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HOW JOB SECURITY LAWS DESTROY JOBS

INTRODUCTION

One important ingredient in the stew called national industrial policy is the demand for greater job security for employees. Robert Reich, a guru of the industrial policy movement, deplores the fact that the average American holds ten jobs before retirement, and pleads for measures to induce businesses to "maintain their old work forces intact" in the "era of human capital."[1] Professor Lester Thurow, now termed a neoliberal economist, insists on a "fundamental restructuring of the economy," to provide "decent jobs" (apparently those paying at least $6.50 an hour) and the creation of a "socialized sector of the economy" to cure our "permanent and endemic" lack of job opportunities.[2] Ray Marshall, a former Secretary of Labor, says that "U.S. policy must be based upon the principle that workers are a fixed cost of production." He urges that management "be more sensitive to the employment consequences of lay-off decisions" and convert workers into full production partners.[3]

Further to the political left, Professors Barry Bluestone and Bennett Harrison call for a "democratic, participatory approach," dedicated to "planning objectives" rather than the "narrow pursuit of private profit," and to mechanisms for "direct and continual

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1 Robert B. Reich, The Next American Frontier (New York: Times Books, 1983), p. 247.

2 Lester C. Thurow, The Zero-Sum Society (New York: Penguin Books, 1981), pp. 205-206.

3 Foreword in Philip L. Martin, Labor Displacement and Public Policy (Lexington, Massachusetts: Lexington Books, 1983), p. xi.

[worker] control over the management process" in "future experiments with worker and community ownership."[4] Perhaps Marxist Professors Bowles, Gordon, and Weisskopf top the list for silliness, however, with their "Economic Bill of Rights," which would include the right to "a decent job," guaranteed public works jobs, "flexible" price controls, and new labor laws to promote employee ownership.[5]

With such a smorgasbord of proposals, it is difficult to know where to begin an analysis, but the primary issue is whether or not government ought to intervene to protect some employees from change in the labor market. Specifically, should government guarantee a form of "tenure" for employees, at their current rates of pay or higher, and so insulate them from adjustments in the market for their services? Expressed this way, the answer is reasonably obvious: not on economic grounds. New rules, regulations, and inducements to promote lifetime attachments to enterprises would be detrimental to working Americans. They would diminish freedom, limit economic flexibility, reduce efficiency and production, and redistribute income from the least advantaged to the best paid workers.

JOB SECURITY PROPOSALS

Little in the way of specific legislation on the labor aspects of industrial policy has yet emerged, so what form the interventions might take, or their exact impact on the economy, cannot be determined. But the National Employment Priorities Act (H.R. 2847), now before Congress as introduced by Representative William Ford (D-Mich.), may provide a preview of some of the measures likely to be seen in the future. It would require businesses to give advance notice of plant closings and layoffs and would provide federally administered assistance to displaced workers, such as new training programs, job placement services, subsidies for job search expenses, moving expenses, and educational expenses. The bill also would require businesses to provide 26 weeks of wages and fringe benefits as compensation for employment loss, more federal aid to favored businesses, targeted procurement subsidies, and federal assistance to local governments.

Future bills are likely to go further, if the theoreticians of lifetime attachment to firms have their way. Thus far government and the labor unions have concentrated on fixing wage rates,

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4 Barry Bluestone and Bennett Harrison, The Deindustrialization of America (New York: Basic Books, 1982), p. 262.

5 Samuel Bowles, David M. Gordon, and Thomas E. Weisskopf, Beyond the Waste-land: A Democratic Alternative to Economic Decline (Garden City, New York: Anchor Press/Doubleday, 1983), p. 270. Also see Robert M. Kaus, "Where Marxists Go Right," The Washington Monthly, March 1983, pp. 40-43.

hours, and working conditions in labor markets. Industrial policy marks a change in emphasis, because it proposes to fix both the quantities of labor and the specific employees that businesses must retain, regardless of business conditions.

