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THE EXCEPTIONAL DECLINE OF THE AMERICAN LABOR MOVEMENT

JOHN GODARD*

This paper adopts a historical/new institutionalist perspective to explain why the decline of the American labor movement has been exceptional in comparison to other labor movements, and especially its Canadian counterpart. Under this perspective, national founding conditions and traditions become embedded in institutional norms that shape national institutional environments and trajectories, substantially constraining labor movements and hence accounting for their development and future. The author argues that the founding conditions of the United States gave rise to “mobilization biases”—biases affecting the various parties’ relative ability to mobilize resources, and thus ultimately privileging some interests over others—that explain both why the labor movement developed as it did and why it has declined. He concludes that, in view of these biases and the norms underpinning them, the American labor movement’s future (unlike the future of its European counterparts) lies in perpetual struggle rather than the pursuit of a long-term accord.

Within the United States, labor unions have been in almost steady decline in both density and coverage for the past half-century. Numerous strategies have been advanced to reverse this decline (see Clawson and Clawson 1999), from associate membership arrangements, to labor law reform, to adoption of the “organizing model,” to card check organizing, to community organizing, to strategies that have little to do with collective bargaining or workplace representation (for example, Bacharach et al. 2001; Freeman and Rogers 2002; Freeman 2004). Yet, union density has remained at pre–New Deal levels, and

the labor movement has split over what to do about it.¹

It seems that the term “exceptionalism” may apply not only to the orientation or philosophy that came to dominate the American labor movement, but also to its decline. To be sure, decline has not been unique to the United States, and the U.S. labor movement’s fate is not yet sealed. However, decline in the United States began much earlier than it did in other western nations (see Bain and Price 1980:165; Goldfield 1987:16) and has been more severe than in most (if not all) of these nations, leading to substantially lower levels of collective bargaining coverage than elsewhere (see appendix).² The paradox is

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¹The increase in density (from 12.1% to 12.4%) in 2008 suggests some basis for optimism. But this gain occurred almost entirely in the public sector, and represents the only overall gain in more than a decade. From 1997 to 2007, density declined by 2.0 percentage points overall and 2.2 percentage points in the private sector, or by 14% and 22%, respectively (Hirsch and MacPherson 2009).

²Although beyond the scope of this paper, it is arguable that much of the decline in other countries has also

that the American labor movement, or at least a large segment of it, may now be the most innovative and vital of any in the developed world (see, for example, Voss and Sherman 2000), and surveys suggest a high unfilled demand for union representation (Freeman 2007).

Explanations for the American labor movement's decline have been almost as many and varied as have strategies for revitalization (also see Clawson and Clawson 1999). Analysts have variously attributed it to the choices made by labor leaders (for example, Aronowitz 2005; Moody 2007:246), to problems of "bureaucratic conservatism" (Voss and Sherman 2000; Moody 2007), to immutable economic forces (Troy 2000), to shifts in labor force composition (for example, Dickens and Leonard 1985), to social developments (Heckscher and Carré 2006:616), to excessive wage and benefit premiums (Freeman and Kleiner 1990), to heightened employer resistance (Goldfield 1987), to the weakening of labor law (Human Rights Watch 2000), and to the very model on which U.S. labor law is based (Adams 1993). Although not all of these factors are necessarily unique to the United States, it can be argued that many have been more pervasive in this country than elsewhere, especially when considered in combination. Yet, as explanations for labor movement decline, they tend to be superficial, providing little by way of a coherent *understanding* of this decline.

In this paper I attempt to move beyond these explanations to provide such an understanding. I am concerned not so much with the extent to which individual explanations hold true as I am with what it is about the United States that has made them, in combination, more pervasive than in other nations. To address this question, I adopt a historical/new institutionalist perspective (Godard 2002, 2004b, 2008b; Frege and Godard 2010). Under this perspective, formative economic, social, and political conditions in a nation's history come to be reflected in deeply held institutional norms, or beliefs, values, and principles as to the role

stemmed from causes different from those in the United States, reflecting national institutional differences as much as or more than the global economic trends to which they are often attributed.

of, rationale for, and legitimacy of established institutional arrangements (Godard 2008b). These norms are constructed and reconstructed over time and may allow considerable scope for interpretation and hence politics (for example, see Jackson 2005). However, they generally embody "mobilization biases,"³ defined for present purposes as biases that shape the relative ability of various interests to successfully mobilize resources, ultimately privileging one or more institutional designs and hence configurations of interests over others. These biases are both structurally embedded, in the way institutions and laws around them are designed and hence in the power resources that actors can draw on, and cognitively embedded, in the way actors think about institutional arrangements, the ideologies around them, and the desirability of various alternatives (for example, Bachrach and Baratz 1962; Lukes 1974). Institutional norms and the biases they engender do not just explain institutional structures and ideologies, they are also (in effect) perpetuated by them.⁴

Following from this perspective, I argue that the exceptional decline of the U.S. labor movement and the various explanations advanced for it primarily reflect national founding conditions and the dominant institutional norms (and forms) to which they gave rise. Although other factors (for example, ethnic and racial divisions) may also have played some independent role, these conditions and norms have engendered anti-labor mobilization biases that have been more severe than in perhaps any other developed nation, sharply restricting the range of viable alternatives for, and ultimately the long-run prospects of, the U.S. labor movement. They explain not only the largely conservative, economic orientation that has defined the U.S. labor movement and

³The meaning of "mobilization bias" in this paper is similar to, but broader than, the meaning of "mobilization of bias" coined by Bachrach and Baratz (1962).

⁴Thus, this perspective is intended to go beyond "culturalist" perspectives (see Olsen 2002:104–17), which tend to be ahistorical, which tend to rely on social values as the sole explanation for institutional structures and changes therein, and which tend to overlook issues of power (for example, Lipset 1986a).

the Wagner model on which it has depended, but also its exceptional decline, despite continued efforts at union revitalization and labor law reform over the past three decades.

My focus is on the historical emergence, development, and implications of U.S. institutional norms and, throughout, I draw comparisons with the Canadian case where relevant. However, this paper is not meant as a contribution to historical scholarship or as an exercise in comparative analysis. Rather, it *draws* on existing historical scholarship in order to illustrate the value of the historical/new institutional perspective as a lens for understanding the state and ultimately the future prospects of the U.S. labor movement, and references to the Canadian case are intended only to help establish how and why the United States is exceptional even when compared to its closest relation.⁵

I begin with a discussion of the founding conditions of the United States, the institutional norms that arose from these conditions, and the general implications of these norms for industrial relations. The arguments on which I draw are well established, so they are addressed only in brief, and may be seen *only* as arguments, the empirical value of which is tested in the remainder of the paper. The intent is not to explain U.S. exceptionalism in general or provide a theory of U.S. culture and institutions, but rather to set the stage for explaining the exceptional nature and decline of the U.S. labor movement.

Founding Conditions, Institutional Norms, and Industrial Relations

The essential conditions commonly believed to account for U.S. exceptionalism include its history of individualist, frontier development,

with limited state involvement; its Calvinistic religious settlement and hence traditions; its history of large markets and large, economically powerful employers; its revolutionary birth; and its tradition of democratic governance “of the people, by the people, for the people” (in President Lincoln’s words) rather than by visible elites. A long list of authors⁶ has argued that these stylized conditions gave rise to norms and values that, historically, came to be more closely associated with the United States than any other nation, including Canada. Despite possible limitations (Baer and Curtis 2005), this literature yields three general arguments of relevance to the present analysis.

First, these conditions meant that the United States, even more than other liberal democracies, came to be known for its “possessive individualism” (Macpherson 1964), under which individual wealth and consumption came to be the primary signifiers of self-worth, and for its unique “spirit,” characterized by optimism, entrepreneurialism, and risk-taking. The former in particular is largely a reflection of Calvinistic traditions (Weber 1935),⁷ but both also reflect the absence of a landed aristocracy and the widespread perception that the United States, with its vast frontier and growing markets, provided virtually unlimited opportunities for success for all of its citizens (Ross 1991:27–28). This is in contrast not only to its European counterparts (Hutton 2002), but also to Canada, which never had a revolution, has a stronger tradition of elite governance, and was developed primarily by large fur and grain trading corporations and the state.

Second, they meant that the United States came to be characterized by strong, Lockean norms as to the sanctity of property and of ownership rights deriving from property, more than in Europe and even Britain, where these norms

⁵Canada’s economy is highly integrated with America’s, its labor movement has, historically at least, been dominated by U.S. parent unions, and the system of labor law adopted by each of its eleven jurisdictions has been largely modeled on the U.S. Wagner Act, and is thus subject to limitations that inhere to the Wagner model (Adams 1993). Yet in virtually all jurisdictions, its labor laws provide stronger protections for workers, and as of 2008, union density had been more than double that in the United States, both overall and in the private sector, for more than two decades.

⁶See, for example, Tocqueville (1998 [1835]); Weber (1935); Perlman (1949 [1928]); Hartz (1955); Bendix (1956:254–74); Lipset (1962a, 1962b, 1963, 1964, 1986a, 1996); Lipset and Meltz (1998, 2004); Jacoby (1991); Hutton (2002); and Ross (1991:22–37).

