

BACKGROUND

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The Case for Voluntary Student Unionism

By Jonathan Wensveen

Article 20 of the United Nations Universal Declaration of Human Rights states, “everyone has the right to freedom of peaceful assembly and association,” and “no one may be compelled to belong to an association.”¹ Similarly, the *Canadian Charter of Rights and Freedoms* recognizes that every Canadian has the freedom to associate, which also implies the freedom not to associate.²

While there are millions of people in the world who are denied this freedom, it may come as a surprise to many that among them remain post-secondary students in Canada. That is right: By law, post-secondary students must join a student union. In all 10 provinces, membership in a student union is mandatory and paying fees is compulsory.

When it is understood from the perspective of violating a fundamental human right, the case for voluntary student unionism (VSU) amounts to pointing out that provincial governments have a responsibility to restore what is guaranteed to all, namely, the right to associate.

Many students, however, continue to support compulsory student unionism regardless of the fact that it violates both the UN Declaration of Human Rights and the *Canadian Charter of Rights and Freedoms*. Specifically, they argue that student unions are a kind of government that, like other governments, have a right to compel membership and coercively tax their members in order to provide certain public goods the members would not have otherwise. They also argue that student unions represent the interests of all students, so all students should be required to join one.

This *Backgrounder* considers the validity of each of the preceding arguments. First, it addresses the issue of whether student unions are also governments that have a right to compel membership and coercively tax their members. It does this by comparing the nature of a government to that of a union in order to distinguish between the two. Second, it deals with the issue of whether student unions provide public goods. To do so, it subjects goods and services offered by student unions to a public goods litmus test. Finally, it discusses whether student unions actually represent the interests of all students by taking a closer look at how student funds are spent.

The *Canadian Charter of Rights and Freedoms* “guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.”³ This means that while the rights in the *Charter* are not absolute, there must be “reasonable limits” when they are curtailed.

This *Backgrounder* finds that there are no “reasonable limits” that justify curtailing the right to associate on university campuses. All three of the aforementioned arguments used to defend compulsory student unionism prove to be either misguided or predicated on false assumptions.

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Not only are student unions not governments, they do not provide public goods or represent the interests of all students.

Students Unions Are Not Governments

At the heart of the debate over compulsory student unionism is a fundamental disagreement over whether a student union qualifies as a kind of government that is allowed to compel membership and coercively tax its members. As such, before addressing whether student unions provide public goods or represent student interests, it is important to distinguish between a government and a union.

What is the difference between a government and a union?

At its core, a government is a recognized political authority that can legislate and enforce laws in order to protect the natural and civil rights of individuals. A union, on the other hand, is a representative body that exists in order to secure particular interests on behalf of a specific group of individuals. Whereas a government exists primarily to secure natural and civil rights, a union exists primarily to secure entitlements.

What is the difference between a right and an entitlement?

Rights exist prior to the formation of government and are recognized and protected by it. In essence, rights signify our nature as human beings (natural rights) or our status as citizens (civil rights). As political theorist Harvey Mansfield explains: "Natural rights are the rights on which civil society is founded; civil rights are the ones it secures."⁴ As opposed to rights, entitlements appear after the formation of government and are therefore the gift of it. Rather than signify our nature as human beings, or our status as citizens, entitlements signify our wants and desires as taxpayers. They are, as Mansfield describes, "unembarrassed, unrelenting claims on the public treasury..."⁵ Hence, whereas a government can merely recognize and protect rights, it can grant entitlements. And because it can grant entitlements, it can take them away.

For example, in Canada, the sick are entitled to publicly funded healthcare. As opposed to being a right protected by government, universal health care is an entitlement granted by it, and, if a majority of Canadians consent to its removal, the government is obliged to take it away. The same is true of publicly funded post-secondary education.

Unfortunately, contemporary liberal democrats have a way of confusing rights with entitlements and often regard them as synonymous. As a result, arguments against VSU often assume that post-secondary

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students do have a right to some kind of publicly funded post-secondary education and that student unions exist in order to protect this right.

Take, for example, The Canadian Federation of Students (CFS), which is the largest student organization in Canada. On their website it says that one of their goals is to achieve “a system of post-secondary education that is accessible to all, which is of high quality, which is nationally planned, which recognizes the legitimacy of student representation, and the validity of student rights...”⁶ Likewise, the University of Toronto Students’ Union (UTSU) website asks questions that intimate similar notions of right: “Do you think education is a right and not a privilege? Concerned about corporate attacks on the right to affordable and quality education, health, transit and other public services?”⁷

What both the CFS and UTSU fail to understand is that students have no rights; individuals do. There are no individual rights related to “a system of post-secondary education,” which is of “high quality” or “nationally planned” outlined in the *Charter*. In fact, the *Charter* makes no mention of post-secondary education at all. As if to underscore their lack of understanding in such matters, advocating for a nationally planned education flirts with unconstitutionality and undermines the autonomous nature of universities.

