

**THE CONTENTIOUS POLITICS OF INDUSTRIAL DEMOCRACY**  
Organised Labour and the Invention of Liberal Workplace Governance  
in the United States, *c.* 1916-1935

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ABSTRACT:

In an era of mounting attacks on the regulatory legacy of New Deal collective bargaining policy, it is appropriate to ask how the modern forms of labour governance were instituted in the first place. This paper explores the sociopolitical origins of the prohibition against company unionism as a form of workplace governance in the National Labor Relations Act (NLRA) of 1935. A historicist conception of workplace governance is presented, which refers to the contested institutional forms through which employees can exercise voice and aggregate interests on the job in the context of politicised industrial conflicts. Through a survey of the history of U.S. industrial relations from the onset of World War I to the passage of the NLRA, it becomes evident that these institutions vary widely, and so does their relationship to institutions and sociopolitical processes outside the workplace. This survey identifies WWI as a decisive moment in the development of workplace governance in U.S. industry, and suggests that company unionism may have become an enduring feature of American industrial relations at that time but for a series of challenges mounted by the labour movement and by its liberal political allies in the ‘progressive’ reform movement. It is explained how over the interwar years, a unionisation impulse ‘from below’ converged with a liberal reform impulse ‘from above’ to prompt the judicial condemnation of the blatantly anti-union use employers were making of company-dominated workplace governance. The liberal reformers who framed the Wagner Act indeed became increasingly committed to the organic solidarity of autonomous unionism and exclusive representation after they confronted management’s deployment of company unionism as an organisational impediment to workers’ self-organisation and collective action.

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## INTRODUCTION

The political and industrial conflicts of the New Deal era reshaped both the role of the federal government in industrial relations and the character and influence of the labour movement in ways that shaped the essential institutional features of the polity and of industrial capitalism in the United States for the next decades. Between the first New Deal reforms of 1933 and 1940, when industrial mobilisation for World War II became a decisive influence on the development of industrial conflicts, American unions recruited 4.3 million new members, raising union density from less than 12 percent of the non-agricultural labour force to 22 percent—the greatest sustained increase to date. Union membership in manufacturing alone tripled, accounting for two million new members. Union victories in manufacturing were marked by intense industrial conflicts and organisational and tactical innovation, including the formation of the Committee for Industrial Organization (CIO), the sit-down movement of autoworkers, and the launching of ambitious organising drives in the textile and steel industries. The importance of these developments in the history of the development of the institutional system industrial relations in the United States has made the relationship between government policy decisions and the growing labour movement a subject of intense public controversy at the time, and it has continued to generate dispute among social scientists and historians this day.

There is no argument, however, about the basic contours of the institutions of workplace governance that emerged out of the industrial conflicts and political upheavals of the period between the mid-1930s and the late 1940s. If we follow historical institutionalists in using the term workplace governance broadly and neutrally to refer to the institutionalised social processes through which employees can exercise voice and aggregate interests on the job,<sup>1</sup> it is indeed possible to highlight the emergence of a distinctively American institutional regime of workplace governance out of the contingent sociopolitical struggles and processes of class formation of that period. Unlike European systems of industry-wide bargaining, this American regime—which David Brody has aptly called ‘workplace contractualism’—is characterised by the fact that plant-level contracts would regulate working conditions and job practices in detail, leaving factory managers little leeway for improvisation; the shop-floor rights of industrial workers would thus be specified rather than left undefined; the social process of specification of those rights would take the form of collective bargaining and take a contractual form; moreover, the contractual rights so achieved would be enforced through a formal grievance procedure, specified in the contract, with arbitration by a third party normally being the final and binding step. Historical institutionalists tend to agree that the locus of this institutional system of workplace contractualism was the mass-production sector of capitalist industry where, in spite of some degree of variability between industries and companies within industries, it would have been experienced in a rather uniform fashion from roughly the late 1940s to the late 1960s.<sup>2</sup>

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<sup>1</sup> J. Haydu, "Workplace Governance, Class Formation, and the New Institutionalism," *Mobilization*, vol. 3, no. 1 (1998).