Many of the goals sought by industrial policy proposals are admirable. The objective of employment stability, for instance, is perfectly understandable. But an unimpeded labor market meets this employee demand because firms have an incentive to keep their labor costs as low as possible. Firms with steady employment levels avoid the higher wages that the market imposes on firms with unstable employment. Well-managed enterprises also enjoy the additional productivity that comes from intact teams of employees. Unemployment insurance, unionized wage rigidities, unionized work rules, and erratic monetary policies, on the other hand, disrupt these market processes.

Productivity patterns during business fluctuations demonstrate that companies treat labor as a more or less fixed finance factor--even in the most volatile industries. Managers get no joy or benefit out of laying off employees and delay it as long as is prudent. Businesses have every incentive to supply steady employment and earn the good will of their employees. And these arrangements are determined by voluntary market processes, not coercion by government.

The apostles of national industry policy promise economic progress and economic security. Yet there is obvious tension between the two. Congressman Stanley N. Lundine (D-N.Y.), for instance, calls for a development bank to support "positive industrial goals, such as long-term job creation, employment stability, the creation of high value-added jobs, and the location of new facilities within economically distressed regions."[6] Apparently he believes that there are never unpleasant choices to make among these objectives. Such naiveté demonstrates that the adherents of industrial policy do not understand the nature of the economic problem. Every day the economy is subjected to changes and new information. It is confronted with new problems to be solved. In an economic system in the process of change, all economic activity is based upon an uncertain future and therefore is bound up with risk and speculation. But as more capital is placed in the hands of the governing authority, and as prices and quantities of labor are increasingly fixed by the State, it means the end of the market economy, which, Mises noted, is the aim of socialism.[7]

It should be remembered that every economy has conflicts between producers and consumers. Producers want to preserve the

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6 Stan M. Lundine, "Now is the Time for a National Industrial Strategy," Challenge, July/August 1983, p. 21.

7 See Ludwig von Mises, Socialism (Indianapolis, Indiana: Liberty Classics, 1981 [1922]), p.121ff.

existing mode of production and their current products, whether they are capitalists (investors) or workers (employees). Consumers, however, are footloose. They have no stake in the existing structure of investment. In free markets, these conflicts are peacefully resolved in favor of consumers. Producers must adapt or go out of business. The age of interventionism, however, has created a parade of protections for producer interests, especially unionized labor, at the expense of consumers. National industrial policy is not new. It is simply the old corporate state thinly disguised.

THE ISSUE OF FREEDOM

A good way to evaluate proposed laws to increase job security is to consider the idea of a governmentally protected right to a job. This concept goes back at least to the Middle Ages and more recently formed a central tenet of the labor market theories of John R. Commons and Selig Perlman.

Is it reasonable and principled to talk about a private property right to a job? A human right can be defined as a just or lawful claim. In a society of free and responsible individuals, rights are enforced and protected by government, but never "created" by government. Rights exist by virtue of the nature of human beings and their relations with each other and to things.

If everyone can simultaneously possess the alleged right, in common, as equals, then it might correctly be called a right. Life, liberty, and the pursuit of happiness, for example, pass the test. The right to a job does not because everyone cannot simultaneously hold the same right.[8] Why not? Because if someone has the right to a job, someone else must be required to supply the job. The "right" to a job is actually a "privilege," because it can only be enforced at the expense of somebody else and conferred by a government upon favored individuals.

Liberty of contract was the prevailing legal doctrine in the U.S. prior to the New Deal. Employment relations received the same legal treatment as any other business transaction. Known as the employment "at will" doctrine, it meant that, if an employee relationship was no longer satisfactory to one party, he was free to renegotiate or end the relation. As Vernon and Gray put it:

> [it was an] absolute right to discharge... with or without cause... for good motive or ill... the converse rule is just as absolute: an employee may quit at any

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8 More precisely, the asserted right to a job is really a demand for the income and the other benefits associated with the given job, not a demand to do the work.