⁷Although Weber’s *The Protestant Ethic and the Spirit of Capitalism* may be found wanting as an explanation for capitalism in general, it is useful as an account of U.S. capitalism, one that may also be found in Tocqueville (Swedberg 2007).

originated (Ely 1998). This in part stemmed from the perception of unlimited opportunities, which was conducive to the argument that property ownership is an extension of natural liberties bestowed on individuals by God rather than inherited status. Because property and wealth are attributed to the achievements of the individual, they do not carry with them the same duties or obligations as in Europe, where they have traditionally derived from inherited status (Hutton 2002). Although there has been some expectation of “Protestant virtue” (Ross 1991; Baker 1985:539), the dominant norm has been that the exercise of authority deriving from property rights should not be interfered with, and that it entails few if any *a priori* obligations to either workers or society. Again, this differs from conditions in Canada, where the history of elite rule and corporate development gave rise to a more paternalistic model, under which authority traditionally engendered a stronger sense of obligation (Palmer 1992:41–48).

Finally, they meant that the United States came to be characterized by strong norms of formal democracy in the political sphere and by a distrust of centralized state power, both of which have been seen to reflect the circumstances associated with the American Revolution. Coupled with the perception of unlimited opportunity (Glickstein 2002:5–6), these circumstances formed the basis for norms under which the state is not expected to play a significant role in addressing economic and social problems. Instead, there is a strong “self-help” tradition in the United States, under which individuals and communities are expected to overcome adversity on their own. The main role of the state in this regard is to protect the ability of citizens to do so by ensuring that individual economic freedoms are maintained. Thus, U.S. institutional norms have emphasized freedom of contract and hence both “free” labor and “free” markets. Similar norms may have developed in Canada, but if so they were not as strong, and the tradition of elite rule has led to a greater trust in, and role for, the state. Indeed, close ties between corporate and state elites, and a history of corporate reliance on state initiatives (Panitch 1977:14–16), have operated against the emergence and promotion of such norms.

The development of these norms was un-

doubtedly more complex than can be discussed here. Although the founding conditions of the United States made its citizens receptive to them and limited the scope for alternative norms, their articulation and institutionalization appear to have been largely a matter for cultural, economic, and political elites, whose interests and views they have most reflected. The extent to which they can be seen to permeate U.S. culture in general has not always been clear, and they have no doubt varied in strength and interpretation both at any point in time and over time. The argument here, however, is not just that they have come to be reflected in culture, but also that they have become deeply embedded within, and reproduced through, the U.S. institutional structure, with particularly important implications for industrial relations.

First, although a defining feature of capitalism is that employer property rights and hence control over the means of production engender asymmetrical relations of production and a requirement to satisfy the interests of capital, U.S. institutional norms have supported a variant of capitalism in which, historically, employer property rights have been particularly strong and the interests of capital particularly dominant. They have also meant that, alongside a long tradition of formal democracy in political affairs, there has been a long tradition of managerial autocracy in economic affairs, reflecting a divide between norms of political equality and of economic liberty (Kiloh 1986:17). Attempts to narrow this divide (for example, Dahl 1985; Harris 1996:45) have met with little success.⁸ The result has been a variant of capitalism more hostile to independent workplace representation than perhaps any other, including the Canadian variant. In Canada, a history of elite rule has traditionally fostered a somewhat softer conception of property rights and resulted in somewhat less visceral employer opposition

⁸Orren (1991) argued that, paradoxically, this reflects feudal traditions imported from Europe. But employer autocracy has been stronger in the United States, and World Values Survey data (Inglehart et al. 2004) reveal that employer authority is more accepted by U.S. workers than by workers in other nations (statistics available on request). Orren’s argument may also oversimplify the feudal tradition, especially as it developed through craft guilds (see Reid 2005:3–41).

to labor unions and, especially, labor laws supporting them.

Second, these norms (coupled with ethnic divisions) have come to be reflected in a conservative (and fragmented) working class concerned primarily with the pursuit of economic gain and a political system in which employers (that is, capital) have, partly as a result, been politically dominant and hence never had to make the sorts of accommodations characteristic of other developed nations (Friedman 1998:191; Jacoby 1991:177). The state's role continues to be best captured by the U.S. Declaration of Independence, which proclaims that governments are instituted in order to secure "life, liberty, and the pursuit of happiness," and that these are "unalienable rights" that have been "endowed by [the] Creator." In contrast, the Canadian working class has tended to have a significant left-wing component (see below); employers as a class have had to make greater accommodations given the elite political tradition; and the state's primary role has perhaps been best captured by the phrase "peace, order, and good government," contained in the Canadian Constitution (Taras 1997).

U.S. norms have not been antithetical to collective action. Yet in contrast to Canada, where there has been a willingness to rely on the state and on political leaders, and collective action has tended to be more bureaucratic and "top-down" in its exercise, in the United States collective action has tended to have a strong grassroots orientation, in reflection of that country's revolutionary past, distrust of government, and history of frontier development. Various forms of collaboration, cooperation, and concerted action have often been widespread (Bacharach et al. 2001:28–30), and this has to varying degrees created the space for alternative cultures and movements that challenge dominant norms or interpretations of these norms. Americans have also had a uniquely strong propensity to form associations (Putnam 2000)—a propensity first observed by Tocqueville (1998) almost two centuries ago. However, the grassroots orientation has often rendered alternative movements susceptible to problems of weak organization and membership instability in the face of dominant institutional norms, as is perhaps most epitomized by the failure of the Knights of Labor in the late

nineteenth century. The propensity to form associations has in turn tended to involve more of an Olsonian, rational choice logic, under which member rather than societal or class interests form the primary basis for action.

The argument of this paper is that, overall, these implications and the institutional norms from which they derive not only have engendered an institutional environment that has been exceptionally biased against labor unions and labor law, but also have critically influenced the development of both, giving rise to a more narrow, economic labor movement than in other nations and a system of representation that has never had much chance of long-term success.

Institutional Norms and the Development of the Labor Movement

An even cursory reading of labor history reveals that the American labor movement was characterized by a variety of competing philosophies and orientations throughout the nineteenth century and into the twentieth (for example, Adams 1995:35–38; Montgomery 1989; Dubofsky 1994; Forbath 1991; Hattam 1993). For example, in the first half of the nineteenth century there was a strong anti-monopoly republicanism or "co-operative individualism" in the U.S. labor movement, advocating co-operative workshops comprised of individual producers (Perlman 1949[1928]:188–90; Derber 1970:37–39; Barenberg 1993:1489–90). There were also attempts to develop a more politically active labor movement, especially in the 1880s—a critical point in the labor movement's development (Hattam 1993). Nonetheless, whether these attempts involved alternative labor movement structures and strategies (for example, the Knights of Labor) or the direct pursuit of legal reforms (Currie and Ferrie 1995), dominant institutional norms and the biases to which they gave rise prevented these efforts from becoming much more than sideshows in a longer-term process under which a narrow economism or, in Samuel Gompers's words, "pure and simple unionism" was to predominate.

Until the twentieth century unions were also at the mercy of judicial norms and of an

evolving doctrine of “free labor” that assumed equality of power and undermined collective rights that, in most other countries, had been accepted as necessary to curb power imbalances (Brody 2005:110–37; Glickstein 2002). Unions were subject to rulings that privileged property and market rights over representation and bargaining rights (Brody 2005; Woodiwiss 1990; Forbath 1991; Hattam 1993). Where employers were unable to defeat unions through the courts, they typically had sufficient economic resources to fight them in the workplace, and hence little reason to band together and engage in industry-level bargaining, as occurred in the United Kingdom (Jacoby 1991; Howell 2005). Finally, norms strongly affirming the primacy of property rights meant that any direct challenge to employer authority was viewed as illegitimate, and norms of possessive individualism meant that workers were in any case primarily concerned with their economic self-interest, not with usurping management prerogatives or advancing social justice.

By the late nineteenth century, labor leaders had learned that their future lay in gaining and exercising power at the workplace level (Brody 2005:32–33). Unions developed a largely anti-statist, voluntaristic, and economistic philosophy, focusing on protecting and advancing the economic interests of members⁹ through workplace- and employer-level collective bargaining rather than seeking meaningful co-decision rights or pursuing broader reforms through political action (see Derber 1970:125–29; Jacoby 1991; Friedman 1998:8, 144–47). Many labor leaders, but most notably Samuel Gompers, had come to reject any form of partisan politics and to oppose state involvement on the grounds that it was coercive and limited workers’ freedom (Sinyai 2006:39–42).¹⁰

⁹This focus included protection of craft skills and control, and may to an extent be said to include the “quality” of working life. But there is a risk of romanticizing craft unions (for example, Sinyai 2006) when their main purpose was economic.