<sup>2</sup> D. Brody, "Workplace Contractualism in Comparative Perspective," in *Industrial Democracy in America: The Ambiguous Promise*, ed. Nelson Lichtenstein and Howell John Harris (New York, 1993); J. A. Gross, *The Making of the National Labor Relations Board: A Study in Economics, Politics, and Law* (Albany, 1974); M. Dubofsky, *The State and Labor in Modern America* (Chapel Hill, 1994), chs. 7-8.

The immediate politico-legal origins of this regime of workplace contractualism are to be found in the National Labor Relations Act (NLRA) sponsored by Senator Robert F. Wagner, which was passed by Congress in June 1935 and promptly signed by President Franklin D. Roosevelt the next month. Since the passage of the NLRA, liberal commentators have presented the Wagner Act as a liberal ‘Magna Carta’ for the American labour movement—a legislative initiative designed to put in place a permanent set of liberal institutions situated within the very heart of private enterprise, which offered a ‘voice’ (and sometimes a club) with which to resolve their grievances and organise and mobilise themselves for conflicts in the industrial arena.<sup>3</sup> To determine the will of the workers, the Wagner Act established a National Labor Relations Board (NLRB) which heard employee complaints, determined union jurisdiction, and conducted on-site elections. Whenever a majority of a company’s workers voted for a union to represent them, management had a legal obligation to negotiate with that union alone over wages, hours, and working conditions. This liberal regime of workplace governance not only guaranteed workers the right to select their own union by majority vote, but also liberal rights to strike, boycott, and picket. Just as important, the Wagner Act also enumerated a list of illiberal, ‘unfair’ labour practices by employers, including the blacklisting of union activists, intimidation and firing of workers who sought to join an independent labour organisation, the employment of industrial spies, and the maintenance of company-dominated unions. It is crucial to note that the liberal reformers who framed the Wagner Act were determined to stamp out ‘company unionism’—that is, labour organisations that were set up or dominated by management. To do so, Section 8(2) of the original Wagner Act declared it an ‘unfair’ labour practice for employers “to dominate or interfere with the formation or administration of any labor organization”, and the Act proscribed proportional representation, which would have allowed more than one union to represent workers in a given trade or company. The U.S. government, acting through the NLRB, would ‘certify’ only one worker organisation as the exclusive ‘voice’ the workers in a particular unit, which Senator Wagner and like-minded liberal reformers expected to be companywide in character.<sup>4</sup>

This determination of New Deal-era liberal reformers to proscribe any form of employer involvement in the unionism they sought to foster bears directly on proposals made since the early 1990s to make the labour law more amenable to various kinds of management-driven employee involvement schemes and other ‘flexible’ and ‘team’ production efforts. Such proposals arise from astonishingly diverse sources on the political spectrum. Employer representatives and neoliberal politicians and commentators say that the ban on company unionism must be lifted if American business is to have the power to use employee involvement to retain or attain competitiveness in the world market.<sup>5</sup> Many

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<sup>3</sup> L. Keyserling, "Why the Wagner Act?," in *The Wagner Act: After Ten Years*, ed. Louis G. Silverberg (Washington, D.C., 1945); L. Keyserling, "The Wagner Act: Its Origins and Current Significance," *Washington Law Review*, vol. 29 (1960); I. Bernstein, *The New Deal Collective Bargaining Policy* (Berkeley, 1950); Gross, *The Making of the NLRB*.

<sup>4</sup> §§ 8(2) and 9(a) of the National Labor Relations Act (July 5, 1935), in *Public Laws of the United States—Passed by the Seventy-Fourth Congress, 1935-1936* (Washington, 1936), 449-457; D. Brody, "Section 8(a)(2) and the Origins of the Wagner Act," in *Restoring the Promise of American Labor Law*, ed. Sheldon Friedman, et al. (Ithaca, 1994).