In sum, student unions are not governments for the simple reason that they do not secure or protect natural or civil rights. Rather, they secure wants or entitlements from governments on behalf of a particular group of individuals (students). This relegates them to the status of associations that, like other associations, exist in order to advance interests on behalf of their members at the expense of taxpaying citizens. Or, as the CFS puts it, “we organize students on a democratic, co-operative basis in advancing our own interests.”⁸ Like any other interest group, student associations exist to advance the interests of their members.

Student Unions Do Not Provide Public Goods

Regardless of the fact that student unions are not governments, another argument frequently made by those who support compulsory student unionism is that membership must be mandatory because voluntary membership will create a free-rider problem. By free-rider problem, they mean that a few actively engaged students end up paying for public goods that are accessible and beneficial to all the other students.⁹ Put another way, voluntary membership will enable some students to take advantage of goods and services produced by others without having to pay for them.

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This argument is predicated on the false assumption that student unions actually provide a public good. For a good to be considered public, it must be both non-excludable and non-rivalrous. Non-excludable refers to accessibility. For a good to be non-excludable, it must be accessible to everyone; consumption must not be restricted. Non-rivalrous, on the other hand, refers to availability. For a good to be non-rivalrous, it must be equally available to everyone; consumption must not be competitive. A lighthouse, for instance, qualifies as a public good. Not only can anyone access its light, anyone can do so without having to compete for it. It is therefore both non-excludable and non-rivalrous.

None of the goods provided by student unions meets these two criteria. For example, access to goods such as clubs, bars, events or health, dental and counselling services can be regulated with the use of membership cards that act as an exclusionary safeguard against would-be free-riders taking advantage of services they do not pay for.

Remaining goods include advocacy and lobbying for things such as lower tuition fees, tax credits or interest-free student loans. On the surface, these goods appear to be non-excludable for the simple reason that both lower tuition fees and interest-free student loans benefit all students. However, because setting tuition fees is a provincial matter, lobbying efforts in each province have resulted in higher or lower tuition fees and different student loan programs across the country, from which some students have benefited while others have not. As a result, goods such as advocacy and lobbying remain excludable on a provincial basis. Post-secondary students in Alberta do not benefit, and have not benefited, from lobbying and advocacy efforts in Quebec.

Neither do these goods qualify as non-rivalrous. When student unions lobby the government on behalf of all students, they do so at the expense of some who may not agree with their agenda. For example, student unions do not lobby provincial governments for VSU legislation regardless of the fact that some of their members support it. Because voluntary membership would, presumably, reduce operating budgets (as it did in Australia in 2005), student union officials who collect a salary derived from compulsory fees remain vehemently opposed to VSU. As a result, those members who do support VSU legislation have less access to goods including advocacy and lobbying for the simple reason that student union officials will not lobby on their behalf.

In short, student unions do not provide public goods. The vast majority of goods and services they do provide are essentially private and could easily be regulated by using membership cards.

Finally, given the fact that student unions do not benefit all students, as the case of those who support VSU shows, goods such as advocacy and lobbying are excludable and rivalrous.

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Students Unions Do Not Represent the Interests of All Students

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A final argument put forth by those who oppose VSU is that student unions represent and advance the interests of all students, and, therefore, all students should be required to join one.¹⁰ After all, representing interests is what unions do best because they are, presumably, made up of individuals who share the same interests, and, therefore, share the goal of advancing these interests. But what, exactly, is an “interest”? And more importantly, what are the shared “interests” of all students?

Mansfield defines interest as “the concept that allows someone else to choose for you because you do not choose your interest, and it can be imputed to you as a ‘rational actor.’”¹¹ As a “rational actor,” your interest is objective or indistinguishable from that of any other “rational actor,” and so as a student, your interest is indistinguishable from that of any other student.

In accordance with this view, the interests of all students essentially amount to lower tuition fees, more grant programs, tax credits and interest-free student loans. In other words, they amount to satisfying more objective wants and securing more entitlements that would benefit all students.

Many student unions, however, are no longer in the business of representing the interests of all students. Despite claims to the contrary, low voter-turnout rates on campuses across the country preclude any elected student union official from making such a claim. With 10 per cent to 30 per cent of students voting in any given election, neither percentage is large enough to provide an accurate assessment of student interests at a given institution.

For example, last year’s elections for Guelph University’s Central Student Association drew 25.5 per cent of the school’s undergraduate population.¹² This year, elections for the University of Toronto Students’ Union were decided by 18 per cent of its undergraduate population, while recent elections for the University of Ottawa Students’ Union drew an abysmal 11.5 per cent.¹³ These are just some examples that, when taken into account, render student unions better defined as bureaucratic entities collecting compulsory fees from a majority of passive subjects. The reality of the situation is that student union elections across the country are increasingly decided according to what a minority of activist students assume a majority might, or should, want as opposed to what a majority of students are willing to pay for or can afford in the first place.