¹⁰For some (for example, Voss 1993:225), this marks the birth of the U.S. labor movement’s exceptionalism. But even if it does, the roots of this exceptionalism can be traced to the conditions under which the United

States was founded. Although this philosophy was not to go unchallenged (Forbath 1991), dominant institutional norms and the mobilization biases they generated ensured that such challenges would have little chance of succeeding—either because they required a level of workplace militancy that was contrary to dominant working-class norms, or because employer resistance was too great (Perlman 1949 [1928]; Voss 1993), or because of judicial rulings, or because of outright state repression (Fusfeld 1980). In effect, U.S. institutional norms gave rise to mobilization biases that virtually guaranteed a predominantly conservative and economistic labor movement rather than one that was politically engaged or that focused on progressive economic and social reforms. As Perlman put it,

The resultant unionism had the merit that it “fitted” both the external environment and the American workman’s psychology.... The unionism of the American Federation of Labor “fitted,” first, because it recognized the virtually inalterable conservatism of the American community as regards private property and private initiative in economic life. ... This unionism “fitted,” secondly, because it grasped the definite limitations of the political instrument under the American Constitution and under American conditions of political life.... Third, [it] ... was under no delusion as to the true psychology of ... the American workingman in particular. (1949 [1928]:201–2)

This did not mean an end to radicalism or militancy within the American labor movement. Rank-and-file unionists and their leaders had to continuously fight for basic rights at work, and left-wing ideologies and activists played an important role in this fight. Indeed, perhaps no other country’s labor history contains more tales of working-class struggle and sacrifice than America’s. Yet these tales should not be mistaken for evidence of latent radicalism within the working class *as a class*. U.S. founding conditions and norms instead gave rise to a comparatively conservative working class, in which support

States was founded. It can also be observed in the anti-monopoly current of the labor movement in the first half of the nineteenth century and the “producer’s ideology” that accompanied it (Frege 2007:108).

for radicalism within the labor movement was always limited and sporadic at best.

The barriers to a more radical—or even reformist—labor movement are reflected by the experiences of the twentieth as well as the nineteenth century. Throughout the twentieth century, the U.S. labor movement attracted no shortage of left-wing activists. But these activists tended to be first- or second-generation immigrants not fully assimilated into the American “melting pot,” and they appear to have had little lasting influence on the direction or philosophy of the labor movement (Galenson 1972a:67; Sinyai 2006:75). Attempts to develop a more radical or reformist movement, whether by the anarcho-syndicalist Industrial Workers of the World or by left-wing activists of the Congress of Industrial Organization (CIO) unions, failed (Galenson 1972a). The former achieved only limited support and finally fell victim to state repression during the first World War (with the complicity of the AFL; Dubofsky 1994:65–69; Fusfeld 1980). As for the latter, any radicalism associated with the CIO turned out to be short-lived (Brody 1980:141), with initial efforts to build an inter-racial and egalitarian, class-based labor movement abandoned in favor of business unionism (for example, see Honey 1993; Goldfield 1997:220–29).¹¹

By the mid-1950s, CIO unions not only had expelled their Communist organizers and activists (although a few communist-dominated unions survived, and one, the International Longshoremen’s and Warehousemen’s Union, has survived to this day; see Kimeldorf 1988), they had also discarded their broader political goals in favor of the same “workplace parochialism” as their AFL counterparts (Lichtenstein 2002:122–25; Greenstone 1969), seeking to create a “private welfare state” for their members (Lichtenstein 1985:360). Although pockets of

left-wing activism emerged in both AFL and CIO unions at various points over the next half-century (for example, the Teamsters for a Democratic Union), none made much difference to the labor movement’s broader trajectory.¹²

The AFL-CIO and a handful of unions did support a number of progressive causes during the post-World War II period, continuing a trend that had begun in the 1930s (Greenstone 1969:334–43; Wilson 1979; Honey 1993:277). But although these alignments represented a departure from Gompersism, unions appear to have entered into them as constituents of the Democratic Party with partisan interests (Greenstone 1969:352). They did not entail a significant change in overall orientation or philosophy. Labor unions continued to focus on advancing the economic interests of their members, and serving largely as “managers of discontent” (Mills 1948). In so doing, they became bastions of the “new industrial state” (Galbraith 1967) and both the racial and structural inequalities it engendered (Averitt 1968). They also became bastions of U.S. Cold War policy, repudiating the anti-war movement and even setting up a series of government (including CIA)-funded institutes to promote American norms and interests abroad (Moody 2007:68–69).

Again, a comparison with Canada is useful. In contrast to its U.S. counterpart, the Canadian labor movement’s primary activity in the late nineteenth century was to make annual appeals for reforms to the Canadian parliament. Although it was effectively taken over by AFL unions in the early twentieth century and took up U.S.-style collective bargaining as its main *modus operandi*, it remained more subject to left-wing challenges and leadership, beginning with the formation of the socialist-led One Big Union in 1919 and the Winnipeg General Strike of the same year (Palmer 1992; Adams 1995:52). By the early 1960s, it had come to adopt a variant of “social

¹¹Honey (1993) and Goldfield (1997) argued that this is largely attributable to the CIO’s decision to opt for a business unionism strategy. But it is just as likely that the forces arrayed against such a labor movement were simply too great and that CIO decision makers did not consider it to be either desirable or viable.

¹²Although these developments may be attributed primarily to dominant institutional norms, they may also have reflected structural barriers to successful mobilization within the political arena (see Voss 1993:245–48).

unionism” and to play an important part in the establishment of the New Democratic Party as Canada’s “labor” party. Whereas the U.S. labor movement had already begun to decline and had retreated into a narrow conservative ideology, its Canadian counterpart continued to expand and became increasingly militant (Goldfield and Palmer 2007), viewing itself as the representative of working people in general, rather than simply of its dues-paying members (Rose and Chaison 1996). It seems that the U.S. labor movement’s philosophy was not “home-grown” (Perlman 1949 [1928]), but rather home-ingrown. Despite the organizational dominance of U.S. unions and collective bargaining, this philosophy did not transfer well to Canada, creating considerable tension between U.S. parent unions and their Canadian affiliates (Adams 1976).

The philosophy that came to predominate within the U.S. labor movement throughout the twentieth century may thus be seen as the reflection not of a particular set of historical circumstances or choices *per se*, or of some inevitable, Michelian tendency toward conservatism (Voss and Sherman 2000), but rather of institutional norms and the environment to which they gave rise (also see Sinyai 2006:71–79). Although it is possible to document the implications of specific choices and the labor politics behind them (for example, the conservative policies of Operation Dixie: see Honey 1993:225–37; Goldfield 1997:240–48), the ultimate destination to which these choices led was, broadly speaking, unaltered. Yet it would also be mistaken to view this destination as a propitious one (as did Perlman). Due to unions’ focus on winning economic gains for members and the system of workplace- and employer-level collective bargaining, unionized employers often shouldered substantially higher costs than their non-union counterparts. This was especially problematic in a highly competitive economy dominated by the profit motive (Lichtenstein 2002:107–8).¹³ Thus,

¹³To an extent, this problem could be overcome by industry bargaining. Yet, in the absence of a government edict, to achieve this on a formal basis requires industry-wide organizing success. Even then, it is contrary to strong norms

paradoxically, this form of unionism may be seen as contradictory in its effects. On the one hand, it allowed for greater institutional legitimacy and had stronger appeal to workers than did alternative forms (for example, social unionism), but on the other hand, it may have only increased employer hostility (Jacoby 1991), especially because “taking wages out of competition” was contrary to norms of employer autonomy and norms of market competition.

The underlying problem, however, has been that, even though business unionism may have been more compatible with institutional norms and realities than its alternatives, it has been far from a perfect fit. Unions and collective bargaining remained antithetical to norms of “free labor,” which privileged individual over collective contracts, and to the norm of employer unilateralism deriving from property rights doctrine. Not only did collective bargaining abrogate the right of employers to unilaterally set the terms and conditions of employment, it also allowed for potentially important restrictions on the exercise of management authority and hence control in the workplace. Thus, although collective bargaining may not have posed a direct challenge to management’s right to manage and hence to property rights, it did pose a challenge to the doctrine of managerial unilateralism that derived from these rights and that, again, was especially strong in the United States (see Harris 1982:27ff.)—even more than in Canada, where employers have seemed more prepared to recognize the legitimacy of labor unions or, at least, of labor law protections (Rose and Chaison 1996).¹⁴

of employer unilateralism and market competition (for example, Dobbins 1994), thereby engendering employer resistance. Thus, although there was a brief flirtation with industry bargaining in some sectors at the beginning of the twentieth century (Montgomery 1989:261–65) and in the 1950s (Pierson 1962), it came to be decried as “monopoly unionism” and was undermined by employers as soon as the opportunity presented itself (Lichtenstein 2002:138–39). Pattern bargaining became the fall-back solution, but even it was possible only in highly concentrated and organized core sectors, and it depended in large measure on the ability of unions to enforce common settlements much more than on the willingness of employers to negotiate them.

¹⁴Recent surveys suggest little difference between Canadian and U.S. employers, but these surveys are

This, more than the potential economic costs associated with unions (which could have been largely addressed through sectoral bargaining), may be seen as the underlying cause of employer resistance to union representation (Gross 1981:6–10; Logan 2006:663; Stein 2006:553).