<sup>5</sup> Under the proposed company-funded arrangements, selected workers, foremen, and managers would meet on a periodic basis, therefore avoiding any ‘adversarial’ relationship between employee and their immediate bosses. Today, such ideas are hailed, especially in business and conservative circles, as productivity-enhancing heirs to the idea of ‘industrial democracy’ itself. On the views of employers and neoliberals,

Center-Left commentators also argue that employee involvement is necessary for the creation of ‘high road’, high-skill/high-wage jobs in the United States. They point to a ‘representation gap’ in the American workplace owing to the decline of organised labour, arguing that Section 8 of the Wagner Act needs modification if workers are to explore new channels for exercising ‘voice’ on the job. Most Center-Left commentaries nevertheless accept the employers’ core argument: the Wagner Act’s ban on company unions stands in the way of employee involvement in the development of the forms of employee involvement and labour-management cooperation necessary for the generalisation of the set of cooperative and trusting norms and values that are allegedly to be the key to rising profits, competitiveness, and prosperity.<sup>6</sup>

Trade unionists and those on the Left have had good reasons to worry about this developing ‘reform’ bandwagon. Thus, it turns out that in practice, the ‘flexible’ models of work organisation and workplace governance that are promoted by those who propose to lift the ban on company unionism are not really ‘empowering’ for workers, but rather represent managerial efforts to assert more control over the intensity of work, and over the institutionalised context of workers’ labouring lives.<sup>7</sup> We might therefore want to pause to ask what light the experience of American industrial relations throws on the current enthusiasm for alternative forms of workplace governance. In this respect, it might be worthwhile to remember that, historically, the model of workplace governance envisaged by interwar liberals and their political allies in the labour movement, which is now so much in disfavour, actually represented a triumph of accommodation to the dynamics of power relations in industry as they were then operating. And so—perhaps more to the point—was the ban on company unionism in the NLRA. Wagner and his political allies within the liberal reform and trade-union movements left workplace governance to collective bargaining because they were convinced that it was necessary to sweep out alternative forms of workplace governance such as company unionism, for which no compelling case could be made then.

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consult for instance A. E. Perl, "Employee Involvement Groups: The Outcry over the NLRB's *Electromation* Decision," *Labor Law Journal*, vol. 44 (1993).

<sup>6</sup> For a range of Center-Left programmatic statements for the establishment of state-mandated works councils, see P. C. Weiler, *Governing the Workplace: The Future of Labor and Employment Law* (Cambridge, 1990); R. B. Freeman and J. Rodgers, "A New Deal for Labor," *New York Times*, March 10 1993; W. Gould, *Agenda for Reform: The Future of Employment Relationships and the Law* (Cambridge, 1993); M. Barenberg, "Democracy and Domination in the Law of Workplace Cooperation: From Bureaucratic to Flexible Production," *Columbia Law Review*, vol. 94, no. 3 (1994); J. Rogers, "Reforming U.S. Labor Relations," in *Restoring the Promise of American Labor Law*, ed. Sheldon Friedman, et al. (Ithaca, 1994). Despite considerable theoretical and political differences, these Center-Left contributions all share the view that the legalistic and exacting workplace rule of law established by the Wagner Act must be reformed because it runs counter to flexible and informal approaches to decision making and conflict resolution. Furthermore, they are all based on the social-democratic argument that prosperity is only possible within a particular institutional framework able to reconcile ‘growth’ with social harmony and trust. For sweeping critiques of the underlying assumptions and of the general neglect of the political economy of capitalism, of power and of conflict, see S. Clarke, "The Crisis of Fordism or the Crisis of Social-Democracy?," *Telos*, no. 83 (1990).