Consequently, student unions have begun to spend student funds in ways that advance or represent the interests of a few students rather

than advancing the interests of all their members. The York University Students' Union, for example, has, in addition to a Women's Committee, an Equality, Welfare and Diversity Committee; an Environment and Ethics Committee; a Racial Equality Committee and an LGBT Committee, which represents lesbian, gay, bi, trans, queer, anthrosexual and asexual students.¹⁴ Similarly, the University of Toronto Students' Union funds a number of campaigns devoted to addressing climate change, nuclear proliferation, racism, women's issues and transgendered issues.¹⁵

Whether such causes and issues warrant attention and deserve representation or if such groups suffer from discrimination is beside the point—they undoubtedly do. The issue, however, is whether funding such committees and campaigns (and taking on the problem of climate change or discrimination in general) actually represents the interests of all students. The fact is that some students hold political or religious views that do not reflect the values expressed and promoted by such committees and campaigns, regardless of how well intended they are. When this is taken into account, using student funds to support causes of this nature undermines a student union's otherwise narrow mandate to begin with—that is, to represent the interests (objective wants) of all students or of all its members.

Despite this narrow mandate, student unions continue to fund or not fund causes based on ideologically motivated views and agendas. For example, in December 2008, the Students' Association at Carleton University considered dropping its annual Shinerama fundraiser because cystic fibrosis was not "inclusive" enough. They claimed that because the disease primarily affects white men, a fundraiser would not reflect the diverse interests of their university community.¹⁶

Student associations at the University of Ottawa and the University of Toronto have also spent student funds in support of ideologically motivated and openly divisive causes. In 2010, the University of Ottawa Students' Union "spent at least \$1,000 to rent a coach bus to shuttle about 50 protesters to Toronto during the G20." Similarly, the University of Toronto Students' Union co-sponsored an event with York's Students' Union titled "Toronto vs. the G20: a teach-in," which introduced students to "Black Bloc tactics," used to smash storefronts and public property during the summit.¹⁷

Not only was this a divisive event, but it encouraged illegal behaviour on the part of students by teaching them how to deface and destroy private and public property—a public good. According to Section 430 of the Criminal Code, anyone "who wilfully (a) destroys or damages property; (b) renders property dangerous, useless, inoperative or ineffective" or who "obstructs, interrupts, or interferes with the lawful use, enjoyment or operation of property" is guilty of committing mischief.¹⁸ Needless to say, "Black Bloc tactics" used to destroy storefronts and public property

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qualifies as a prime example.

Then there is Israel Apartheid Week—another partisan and ideologically motivated event that receives funding or outspoken support from various student unions. On several campuses across the country, including Carleton, York, and the University of Toronto, student unions have either supported, organized and funded anti-Israeli apartheid events, or they have tried to adopt “socially responsible investment” policies that boycott companies with ties to Israel.¹⁹

Finally, club status has been denied to some student groups because of partisan preferences on the part of student union officials. For example, student union officials at the University of British Columbia, York University, and the University of Victoria have either tried to deny or denied pro-life groups club status and withdrawn their funding because they do not agree with the groups’ moral and political preferences.²⁰ The same is true of student union officials at the University of Calgary. After the university charged some pro-life members with trespassing for refusing to take down posters that compared abortion to genocide, the University of Calgary Students’ Union considered stripping the Campus Pro-Life Club of its funding and status.²¹

Every regime has its benefactors and student unions in Canada are no exception. Unfortunately, their benefactors tend to consist of small groups of students who claim to represent the interests of all, while using student funds to advance their own political agenda. Because of low voter-turnout rates, small groups of students have taken advantage of their elected positions and have used student funds in ways that simply do not reflect the interests of all students. Simply put, many student unions no longer represent the interests of all students.

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Conclusion:

The Case for Voluntary Student Unionism

Although student unionism as it currently exists in Canada violates both the *Canadian Charter of Rights and Freedoms* and the UN Declaration of Human Rights, many students continue to support compulsory student unionism because they assume that student unions are governments that have a right to compel membership and coercively tax their members. Furthermore, they see this as legitimate because they assume that student unions provide public goods and represent the interests of all students.

This *Backgrounder* argues to the contrary. Not only are student unions not governments, they do not provide public goods, or represent the interests of all students. Rather, the goods and services they do provide are essentially private, while the interests they do represent are those of a minority of activist students advancing partisan views at the expense of others who disagree. The result is a gross misallocation of student funds toward a number services, events and advocacy programs that do not represent the interests of all students.

To ensure that student unions remain legitimate, effective and accountable, membership should become voluntary. Not only would it amount to restoring a fundamental human right, it would dramatically decrease operating budgets and compel student union officials to allocate resources according to what a majority of assertive students are willing to pay for, as opposed to what a minority assume a majority of passive students might want in return for their compulsory fees. In other words, by allowing individuals to make an active choice upon entering university, VSU would ensure that student unions are composed of members who actually share in the goal of advancing common interests.

"After the freedom to act alone," wrote Alexis de Tocqueville, "the most natural to man is that of combining his efforts with the efforts of those like him and acting in common."²² Put another way, after the right to consent, the most natural to man is the right to associate. Associations exist only because individuals choose to create them and to join them. Student unions in Canada should be no different.

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Endnotes

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FURTHER READING

February 2011

Public Administration Wage Growth

By Ben Eisen

<http://www.fcpp.org/publication.php/3625>

December 2010

Time to Free Students from Forced Association

By Peter McCaffrey

<http://www.fcpp.org/publication.php/3506>

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