Complicating matters has been the broader institutional environment of U.S. firms. Notwithstanding the large trusts emergent in the late nineteenth and early twentieth centuries, American capitalism has historically been characterized by disorganization relative to other major economies (Lichtenstein 2002:107–8). Indeed, there has been a uniquely American distaste for large trusts and internal trade barriers (Bensel 2000: 289–354), reflecting institutional (especially legal) norms favoring decentralization and competition rather than centralization and coordination, as in European economies (for example, Dobbins 1994). As Lichtenstein (2002:108) argued, these norms and their institutional manifestation predisposed firms to “put a premium on keeping labor costs flexible, production techniques plastic, and unions weak.” U.S. institutional norms have always been more conducive than perhaps any other to a liberal market economy, and a liberal market economy is not conducive to strong unions. The result has been that the United States has had, in the oft-cited words of Taft and Ross (1969:281), the “bloodiest and most violent labor history of any industrial nation in the world.”

This account is largely consistent with Perlman’s theory of the American labor movement (1949 [1928]). But from a historical/new institutionalist perspective, the critical argument is that the development of the U.S. labor movement and of the environment within which it developed did not just reflect the choices of labor leaders or the politics of the era. Rather, it reflected the relative conservatism of the working class, the innate hostility of employers and their power to resist, and judicial norms that were biased against unions, all conditions that did not

obtain to the same degree in Canada, and all of which reflect in considerable measure the founding conditions of the United States and the institutional norms and values associated with these conditions. Thus, the development of the labor movement and its institutional environment was conditioned not only by short-term circumstances and choices, but also by lengthier historical processes that shaped these circumstances and choices. So was the development of the Wagner Act, which came to virtually define the U.S. labor movement and the discourse surrounding it.

Institutional Norms, the Wagner Act, and the “Maturation” of Business Unionism

The National Labor Relations Act (NLRA) of 1935 may be seen as the culmination of a “mini-trajectory” of state policies begun almost two decades earlier under the Wilson administration (for example, see Dubofsky 1994), but which had largely stalled after 1922, only to be restarted in the 1930s. Also known as the Wagner Act (after its main sponsor, Senator Robert Wagner), its primary function was to legally institutionalize the system of workplace-level, business unionism that had developed over the preceding half-century, and to extend this system to accommodate the growth of industrial unionism. The NLRA not only provided workers with basic collective bargaining rights under the law, it also invested these rights with some level of moral legitimacy (Woodiwiss 1990). Yet these rights were in many respects doomed from the beginning, not because of superior employer power within (and deriving from) the broader institutional environment *per se*, but because they did not conform sufficiently to U.S. institutional (including judicial) norms and values. In this respect, the Wagner Act may be seen not as an example of how critical historical junctures create the opportunity to alter institutional path trajectories, as new institutionalists often argue to be the case (for example, Krasner 1988), but rather as an example of how such attempts tend to be undermined over time if they do not conform sufficiently to dominant institutional norms and conditions, thereby falling victim to mobilization biases associ-

limited in important respects and may in any case not apply to earlier decades. See Godard (2003:481, fn. 22).

ated with these norms and the institutional structures they engender.

The Wagner Act codified the right of workers to “self-organization,” a right that was initially to be exercised largely free from state and employer involvement and which was consistent with institutional norms of self-help and voluntary association. But although the provision of legal rights that were conducive to these norms and that could address very real problems faced by workers were critical in motivating the framers of the NLRA (Gross 1985:10–11; Dobofsky 1994:127; Barenberg 1993; Forbath 1999; Dannin 2006), they did not provide the primary justification for the Act’s passage.

In contrast to the labor law context in Canada, where Wagner-style legislation adopted in the late 1940s was sold largely in terms of providing rights to workers and maintaining a balance in industry (for example, Woods 1968, 1973:64–70), the NLRA was legally justified under the U.S. Commerce Clause as a means to “eliminate the causes of certain substantial obstructions to the free flow of commerce” (see Gross 1985:12; Pope 2002) in an attempt to pass muster with the Supreme Court, after its predecessor, the National Industrial Recovery Act (NIRA), had been ruled unconstitutional.¹⁵ It was also sold largely on economic grounds, as a means to stimulate the economy by boosting the incomes and hence spending power of workers (Kaufman 1996).

Moreover, although the Wagner Act did (and still does) contain a policy statement recognizing the detrimental consequences of an inequality of bargaining power for these outcomes and for the “flow of commerce,” it was drafted in a way that defined labor rights largely in terms of individual rights and “liberty of contract” (Woodiwiss 1990:162–64; Pope 2002:15) and hence justified as fostering “free” choice for workers and “free” collective

bargaining, under which the parties resolve their differences absent state involvement. Indeed, the main intellectual progenitor of the act, John R. Commons, believed that any form of third party intervention into the bargaining process was to be avoided (Commons and Andrews 1920). There was even some initial intention that recognition would in most cases be voluntary, with the National Labor Relations Board (NLRB) intervening only as a backstop, in the case of disputes over whether a union had sufficient support (Flanagan 1987:24; Brody 1997).¹⁶

It is difficult to see how, in view of U.S. institutional (and constitutional) norms and the structures conditioned by them, the Wagner Act could have been improved on. A labor rights discourse at odds with the freedom of contract and economic gain could be seen as a challenge to property rights, and would not have resonated with U.S. traditions, institutional norms, or, ultimately, Supreme Court doctrine. Moreover, the Act initially appeared to meet with considerable success, especially after the Supreme Court upheld its constitutionality in April 1937. Density increased from 13% the year before to 28% by 1939, only 6 percentage points below its historical peak in 1945.¹⁷ This increase was no doubt also partly explained by widespread discontent (Galenson 1972b; Freeman 1998)¹⁸ and by the political and economic conditions to which employers were subject in the late 1930s (Brody 1980:103–6). Its continued success during the war years was also facilitated in part by the labor-friendly policies of the War Labor Board (see Harris 1982; Atleson 1998). There can be little question, however, that the Wagner Act played a major role in spurring union organization.¹⁹

¹⁶Indeed, the NLRA still (technically) requires that unions seek voluntary recognition before petitioning the NLRB for certification. It still also technically protects the right of self-organization, which at least one legal scholar has argued allows for minority unionism (see Morris 2005).

¹⁷Unless otherwise stated, all U.S. density statistics in this paper are from Freeman (1998).

¹⁸This discontent may also have been a reason the Act’s constitutionality was upheld (Pope 2002:9).

¹⁹As Richard Freeman (1998:282) pointed out, three-quarters of the new recognitions in 1937 followed recognition strikes. He interpreted this as evidence that “bottom up” factors (worker militancy) were more important than

¹⁵Pope (2002) argued that this was a mistake and that there were grounds for justifying the NLRA under the Thirteenth Amendment. But a close reading of his analysis (pp. 28, 37, 40, 43, 54, 56, 64, 102, 104) suggests that, although activists may have supported this strategy, legal experts and lawmakers almost universally viewed this strategy as untenable.

During the post–World War II era (1946 to the mid-1970s), the conventional wisdom in academic circles was that, indeed, the Wagner model was an effective one (even if there were controversies about legal specifics), and that under it labor and capital had reached an accord satisfactory to both sides (see Lichtenstein 2002:148–56). To the extent that discord occurred, it was typically attributed to corrupt, irresponsible, or undemocratic union leaders, not recalcitrant employers, and so the primary concern became how to improve union professionalism and democracy. Although the Wagner model did not fit with traditional institutional norms of managerial unilateralism, a “managerial revolution,” coupled with increased market concentration, was believed to have generated a new managerial ethos, one that sought to maximize growth and efficiency while balancing the competing claims of various stakeholder groups (Berle and Means 1932; Burnham 1960; Cyert and March 1953; Berle 1959). In theory, this yielded a “soft corporatism,” characterized by a willingness to work with unions and accommodate the legitimate expectations of their members, and, in particular, to take wages out of competition through pattern bargaining

the NLRA. But it is just as likely that the NLRA, coupled with the Supreme Court ruling, served to spur worker organization and employer recognition, especially given the NLRB’s limited resources and hence its limited capacity to process certification requests in a timely fashion (Woodiwiss 1990:179–80). In essence, workers were asserting their legal rights even if the legal process for realizing these rights was not yet fully in place (Adams and Markey 1997), and employers were more willing to concede these rights in the belief that the union would in any case win certification through the board. The board also played an important role in inducing employers to comply with its code of conduct rather than engage in protracted resistance (Harris 1982:22). Recognition strikes also mattered, but it is not clear that, in the absence of the NLRA and both the legal and normative legitimacy it conferred on labor unions, these strikes would have been particularly successful in giving rise to long- or even short-term bargaining relationships, or even would have been as widespread as they were. In Britain, for example, there was an increase in employer willingness to voluntarily recognize unions after the 1999 passage of legal reforms (Gall 2003), although substantial institutional and historical differences between the recent British case and the 1930s U.S. case (Wood and Godard 1999) limit their comparability.

(Lichtenstein 2002:127ff). Paradoxically, this characterization may have provided a better description of the Canadian environment, where a smaller and more geographically dispersed population and extensive corporate interlocks (Clement, 1975) meant less intense competition. In the United States, it appears to have been largely a mirage. Union density never exceeded its 1945 peak, and by the late 1950s it had begun its long-term decline. In contrast, Canadian density continued to increase until the early 1980s.²⁰

Institutional Norms and the Decline of the U.S. Labor Movement

A number of factors can be identified to explain the long and gradual decline of the U.S. labor movement. Continuing management antipathy toward unions lies at the heart of this decline, and so I begin with this.