> time, for whatever reason, without giving notice... the concept of mutuality--the employer and employee remain free to continue or to terminate an employment relationship as each desires.[9]

Since the New Deal, however, justice has not been quite so blind to the status of the parties and no longer treats people as legal equals. Alleged inequalities in the bargaining abilities or circumstances of the parties have moved Congress and the courts to limit the employer's once absolute right to terminate employment. Employers today may not fire employees for reasons that violate a host of federal laws, including the National Labor Relations Act, the Civil Rights Act of 1964, and the Occupational Safety and Health Act. A number of nonstatutory, common law challenges also have eroded the "at will" doctrine.

Yet the termination-at-will rule is strongly embedded in the common law, despite frequent attacks which argue that the doctrine is anachronistic and unfair. No longer, say the critics, can workers shift from job to job: the theory of "at will" mutuality ignores current realities. The concept of jobs as a private property right for incumbent workers, however, is hardly a progressive one. On the contrary, it turns the clock back two centuries, to when men could not freely contract with each other for mutually profitable employment. Contemporary restrictions differ only in their target. Now employers increasingly are bound to protected employees, and they are prosecuted as lawbreakers if they try to revise or escape an employee's service. In the old days, workers were bound as serfs to lords. Today, hiring someone to perform services nearly amounts to a marriage, made in Washington.

IMPLICATIONS OF THE "RIGHT" TO A JOB

Whether legislation takes the form of employment restrictions on firms, new subsidies for displaced workers, or corporate subsidies and tax benefits, the economic effects of legislated lifetime employment guarantees would be damaging. New job security regulations would mean additional restrictions on economic growth and dynamism because they would present additional obstacles to profitable production and exchange.

The impediments to labor market efficiency now under discussion would have several specific and injurious effects:

Reduced Business Formation: Job security legislation would discourage business formation because firms would be subject to additional and expensive legal obligations to the employees hired.

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9 Richard G. Vernon and Peter S. Gray, "Termination at Will--The Employer's Right to Fire," Employee Relations Law Journal, Summer 1980, p. 25.

Sometimes legislation implicitly recognizes this effect by exempting businesses below, say, 50 employees, as H.R. 2847 does, but these measures would still discourage larger new businesses and those that expect to grow large very quickly.

Reduced Employment: Existing businesses would experience an increase in the expected cost of labor and would reduce the demand for labor. If the legislation were very restrictive, many marginal producers would be driven out of business by the higher costs, reducing competition in the product market and hence competition among employers for productive labor.

Increased Uncertainty: Business uncertainty would increase. The labor market is ever-changing. Jobs disappear for a variety of reasons: competitive pressures, new techniques that lower costs, and so forth. Government officials can freeze particular forms of industrial change and single out particular firms for special treatment, but how are these cases to be chosen? When everybody wants favors and is trying to obtain as much as possible from the authorities, complicated and arbitrary formulas for aid must be drawn up, or it must be left entirely to bureaucratic discretion, with all the associated dangers. Elections and new appointees only add more uncertainty.

Rights for Firms: If employees are to have government guaranteed rights to their current jobs, then symmetry and economic logic dictate that favored companies should have guaranteed rights to their current revenues. If government is to make good on its promises to guarantee specific jobs to workers, then the taxpayers must be compelled to support companies that cannot survive on their own in the marketplace--how can jobs be guaranteed unless the existence of a company is guaranteed? As Henry Ford once remarked, "It is not the employer who pays wages--he only handles the money. It is the product that pays wages." And if the product cannot pay the wages, presumably the government should step in.

Reduced Labor Mobility: The process of matching specific people to specific jobs at particular times and places will be hampered by rigid job guarantees, thereby reducing productivity. Forgotten in all the hubbub over industrial policy is the simple fact that efficient labor mobility and turnover improve productivity and stimulate the economy.

Decline in Wage Rates: Wage rates in the jobs covered by job security legislation would fall, compared with other wages, because the risk of termination would fall. The labor market builds in wage premiums for risky jobs, as a compensation for bearing the risk, and these premiums would be eroded by government job guarantees.