<sup>7</sup> This conclusion has been reinforced by a wide range of recent research that questions the benefits of the models for workers, such as P. Fairbrother, *Flexibility at Work: The Challenge for Unions* (London, 1988); C. Yates, P. Stewart, and W. Lewchuk, "Empowerment as a Trojan Horse: New Systems of Work Organization in the North American Automobile Industry," *Economic and Industrial Democracy*, vol. 22, no. 4 (2001).

The Wagner Act's ban against company domination of labour organisations, after all, was linked directly to the right to self-organisation. No one argued at the time that anything else was at issue. A case has been made that, by empowering workers, Wagner and his liberal and labourite advisers thought they were laying the basis for the development of a model of high-trust, cooperative workplace governance.<sup>8</sup> What a one-sided emphasis on this vision risks leaving out, of course, is that American managers themselves never harboured such a vision during the 1930s—from their point of view, workplace governance was a prerogative of the employer, the unilateral exercise of which could only be qualified by power struggles against workers' efforts at self-organisation. Thus, before the passage of New Deal collective bargaining policy, the keyword in organised labour's vocabulary was 'recognition'. It referred to the standing that a union attained on entering contractual relations with an employer. In granting recognition, the employer acknowledged a union's social power—and overtly or not, the sociopolitical process leading to collective bargaining constituted a power struggle. Thanks to the work of the 'new' labour historians, moreover, we know that what was at stake in these power struggles was not only the 'bread and butter' issues of 'pure and simple' unionism, but the institutionalised forms of authority and domination in the workplace, which were *chosen* by specific actor engaged in power struggles rather than created out of necessity or because of the deterministic dictates of bloodless 'efficiency'. The primary function of labour law has been to police this struggle—which it did, prior to the interwar years, with unabashed and ultimately reckless disregard of organised labour's cause and aspirations. Moreover, as the 'new' historians of American labour law have shown, it is only in the course of the development of power struggles specific to capitalist social-property relations that the state acquired, developed, and transformed this particular juridical and administrative function. Thus, it was amidst the politicised industrial conflicts which led to the passage of the NLRA that a keyword of organised labour became 'certification', meaning a union's official standing as exclusive bargaining agent, and the employer's correlative obligation to negotiate with it. This was the specific character of the New Deal's collective bargaining revolution: the American state had undertaken to mediate the equations of power within capitalist industry with a new rule of law, which consisted, of course, of the provisions of the Wagner Act.<sup>9</sup>

As we shall see in the present essay, the authors of the Wagner Act and their political allies in the labour movement had plenty of experience with company efforts to reform workplace governance as a means to divide, manipulate, and 'speed up' their employees. In the course of their experience of the industrial conflicts of the interwar years, liberal reformers and labourites alike came to see management-dominated company unions as nothing more than a corporate effort to thwart and corrupt the authentic 'voice' of workers. In such periods of intensifying industrial conflict as World War I and the first few years of the New Deal, industrialists had sponsored such forms of workplace governance as

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<sup>8</sup> M. Barenberg, "The Political Economy of the Wagner Act: Power, Symbol, and Workplace Cooperation," *Harvard Law Review*, vol. 106 (1993).

<sup>9</sup> For critiques of the 'old' labour history, discussions of the connections between the 'new' labour history and the 'new' labour law history, and useful bibliographical collections on these matters, see notably C. L. Tomlins, "Of the Old Time Entombed: The Resurrection of the American Working Class and the Emerging Critique of American Industrial Relations," *Industrial Relations Law Journal*, vol. 10 (1988); C. L. Tomlins and A. J. King, eds., *Labor Law in America: Historical and Critical Essays* (Baltimore, 1992); W. Holt, "The New American Labor Law History," *Labor History*, vol. 30, no. 2 (1989).

a way to provide an alternative to—and an institutional barrier against—workers’ impulse towards self-organisation through independent unions. Union leaders and the liberal reformers who were the principal framers of the Wagner Act militated for a legal ban on company-sponsored unions because they convincingly contended that such forms of workplace governance merely perpetuated unjustifiable expressions of managerial power and exacerbated divisions within the workforce. As some key historical institutionalist accounts of the development of workplace governance have stressed, they *learned* that company unionism “could never provide a sound basis for the kind of vibrant shop representation and collective bargaining necessary to propagate the union idea and alter management behaviour”.<sup>10</sup>