Management antipathy. Although the notion of a “managerial revolution” had widespread appeal among management academics and pundits until well into the 1970s, any revolution that may have occurred was far more limited than its progenitors wanted to believe. It is possible that, during the 1940s and on into the 1960s, some core U.S. corporations were characterized by a softening of the profit motive (for example, Sutton et al. 1956; Galbraith 1967), and that this may have meant a greater acceptance of unions. Yet the managerial revolution thesis served mostly as an ideological response to the legitimacy crisis faced by firms beginning in the 1930s. This crisis revolved around concerns about concentrated market power and the need for stronger anti-trust laws (see Fligstein 1990, Chap. 5), in part reflecting U.S. institutional norms pertaining to free competition and decentralized power. But it also revolved around negative perceptions of large corporations in general and of the unfettered exercise of management authority. Within this context, employer groups perceived a threat to

²⁰There was some decline in Canadian private sector union density beginning the 1960s. But this decline was less dramatic; in the early 1960s, density was roughly 30%, while in 1980 it was roughly 26%. In the United States, the comparable statistics were 32% and 20%, respectively (Godard 2003).

management power and prerogatives from both unions and the state (Harris 1982:177–99). The popularity of the managerial revolution thesis in employer (and academic) circles may be seen in part as a product of this perception. Its ultimate purpose was to forestall possible union infringements on managerial control and to minimize state regulations by promoting the belief that firms were now managed by largely neutral professionals who could for-the-most-part be trusted to exercise authority efficiently and “effectively” (that is, in the public interest).

The managerial revolution thesis was consistent with institutional norms calling for minimal state involvement in the economy and, to an extent, “free labor,” both of which could be sustained as long as power imbalances were not perceived to be a problem. Its success is in part reflected by subsequent declines in public concerns about corporate power (see below) and by the anti-labor provisions of the Taft-Hartley Act of 1947. It even became entrenched in much of the mainstream industrial relations literature, where the term “profit” virtually disappeared from the theorization of management objectives in favor of the phrase “efficiency and effectiveness,” and where conflict came to be attributed to clashes between management’s pursuit of this objective (rather than profit) and worker concerns for “equity” (Barbash 1964; Kochan, 1980). Yet any pretense of a departure from the profit motive was contrary to competing norms surrounding property rights, from which the legitimacy of management authority derived and which were ingrained in law in the form of fiduciary obligations to owners. In reality, it also greatly underestimated the continuing control of large stockholders and the pressures from stock markets.

Even though managers in large, publicly held corporations may have enjoyed somewhat greater independence from investors than did their counterparts in other firms (Jacoby 2005:85–87), the profit motive appears to have remained predominant (for example, Herman 1981) and to have provided the main rationale for the apparent acceptance of unions by many of these corporations. If there was a change, it was the adoption by large corporate bureaucracies of a sales and marketing conception of management. This conception emphasized not only sales growth, but also—in order to take

advantage of growing market opportunities—certainty and stability (for example, Galbraith 1967; Pfeffer and Salancik 1978). Progressive management, under which firms sought to accommodate labor unions and agreed to share the gains from ongoing productivity improvements, was considered to be necessary in order to achieve such stability and growth. But this doctrine was little more than an adaptation of the earlier “personnel management” school, which was based on the premise that treating employees benevolently was consistent with, and had to be justified in terms of, long-run profitability (Harris 1996:56; Kaufman 2004:136).

It did appear for a short period in the 1950s that unions had gained acceptance in most large, already unionized “core sector” firms, and that “mature” industrial relations, in which each side recognized the legitimacy of the other, were on the increase (Northrup 1962). Indeed, a widely shared view was that U.S.-style pluralism was both an inevitable and an essential component of an advanced industrial economy (Kerr et al. 1960), necessary to the resolution of conflict within the firm and even contributing to firm productivity (Slichter et al. 1960). Leading-edge firms were considered to be those actively cooperating with unions and conforming to the model of “joint sovereignty” promoted by liberal pluralists (Stone 1981), not those that had remained union-free or even those that accommodated unions for pragmatic reasons. However, such leading-edge firms never comprised much more than a relatively small minority (Harris 1982:136–58).

Even within the core sector, things were not entirely as they seemed. Most firms that appeared to accept unions did so out of the belief that they had little choice, and turned their attention to minimizing union infringements on management control (Harris 1982) and limiting union power (Lichtenstein 2002:136–40). As early as 1958, union employers had mounted an offensive against labor (Davis 1986:121–24; Northrup 1962; Barbash 1962). Firms that had succeeded in avoiding unionization continued to do so, opting for a union-free welfare capitalist approach (Jacoby 1997) and union “substitution” policies (Kochan 1980). It is possible that the motives underlying these programs were often “pure,” reflecting a belief that non-union forms of representation and paternalistic

practices represented a better alternative for both management and labor. However, there appears to have been little taste for laws entrenching any form of representation rights, suggesting that so-called progressive practices were little more than unilateralism in a velvet glove. Indeed, employer groups continued to fight for laws and court rulings that would protect management authority and hence restrict the role and power of unions at the point of production to the processing of grievances (see Tomlins 1985a; Stone 1981). In contrast, Canadian employers seemed more willing to rely on the state to regulate labor.

Making matters worse for unions was the displacement in the 1960s of the sales and marketing conception of management by a finance conception, which focused on profit centers, and then in the 1980s by a shareholder value conception (Chaps. 6, 7 in Fligstein 1990 and Fligstein 2001). Of note, these shifts were partly in response to a more vigorous antitrust policy following the passage of the Celler-Kefauver Act in 1950 (Fligstein 1990, Chap. 6), to which there was no parallel in Canada. Thus, institutional norms in which property rights and hence ownership interests trump all other possible stakeholder rights may have been weakened somewhat during the 1940s and 1950s, but any such weakening was of limited scope and limited duration. U.S. firms came to be increasingly subject to short-term market and financial pressures, helping to promote a short-term, cost-minimization orientation toward labor relations, more than did their Canadian counterparts, who were exposed to much less stringent competition policies (Panitch 1977:19) and more subject to coordination by a dominant corporate elite (Clement 1975; Panitch 1977:12–15). Thus, any revolution that may have occurred in the United States was short-lived, supplanted by a counter-revolution that fostered more rather than less employer opposition to unions.

The “big labor” campaign. Continued employer hostility was accompanied by concerted and largely successful attempts to portray labor unions as corrupt, undemocratic, and unduly powerful. Although there were undoubtedly grounds for this portrayal in the case of some unions (Jacobs 2006), this sort of campaign

seems, within the developed world, to have been largely unique to the United States (Lipset 1962a,b; Goldfield 1987:50). There was no equivalent campaign in Canada, even though the Canadian labor movement continued to be dominated by U.S.-based internationals and was subject to some of the same red-baiting tactics (Palmer 1992: 290-98). Indeed, the only major corruption case involved the imported, American leader of the Canadian division of the Seafarer’s International Union, who had been brought to Canada to help crush the communist-led Canadian Seamen’s Union.

As was the case for the weakening of the Wagner Act, the success of the “big labor” campaign in the United States may be attributed in large part to the ability of anti-labor groups to play on institutional norms that were unfavorable to unions and to mobilize their resources in accordance with these norms. Even if one bought the notion of “free” collective bargaining, so-called “big labor” was easily portrayed as a centralization of power in the hands of officials whose authority stemmed neither from the ownership of property, nor from free and open elections, nor from their ability to enhance overall economic wealth (for example, Petro 1959). In effect, it was easy to portray “big labor” as a corruption of the American way, and anybody who fought unions—including politicians—could only be seen as defending against this corruption. This was especially so given that unions and collective bargaining had come to be sold largely as economic instruments rather than as essential manifestations of political democracy (Lambert 2005), again in accordance with institutional norms.

Bok and Dunlop (1970:12–14) reported that, as early as 1941, three-quarters of Americans thought union leaders had too much power, while 59% held the same view of large corporations. By 1950, the former number had declined, but only to 62%, while the latter had declined to 38%. As of the late 1950s, half of the U.S. public believed that laws restricting unions were not strict enough, compared to a quarter who thought they were, and a quarter who had no opinion. By the mid-1960s, six in ten believed that unions should be closely regulated (a quarter did not think so, and a fifth had no opinion), compared to three in ten who believed this should be the case for business.

Only one in five wanted unions to grow larger and stronger, although only one in ten thought they had grown too much (half thought they had grown enough, one in eight had no opinion). As of 1977, two-thirds of Americans still agreed that unions had more power than business (Kochan 1979:24). Even in the mid-1980s, when the labor movement had been severely weakened, 46% believed labor unions had too much power, while only 20% believed they were not powerful enough (Lipset 1986b:312). Yet even at the height of the McClellan hearings into union corruption in the late 1950s, almost two-thirds of Americans continued to approve of unions in general, down only about 10% from the peak approval ratings a year or two earlier and down only about five percentage points from 1936, when the NLRA was only a year old (Bok and Dunlop 1970:13). It seems that concerns over union power did not have to do with collective bargaining per se, but rather with a distrust of labor leaders and institutions (Bok and Dunlop 1970:16). Not only did this bode badly for labor law reforms, research has also shown that “big labor” beliefs have strong negative implications for union organizing (Kochan 1979; Fiorito 1987).