Costs Outweighing Benefits: Employee attitudes and productivity would deteriorate if jobs and earnings were guaranteed regardless of performance. Industrial policy advocates such as Robert Reich point to alleged benefits that more security would foster among people "who can easily and securely cooperate, collaborate, and reach collective judgments."[10] But common observation suggests that such benefits are likely to be swamped by the disincentives implicit in job security legislation.

Invitation to Inflation: Labor union officials would also be less restrained in their wage demands, because their members in covered jobs would be freed from the threat of layoffs if labor became overpriced. If union power is not to be constrained by the threat of unemployment, however, an upward sweep in wage rates (and prices) is practically guaranteed. And if favored businesses no longer feared unsold goods, thanks to revenues guaranteed in some way by government, they too can be unconstrained in their pricing. Guaranteed job rights is a disguised formula for inflation, or even hyperinflation. No doubt, an obliging Federal Reserve Board would print new money to disguise the pricing problems created by job security legislation--how else could employment levels be maintained?

The Greatest Hurt to Workers and Consumers: Workers and consumers, not investors, would bear most of the economic costs of guaranteed job security. Financial capital is fluid and worldwide, and even physical capital has substantial mobility, so investors cannot be forced to bear the losses of enforced tenure. But investment losses would only be temporary, because they are ultimately corrected in the marketplace. Of course, investors would suffer to some degree, because they would have to operate in a less productive economy.

Benefits to the Well-paid: Protected employees would gain at the expense of the "outs," including the unemployed, new entrants into the labor force, the disadvantaged, the unskilled, and employees in unprotected small businesses (the sector that generates most new employment). The "ins" would be well-paid workers insulated from competition. And no doubt the sorry spectacle would arise of the government helping auto workers paid $20 or more an hour with job protection financed by taxes and other costs to retail clerks earning $5 an hour. Job guarantees inevitably go to the powerful, not the weak. During the 1970s, for example, the number of retail gasoline stations declined from 300,000 to 200,000, and yet government did nothing to "save" half a million jobs. They were politically invisible. But Chrysler was not.

Inhibiting Innovation and Job Creation: To the extent that government protects old jobs and inhibits new firm creation, it harms the workers who produce, sell, and service the new products that otherwise displace old techniques and products. These potential workers cannot know who they are because the firms do not appear, nor can society ever be aware of how government intervention has contributed to these missed opportunities. But politicians can

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[10] Reich, op. cit., p. 278.

only gain: the grateful beneficiaries in old industries are highly visible, while the losers are invisible.

CONCLUSION

If a worker is in a job that produces things no one wants to buy, then the only way the government can guarantee the job is by subsidizing it with tax money or by controlling the entire market. When the job subsidies prove insufficient to honor the guarantee, the government has to move in and take over the industry altogether. This has been the experience of the European countries that have succumbed to the idea of employment as a right.[11] So the logic of job security, supposedly an aspect of the "middle way," enshrined in industrial policy, leads inevitably to government ownership of the means of production--in other words, socialism.

John Maynard Keynes was concerned about the stability of aggregate employment, but the industrial policy gurus are microeconomists--they believe they can fine-tune employment down at the level of individual industries and companies. This is a breathtaking advance in conceit, if nothing else. It is reminiscent of the 19th century utopian socialists, such as Saint-Simon and Charles Fourier, and their detailed, harebrained schemes of industrial administration and communal sharing.

Government measures to compel worker tenure and increase job security would diminish freedom, shrink the economic pie, redistribute income from the less-well-off to the well-paid, and increase centralized political control over economic activity. This last feature may account for the enthusiasm for industrial policy expressed by populist intellectuals and politicians. The names for expanding governmental control keep changing, but it is the same dead hand of government at the service of a coalition of the same organized interest groups.

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[11] Portugal is another good example of the overstaffing, heavy losses, and economic deterioration due to labor laws intended to protect jobs. See The Wall Street Journal, August 26, 1983, p. 18.