raise productivity and profits. Others favor giving some ownership to workers in the belief that worker-owners will shift their politics to the right. Progressives generally favor worker ownership as a way to expand democracy at the workplace and reduce pay inequality within firms.

Thanks in part to the 1974 Employee Retirement Income Security Act (ERISA), which regulates private pension plans, the United States has a strong base on which to expand employee ownership. ERISA established Employee Stock Ownership Plans (ESOPs) that give workers collective ownership of shares in their employer via a trust fund and gives tax breaks to firms that set up such funds. Today, about 10% of all private sector workers are in ESOP firms, with shares of ownership that range from a modest proportion to 100%. Beyond ESOPs, many workers have an ownership stake in their firm via stock options or share purchase plans. And many more have profit- sharing, which gives them a stream of income from profits without capital ownership. In 2019, 47% of US workers had some form of ownership or profit-sharing at their workplace, though many had small stakes that did not add much to their income. Finally, US workers also have substantial pension fund equity in businesses outside of their employer. The growth of pension fund investment equity was so rapid in the 1970s that Peter Drucker (1976) famously declared that “If ‘socialism’ is … ownership of the means of production, … the United States is the first truly Socialist country.”

Socialism or workers' capitalism, all of these forms of ownership supplement wages and salaries with income from capital, which is sorely needed in an era when the distribution of national income has shifted from labor to capital. With capital earning more of national income than ever before and with capital income being far more unequally distributed than labor income, it is exceedingly difficult to see a path forward to reducing inequality without raising workers’ ownership of capital and capital income.

So what can the United States do to expand employee ownership?

A natural first step is for government to spread knowledge of what the ESOP business form can do and how employees and business owners can shift business ownership toward ESOPs or other forms of ownership or profit-sharing. Some states, such as Massachusetts and Ohio, have developed worker ownership offices or centers to help retiring small business owners sell their companies to employees and to spread best practices among ESOPs.[[7]](#endnote-7) The federal government could designate the Small Business Administration or some group in the Department of Commerce to undertake such a role nationally. A Presidential candidate could commit his or her administration to tilt economic decisions toward employee owned firms and to press Congress for new laws that would put employee ownership at the heart of a new economic order.

For its part Congress to could increase the tax breaks for worker-owned firms. Currently, an owner who sells his/ or her firm to employees pays no capital gains tax on the sale. And the profits the ESOP uses to buy shares of the firm are also tax-free. ESOP advocates favor giving more tax advantages to retiring owners in S corporations (closely held corporations that do not pay corporate taxes but pass profits to owners, who pay taxes) by excluding them from capital gains taxes when they sell to the workers, in the belief that this would substantially increase the number of ESOPs. In considering such a policy or others, economics points to the central importance of the incidence of the tax break. The nominal gain goes to the owners, which presumptively increases inequality in the short run, but the workers who buy the firm benefit by being able to buy at a lower price and receive higher income and wealth in later years. Artful design of the tax break can assure that it accomplishes its objective.

Using the tax system to spur the growth of employee ownership, however, need not be limited to ESOPs. The United Kingdom gives substantial tax breaks for workers to purchase and hold shares as individuals in employee stock purchase plans, which has spurred UK firms to develop share purchase plans more extensively than US firms. In the 2016 US presidential race, the Hillary Clinton campaign proposed giving a tax break for firms without profit-sharing to introduce such a program. Senator Sanders’s 2020 presidential campaign proposed creating a bank to give “low-interest loans, loan guarantees, and technical assistance” to workers who want to purchase firms and has also proposed taxing large firms to shift 2% of shares to a fund run by worker-elected trustees that would pay dividends to workers.[[8]](#endnote-8)

On the notion that positive incentives work better (and are easier to enact) than taxes, I favor government procurement policies that would give preference to enterprises that meet some employee ownership or profit-sharing criterion. Current procurement policies give preference to small businesses, (guaranteed 23% of federal contracts), to businesses owned by disabled veterans, to businesses owned by women, and to businesses with economically or socially disadvantaged owners. Why not include employee-owned businesses as well? But any such preference for worker owned firms ought to go beyond small businesses. A program for employee-owned/ or profit-sharing firms should include large firms, whose choice of such an ownership form would benefit large numbers of workers.

Finally, since workers should diversify ownership of capital beyond their own firm to avoid taking on too much risk, any major reform should consider ways to assure that ESOPs and other ownership forms offer 401k pension funds, as well (which most do). Alaska’s Provident Fund and other sovereign wealth funds in which the government establishes a trust/mutual fund that pays dividends to workers offers another potential way to increase capital income going to workers.[[9]](#endnote-9)

All of these schemes have weaknesses as well as strengths that merit investigation by economics, legal, and business experts as well as input from workers and firms experienced with or considering introduction of worker ownership or profit-sharing schemes akin to the Clean Slate for Worker Power analysis of labor laws. Given widespread nonpartisan support for employee ownership, policies to increase ownership could be the first step to improving the state of labor in the US (and other countries) and creating a more favorable environment from which to approach the more contentious path to reforming labor laws and regulations.

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2. ***Janus v. American Federation of State, County, and Municipal Employees, Council 31***, No. 16-1466, 585 U.S.(2018) [↑](#endnote-ref-2)
3. For recent evidence on unions reducing inequality, see https://www.nytimes.com/2018/07/06/business/labor-unions-income-inequality.html. [↑](#endnote-ref-3)
4. A growing literature has found evidence of monopsony in US labor markets, See José Azar Ioana Marinescu Marshall I. Steinbaum Labor Market Concentration NBER Working Paper 24147 revised Feb 2019; Arindrajit Dube, Jeff Jacobs, Suresh Naidu, Siddharth Suri Monopsony in Online Labor Markets NBER Working Paper No. 24416 Issued in March 2018; and Brad Hershbein W.E. Upjohn Institute Claudia Macaluso FRB Richmond Chen Yeh FRB Richmond Monopsony in the U.S. Labor Market December 31, 2019 [↑](#endnote-ref-4)
5. For information on the Clean Slate for Worker Power project, see https://lwp.law.harvard.edu/clean-slate-project. [↑](#endnote-ref-5)
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