Again paradoxically, the very characteristics of unions that were used to delegitimize them as organizations were characteristics that they had developed largely in reflection of their institutional environment. No doubt there are a number of characteristics of unions that provide leaders with both the opportunity and the incentive to undermine internal democracy (for example, Michels 1915 [1962]; Lipset et al. 1956; Lipset 1960). But this by no means portends an inevitable outcome (for example, see Voss and Sherman 2000), and it fails to adequately explain why U.S. unions in particular adopted the characteristics they were to be criticized for. In the United States, large, bureaucratic unions were necessary to effectively deal with large, bureaucratic firms (Lipset 1960:359–63), not just to achieve environmental fit, but also to be able to “take wages out of competition” and to withstand constant attacks from employers and employer groups (Lichtenstein 2002:142–48). Where corruption occurred, it reflected the need to deal with employer hostility and violence (Adamic 1931; Lens 1959; Jacobs 2006), or the corruption

already embedded in local political machines (Jacobs 2006:9), or the complicity of employers (Jacobs 2006:xviii, 8–9). More generally, it also reflected the ethos of economic gain that remained predominant within the U.S. institutional environment (Taft 1958; Lipset 1962a,b) and the decentralized structure of bargaining and union representation (Lipset 1962b:100) that this environment and the norms that underpinned it effectively required.

The attack on unions as organizations was accompanied by the perception that unions could be counted on to abuse their economic power. Theories of economic maximization began to dominate theories of labor unionism in the 1950s and 1960s (Dunlop 1944; Ross 1948), and although these theories might have seemed misplaced in other countries (including Canada), they may well have been applicable in the United States. Indeed, the debate seems to have concerned not whether unions engaged in economic maximization, but rather how. Thanks to the combination of “big labor,” which was contrary to U.S. institutional norms (but indirectly a consequence of them), and business unionism, which was a product of these norms and the institutional environment to which they gave rise, unions came to be viewed as a major cause of inflation, even though evidence in support of this view was mixed at best (Freeman 1986).

Against this view, a number of U.S. authors argued that unions were important because they provided democratic rights at work (for example, Chamberlain and Kuhn 1951; see Derber 1970 and Stone 1981 for reviews of this argument), and liberal pluralists stressed that collective bargaining provided a balance in industry between “equity and efficiency” (Kochan 1980). But these arguments were by no means universally accepted (see Tomlins 1985b). Instead, many have argued that the over-riding function of unions was to help secure economic stability and hence prosperity. For some, this was achieved by obfuscating broader class conflicts (see Lichtenstein 2002:148–54), for others it was by legitimating labor market and pay structures (for example, see Bok and Dunlop 1970:464), and for still others it was by ensuring industrial discipline at the point of production (Mills 1948; Stepan-Norris and Zeitlin 1991, 1995). If unions fostered democratic

rights or provided a balance between equity and efficiency, it was largely in the service of these broader purposes. Indeed, although concerns over internal union democracy remained widespread, the term “industrial democracy” had virtually disappeared from the lexicon of labor leaders and academics by the 1950s (Derber 1970:11ff.; Schatz 1996:107), to eventually be replaced by the term “collective voice.” Leading scholars sought to bolster unions’ legitimacy by arguing not that they fostered democratic values *per se*, but rather that, by fostering collective voice, they yielded higher levels of economic performance (Freeman 1976; Freeman and Medoff 1984).

During this period, the American labor movement, in contrast to its Canadian counterpart, became anathema not just to the right, but also to many on the left, who came to view it as a largely regressive and morally corrupt force (Lichtenstein 2002:156–64). In their view, the labor movement had been reduced to a narrow interest group concerned almost entirely with economic gain, its support for some progressive causes (for example, civil rights) notwithstanding. But it is not clear, given dominant institutional norms and the institutional environment to which they had given rise, how the labor movement could ever have been much different, or how its supporters could have sold a more social democratic or corporatist justification for unions. As it was, even the collective voice argument for unions (their purported contribution to economic performance) seems to have lost traction by the late 1980s—despite its continued popularity among liberal academics.

During the mid-1980s, a number of leading U.S. scholars began to argue that the traditional economic role and functions of unions were essentially obsolete (Kochan, Katz, and McKersie 1986). Rather than seeking ways to justify unions as instruments of democracy or social justice (even though many may have still viewed them as such), they essentially argued that labor unions could expect to survive and prosper only if they adopted a collaborative, “mutual gains” approach (Kochan and Osterman 1994). This “pragmatic realism” (Godard and Delaney 2000) may have been, in one respect at least, more consistent with institutional norms, because it also focused on economic gain. Yet it

was even more contrary to traditional employer norms of unilateralism than was the traditional economic role of unions, a problem that was worsened by the structure of the employment relation and the distrust it generates in liberal market economies (Godard and Delaney 2000). It was also contrary to deeply institutionalized labor movement norms and traditions, and out of step with a system of industrial relations that had come to be premised—for good reason—on the assumption of adversarial relations. As a result, this new role was developed in only a small fraction of firms, as was the model with which it was associated (Gittleman et al. 1998; Ellwood et al. 2000), and its potential as a wider strategy remained dubious—despite attempts to foster it during the Clinton Administration.²¹ To many, the real problem lay with what they believed to be the gutting of the Wagner Act (for example, Weiler 1983; Gould 1993). Yet this, too, may be viewed as a reflection of institutional norms and the mobilization biases they engendered.

The gutting of the Wagner Act. By the mid-1950s, after the appointment of the Eisenhower labor board, the original Wagner model had been both transformed and effectively undermined through a combination of legal reforms, NLRB decisions, and court rulings, most of which drew on dominant institutional norms. This weakening has been well documented (for example, Gross 1981; Logan 2001; Atleson 1995; Woodiwiss 1990; Brody 2005), and its implications for the U.S. labor union movement have been well established (for reviews, see Godard 2003, 2004a, 2004c). Essentially, however, it transformed an initial right to self-organization (and hence collective self-help), in which employers were required to remain neutral and state involvement was to be minimal, into a highly legalistic political contest administered by the state (see Brody 1997) and falling far short of any standard of a “free and fair” election (see Lafer 2008).

²¹For example, a central mandate of the Dunlop Commission on Labor-Management Cooperation, which many had hoped would lead to positive labor law reforms, was to establish that labor unions contribute to, or could contribute to, productivity (Gross 1995:282), not dignity or justice.

The weakening of the Wagner Act can be attributed in part to a hostile political environment, reflecting a combination of employer anti-unionism and political power and the success of the “big labor” image. But legal norms and precedents may be seen to have played the major role. They provided the justification and hence legitimacy for judicial rulings that undermined the self-organization doctrine (see Brody 1997), for the Taft-Hartley Act of 1947, and for the subsequent inability of labor or its supporters to win favorable legal reforms or judicial rulings. Although decisions of the NLRB also no doubt played some role, careful readings of history reveal that Supreme Court decisions may have been the primary culprit, with the NLRB often attempting to anticipate these decisions and the Taft-Hartley Act embedding them in statutory law (Brody 2005; Dannin 2006:7–15) as well as imposing additional restrictions and burdens (for example, Honey 1993:237–40). These decisions, and the subsequent provisions of the Taft-Hartley Act, were no doubt a reflection of political developments and power imbalances (especially as represented by the Smith Committee; see Gross 1981), but they ultimately reflected deeply ingrained institutional norms privileging property rights over labor rights, “freedom of contract” over collective interest, and inalienable rights attaching to both of these considerations over considerations of labor policy and social advantage (see Brody 2005:110–37).

It may be possible, if one explores the detail of history, to identify specific decisions and developments that might have “gone the other way,” with positive implications for labor. For example, Pope (2002) argued that the Wagner Act’s fate is partly due to the decision to justify it under the (Interstate) Commerce Clause rather than under Thirteenth Amendment human rights protections (although it is not clear that the latter was ever tenable; see fn. 15). Brody (2005:104) argued that the ballot requirement initially reflected a political decision by the NLRB and a tendency of the board to lose sight of the original intentions of the Act. Gross (1985) argued that conflicting statements in the Taft-Hartley Act allowed for conflicting, and ultimately more conservative, NLRB interpretations of congressional intent (also see Liebman 2008). But when one cuts

through specific developments and the events surrounding them, the outcomes were consistent with dominant institutional norms and the mobilization biases associated with them. It seems that these were bound to prevail, if not through any one particular legal argument or decision, then through a series of later ones.

Under a system in which state intervention, and especially administrative law (Gross 1981:262), was traditionally weak and distrusted, the National Labor Relations Board was given only weak powers (Harris 1982:20ff.) so as to guard against employer challenges to its constitutionality (Woodiwiss 1990:160–77), and it has been easy for employers to frustrate its decisions (Taras 1997). This, along with norms supporting “free” markets and “free” contracts, has helped employers to ensure weak provisions for good-faith bargaining and the absence of first contract arbitration. Norms giving primacy to private property have formed the basis for Supreme Court decisions permitting the use of permanent striker replacements (*NLRB v. Mackay Radio*) and the denial of union access (*Lechmere, Inc v. NLRB*). Free speech doctrine has been drawn on to undermine restrictions on employer speech during an organizing drive (Story 1995; Slinn 2008). A tradition of formal democratic process has provided employers with a normative justification for formal ballots rather than card certification. Finally, norms of “free” labor and personal liberty have formed the ideological basis of open shop laws.²² To be sure, there may be room for competing interpretations of these norms as they apply to the Act. But even if so, broader mobilization biases have operated against such interpretations.

In a nation characterized by “possessive individualism” (Macpherson 1964), a strong belief in the virtues of market competition and freedom of contract, a political system in which capital has been dominant (Jacoby 1991), and a pervasive (and constitutionalized) distrust of the state, these developments should have come as little surprise. Indeed,

²²Weak public sector labor laws are a further indication that institutional norms have played a major role. As of the mid-1990s, only 23 states had laws mandating bargaining rights for state employees, and only 14 of these provided a right to either strike or go to arbitration (Lund and Maranto 1996).

the NLRA as initially passed has been viewed by many as at odds with U.S. legal precedents and constitutional traditions, representing an unprecedented increase in the power of the state to intrude into economic affairs (Dubofsky 1994:129). Its predecessor, the NIRA, had been ruled unconstitutional essentially for these reasons (*Schechter Poultry v. United States* 1935) and, despite every effort to draft the NLRA accordingly, it was ruled constitutional only after what one historian has referred to as a “revolution” on the Supreme Court (Dubofsky 1994:142–46), in part prompted by President Roosevelt’s threat to “pack” the court should it find otherwise. Even then, political support for labor rights pretty much died within two years of this ruling (see Gross 1981; Harris 1982:37). David Brody has concluded that “the striking feature about labor law’s evolution is its sheer inevitability” (2005:153). Although the term “inevitable” may seem overly deterministic, the term “predictable” may not.

Paradoxically, Canadian norms were more receptive to the Wagner model. The Canadian version of Wagnerism, as adopted in both the federal and all ten provincial jurisdictions by the close of the 1940s, was considered to be weaker than the initial version of the NLRA. But it was to be gradually strengthened throughout the postwar era (see Logan 2002 for a fascinating account), typically in ways that restricted aggressive electioneering by either labor or management and protected against employer intimidation. By the mid-1980s, it generally contained most of the characteristics initially associated with the Wagner model (that is, prior to 1939), including provision for card certification in all but one jurisdiction, a prohibition on the use of permanent striker replacements in all jurisdictions, and de facto bans on open shop arrangements.

Canadian differences may be attributable to a number of factors (see Taras 1997:304–18). They include labor unions’ broader legitimacy as “social” unions, the existence of a social democratic political party with which unions have had strong institutional ties, the opportunity for much greater experimentation provided by Canada’s multiple labor law jurisdictions, and a parliamentary system that makes the passage of labor law reforms less difficult than in a U.S.-style republic (Bruce 1989). They

may also include heightened labor movement militancy beginning in the 1960s (Goldfield and Palmer 2007). But at their core, they reflect a much greater tolerance for state intervention and a stronger tradition of administrative law, conditions under which labor boards were entrusted with much stronger authority and powers than has been possible in the United States (Taras 1997). Canada’s different path also reflects a greater concern, by political and economic elites, for maintaining order and stability, and hence a preference for regulating industrial conflict in its various manifestations (Godard 2008c).

Economic realities and union demand. According to a number of authors, labor movement decline reflects a decline in demand for union representation, due primarily to improved employer policies (for example, O’Toole and Lawler 2007), or to improved employment laws (Neuman and Rissman 1984), or to compositional shifts (Dickens and Leonard 1985). Others (Troy 2000) have argued that the inexorable pressures of a market economy have made the effective demise of the U.S. labor movement virtually inevitable. These arguments have almost become conventional wisdom in some circles. Yet research addressing decline-in-demand arguments suggests that their importance may be over-stated (see, respectively, Godard 2009; Coombs 2008; Riddell and Riddell 2004), and these arguments are at odds with research suggesting that the demand for union representation may have never been higher than at the beginning of the twenty-first century (Kochan 2005:145; Freeman 2007).²³ There is also little to suggest that they have been more germane to the United States than elsewhere and hence that they explain the exceptional nature of U.S. density decline.

The evidence in support of the market pressures thesis is also unclear (Godard 2003). It is

²³This also suggests that the Piore and Safford (2006) argument, which implies that emergent identity groups have displaced unions and hence lowered demand for them, may be misleading. It is more likely that the decline of unions has created a greater need for such groups. Indeed, unions can be important vehicles for identity groups. They are, if anything, complementary, as revealed by recent organizing strategies (see Voss and Sherman 2000:311).

certainly plausible to argue that, as market pressures have intensified, the prospects for unions have diminished, due either to economic selection processes or to increased employer resistance. This may have been especially so after the 1970s, although the extent to which the rate of union decline increased during this period or can be specifically attributed to market forces is also unclear.²⁴ But even if one accepts that the intensification of market forces has played an important role in accounting for union decline, this intensification was particularly strong in the United States, reflecting not just competition policies but, more generally, increasingly neoliberal economic and social policies adopted in the 1980s. Where most other states (including the Canadian state; see Adams 1985) initially sought to address the economic problems emergent in the 1970s by renegotiating or temporarily suspending the postwar accord, the U.S. state sought to largely abolish it. The implications of neoliberal policies for union decline were magnified by the ability of firms to relocate to the largely union-free South, where anti-union mobilization biases have been especially strong.

No doubt, broader economic developments common to all developed nations have also mattered, but in and of themselves they may account for only a small part of the decline in U.S. union density (Godard 2003), and they do not explain why this decline began earlier and has been more severe than in other developed nations (with the possible exception of the United Kingdom, where similar policies were adopted in the 1980s). Even in Canada, which first entered into a free trade agreement with the United States in 1988, the government was slower to adopt neoliberal reforms. Canada's labor laws and social programs remained much stronger than in the United States, despite some weakening in the 1990s (for example, Canada retained its system of universal government

health care).

Market pressures are inexorable only to the extent that the broader institutional environment fosters them. Even prior to the 1980s, U.S. economic policies (for example, the Celler-Kefauver Act of 1950) had created a harsher competitive environment than elsewhere, heightening employer resistance and allowing little positive role for unions in the economy. These policies have reflected the broader institutional context and norms underpinning it, which in combination have meant that the United States is not just (or necessarily even) a liberal market economy, but the archetypically one, in which unions lack institutional fit, workers have fewer meaningful rights and protections than in virtually any other developed nation,²⁵ and employers are dominant within the political as well as the economic sphere, even if often from behind the scenes.

Moreover, the offensive unleashed against labor unions in the 1980s may have reflected economic pressures, but it also reflected business opportunism (Goldfield 1987). First, the labor movement, already weakened by decades of stagnation and with few meaningful protections under the law, was severely affected by the recession of 1982–83 (many unions had to resort to extensive staff layoffs) and unable to respond to an increasingly hostile ideological environment. Unions were thus virtually defenseless against management attacks, freeing employers from the need to engage in the “realism” of the postwar era and allowing them to pursue a more openly anti-union and in many cases anti-worker agenda. Second, and in tandem, the United States had seen the growth of a sophisticated union avoidance industry (see Logan 2006), one that remains unparalleled elsewhere. This is partly because ongoing employer hostility generated the demand for this industry, and partly because the gutting of the Wagner model created the opportunity for its success. But it is ultimately because of a lack of institutional norms and hence government

²⁴Farber and Western (2001) found that it did so in the private sector, but not the public sector. Yet their data for the former begin only in 1973. From 1970 to 1975, union density dropped from 29.1% to 21.9%. This compares to a drop from 20.4% to 14.6% in the period from 1980 to 1985, after which the rate of decline slowed to, on average, less than 0.5% per year (see Godard 2003:465).

²⁵Piore and Safford (2006) argued that an employment rights regime has emerged in place of collective bargaining. But their analysis pertained primarily to anti-discrimination law. The United States lags behind other developed nations in just about every other way, as OECD statistics reveal (OECD 2003:117).

policies recognizing union representation as a democratic right, coupled with a narrow economic interest group image of unions and hence an absence of any broader institutional legitimacy through which this right could be convincingly claimed. Thus, it has been possible for employers to openly undermine unions with less fear of the public or political backlash such behavior could be expected to provoke in other developed nations (for example, the United Kingdom; see Pencavel 2004). In Canada, there were similar assaults on labor unions, but they were more muted, and labor unions were generally more successful at resisting them (Rose and Chaison 1996).

Authors of their own misfortune? It is possible to argue that unions were partly the authors of their misfortune after the demise of the post–World War II era, because they failed to adjust to economic realities. In particular, union wage and benefit premiums that were high compared to those in other nations effectively priced unions out of the market (for example, Freeman and Kleiner 1990). Yet this argument also does not appear to be well supported by the available evidence (Belman and Voos 2006) and, even if these premiums have mattered, they may also be attributed to the economic role of unions, the decentralized structure of bargaining, and weak state-mandated benefits, all of which are a product of the U.S. institutional environment and the norms underpinning it.

The converse may also be argued: that, in contrast to their Canadian counterparts, U.S. unions were not sufficiently militant in either their organizing or their political strategies. Yet more militant strategies are generally contrary to U.S. traditions and, in particular, the norms of American workers and union members. While more militant organizing strategies may prove effective for organizing selected groups, research as to their general effectiveness may suffer from important limitations (Godard 2008a:387–89), and, in view of the uncertainties and costs associated with organizing in general (Farber and Western 2001), it is not likely that they can serve as a viable overall strategy for revitalization except perhaps in periods when there are widespread perceptions of injustice, as in the 1930s. But even this is uncertain in an era of global capitalism, in which injustice has

come to be attributed to anonymous economic forces rather than employers. For example, one might have expected the economic upheaval of the 1980s to generate such perceptions. But instead, American workers were relatively passive.

It may also be argued that the developments of the early 1980s, including the relative passivity of workers, were not attributable to global capitalism but rather to a neoliberal ideological onslaught (for example, Harvey 2005:40–63). If so, labor leaders might be castigated for failing to anticipate this onslaught or to develop and promote an effective counter for it when it began to become a major force in the 1970s. But it is not clear what this counter could have been, or how the labor movement could have developed or promoted it, especially in view of both its own institutional norms and traditions and the orientations of its members. For example, attempts to promote greater militancy within the labor movement, albeit by rank-and-file activists, largely failed. Instead, the labor movement opted for labor law reform in the late 1970s, and when that failed it sought to reverse its fortunes by offering “associate memberships,” under which workers would not acquire bargaining rights but would gain a number of consumer benefits (Jarley and Fiorito 1990).

Since then, there have been myriad attempts to develop new strategies or to revisit old ones (for example, labor law reform), none of which appear to have made much difference to the overall fate of the U.S. labor movement. Notably, there has been little change in strategies (at least on any scale) within the Canadian labor movement (Yates 2007), and although this labor movement has suffered some decline over the past few decades, its rate of decline has been less severe than in the United States (Godard 2003). This does not mean that new strategies do not matter or even that they are not in some sense necessary, even if only to counter further decline. Indeed, their relative absence likely explains the decline that has occurred in the Canadian labor movement despite its more favorable institutional environment and, perhaps, the gradual weakening of labor law that has also occurred in a number of Canadian jurisdictions over the past decade or so. These strategies may also deserve some credit for the increase in union density in the United States

in 2008, although that gain was limited to the public sector. But by themselves, these strategies are unlikely to be sufficient to generate a major turn-around in the long-term fortunes of the American labor movement. The problem is ultimately the institutional environment within which unions operate and the norms underpinning it.

Discussion

I have adopted a historical/new institutionalist perspective to account for the exceptional decline of the U.S. labor movement. The core argument has been that this decline reflects deeply ingrained institutional norms that have come to be reflected not only in employer hostility but also in a narrow, economic form of unionism lacking broader institutional legitimacy,²⁶ in a view of strong unions as essentially un-American, in an ineffectual labor law regime, and in an increasingly hostile economic environment. In effect, these norms—which can be traced to the unique conditions under which the United States was founded and emerged as a modern nation—have engendered mobilization biases that have become increasingly embedded in the institutional environment of labor unions, and have in turn increasingly limited (perhaps undermined) the prospects for revitalization.

The argument has not been that the exceptional decline of the American labor movement has been inevitable. It is always possible that alternative strategies or events could have made a difference. But this paper suggests that any such strategies or events would have had to provide for a model with a better fit with institutional norms than the one that did emerge and develop, and it is not clear what such a model could have been. A central implication is, therefore, that the long-term success of current and future labor movement strategies will depend on whether unions can achieve such a fit. Yet a further implication is that they are not likely to do so.

²⁶Indeed, the law would appear to indirectly mandate this form of unionism. Spending resources on organizing new workers can be challenged by members unless it can be seen as benefiting existing bargaining units. See *UFCW Local 1036 v. NLRB* (cited in Dannin 2006:44).

The problem is not so much one of mobilizing workers at the grass-roots level or of the willingness of workers to self-organize. Both of these are consistent with American traditions and norms of self-help. It is not surprising that they have in recent years been the primary focus of activists both within and outside of the labor movement (see Voss and Sherman 2000). Indeed, the U.S. labor movement may in this regard enjoy a comparative advantage over other labor movements, especially its Canadian counterpart. Rather, the problem is one of effective union representation. As the union organizing and labor law literature reveals, it is one thing to be able to appeal to initial worker predispositions, and another to be able to convince workers, in the face of employer resistance, that a union will be able to win meaningful gains and then to achieve a stable, long-term bargaining relationship (see Godard 2003, 2008a:390–93; Ferguson 2008). In the United States, effective union representation is contrary to powerful norms of employer unilateralism and hence generally requires both strong laws and alternative economic policies in support of it. Yet both of these are contrary to deeply ingrained legal norms and state policy traditions, and any efforts to realize them are readily undermined by employers, who have been able to thwart labor-friendly legislation and policy by playing on these norms and on widely held perceptions of unions as narrow interest organizations that cannot be trusted with more power. They have also been able to draw on the superior power and resources allowed them by the political system, again in reflection of institutional norms and the mobilization biases they engender. In general, Canadian unions have not faced these problems, at least to the same degree as their U.S. counterparts. Indeed, a 2007 Canadian Supreme Court ruling (*Health Services and Support Bargaining Association v. British Columbia*, 2007 SCC 27) affirmed collective bargaining as “a fundamental aspect of Canadian society” and hence as “a fundamental Canadian right,” protected under the Canadian Charter of Rights and Freedoms.

U.S. norms and traditions mean that legal or policy reforms conducive to union representation are most likely to be politically saleable if based on the claim that they will be good for the economy. This may be especially true at

a time of major economic collapse. Yet even in such a time, its effectiveness is likely to be limited and to last only until the economy has recovered (as in the 1930s). Developments in Canada notwithstanding, any appeal based on a strengthening of workplace democracy or human rights is even less likely to succeed (see Brody 2000; Ewing 2002:145–47).²⁷ Thus, not only is the attainment of such reforms unlikely, so is their long- (or even intermediate-) term effectiveness and survival in the event that they are attained. One alternative is for unions to represent workers only outside the workplace, through either mutual aid societies (Bacharach et al. 2001), “open source” unionism (Freeman and Rogers 2002; Freeman 2004), or community affiliation (for example, Working America; see Freeman 2008). But although such strategies could prove of value to workers and for mobilizing public support on union issues, they do not provide meaningful representation at work. As such, they are only likely to be effective as secondary means of reversing union fortunes or serving workers.

The main implication for the American labor movement, therefore, is that its best hope may lie not with long-term strategies or “end games” designed to achieve an elusive fit with dominant institutional norms, but with its ability to wage a constant, ongoing struggle. The New Deal era, and the decades immediately following it, demonstrated that short-term departures from dominant norms and hence national trajectories are possible. But it also demonstrated that such departures are subject to mobilization biases that render them difficult to achieve

and relatively easy to undermine. Although the Wagner model was generally viewed as an end game under which the labor movement could survive and prosper, in hindsight, it was a temporary—and limited—truce to a long war. In view of American norms and the mobilization biases they engender, this is a war that the labor movement cannot hope to win. Nor can it hope even to achieve the kind of long-term armistice that many of its European counterparts have enjoyed. But it can hope to stay alive and even to make some gains. To do so, its leaders will need to recognize that no single strategy (for example, restoring the Wagner Act) is likely to provide the “magic bullet” many have been searching for, and that any gains they are able to make may only be temporary. Rather than searching for such a strategy, unions must constantly fight for new gains, on multiple fronts and with multiple strategies.

In effect, this calls for a “post-modern” recipe, one that the U.S. labor movement seems (perhaps inadvertently) already to be following (for example, Schiavone 2008), and for which there is some historical precedent (Cobble 2001). It calls for continuous innovation and perhaps even “labor entrepreneurship” rather than organizational stasis. Such a recipe might be viewed as consistent with the American spirit, and it would in many respects match the contemporary dynamic of the U.S. economy in the same way that bureaucratic unionism did in the 1950s. It may not portend a stable or happy future and may be difficult to sustain. The range of viable strategies would appear to be limited, and the myriad innovations attempted to date have so far failed, both singly and in combination, to appreciably reverse the labor movement’s fortunes. But, mixed perhaps with a strong dose of “naive optimism,” it would seem to be the only future the American labor movement has.

²⁷Even though there may be some basis for such an appeal in the Thirteenth Amendment (Pope 2002), it is not likely to be sufficient to win the kinds of reforms sought under this strategy, especially in view of broader institutional norms and the biases to which they have given rise.

Appendix
Union Density and Coverage: Selected Nations, 1980 and 2003

Country	Density		Coverage	
	1980	2003	1980	2003
United States	22	13	26	14
United Kingdom	51	30	70+	33
Japan	31	23	25+	18
Australia	48	23	80+	83
Canada	35	30	37	32
Italy	50	34	80+	83
France	18	10	80	93
Germany	35	23	80+	68
Netherlands	35	22	70+	83
Sweden	80	78	80	93

Sources: figures on density as of 1980 are from *OECD Employment Outlook* (2003); for 2003, from *OECD Corporate Data Environment*. Figures on coverage as of 1980 are from *OECD Employment Outlook* (2003); for 2003, from *OECD Economic Outlook* (2004).

A plus sign (+) indicates that the estimate is conservative.

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