In its heyday before the passage of the Wagner Act, only eccentric Taylorites thought company unionism to be of any relevance to facilitate employee’s efforts to exercise voice and aggregate interests on the job.<sup>11</sup> Now that this view is widespread, we may gain from revisiting the interwar history of conflicts over the institutions of workplace governance. Some social scientists doubtless would take a more elevated approach, but it remains extremely useful to think in terms of that commonplace artefact of historical sociology—the survey, which reads the past less as a cautionary tale than for what it tells us about the ways specific social actors in their historical context fashioned institutional responses to the problems now at stake. The place to seek the reasons for the path actually taken by the institutions of workplace governance is, to a large extent, with the demise of the real historical alternatives which arose in the course of struggles for power in American industry. To discover these alternative forms of labour governance, it is not necessary to concoct ‘counterfactual’ scenarios or dream of ‘what might have been’. This may be achieved by using the analytical tools of historical sociology.

My method is indeed, in the fashion of the historical sociologist, to follow a basic chronological course, stopping along the way at major junctures where events seem to have been determinant in the path of institutionalisation that led to the legal ban on company unionism. Of course, this is a historical method that makes sense only when a time frame is fixed.<sup>12</sup> So take two points in time—1916 and 1935. Separated by half a generation, it is hard to object that these points are very close together on continuum of time—so close together, in fact, that from the distant perspective adopted by those who are busy mooted post-Fordist futures, they appear as one moment of ‘despotic Taylorism’. Within this single ‘moment’, however, it is possible to capture actually-existing institutional alternatives to the regime of collective bargaining that New Deal labour policy sought to establish. The leading alternatives were the ‘open shop’ regime of unilateral workplace governance that had consolidated since the beginning of the twentieth century, and the ‘shop committees’ and company unionism of that arose in the era of World War I. Subject during the interwar

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<sup>10</sup> N. Lichtenstein, "Reconstructing the 1930s," in *State of the Union: A Century of American Labor* (Princeton, 2002), 38 (quote); Brody, "Section 8a(2)."; Dubofsky, *The State and Labor in Modern America*, 119-128; S. Jacoby, *Modern Manors: Welfare Capitalism Since the New Deal* (Princeton, N.J., 1997), 57-94, 143-192.

<sup>11</sup> S. Jacoby, "Union-Management Cooperation in the United States: Lessons from the 1920s," *Industrial and Labor Relations Review*, vol. 37 (1983); C. E. Pabon, "Regulating Capitalism: The Taylor Society and Political Economy in the Interwar Period" (Ph.D. dissertation, University of Massachusetts, 1992).

<sup>12</sup> L. J. Griffin, "Temporalities, Events, and Explanation in Historical Sociology," *Sociological Methods and Research*, vol. 20, no. 4 (1992); W. H. J. Sewell, "Three Temporalities: Toward an Eventful Sociology," in *The Historical Turn in the Human Sciences*, ed. Terence McDonald (Ann Arbor, 1996).

years to more or less the same historical conditions, these distinct regimes of workplace governance may be interpreted both ‘from below’, as different forms of institutionalisation of power relations in America’s capitalist industrial relations, or ‘from above’, as different solutions to the same ‘labour problem’. Putting both procedures to the test of events, this study shines a narrow beam of light on the historical emergence of the New Deal regime of collective bargaining, taking as its central argument that what was at stake in the process of its institutionalisation was a systematic choice, amid concrete industrial and political power struggles, between rival forms of workplace governance.

#### THE POLITICS OF WORKPLACE GOVERNANCE IN WARTIME, 1917-1918

For our purposes, it is possible to begin an investigation of the contentious politics of workplace governance with the United States’ entry and participation in World War I in 1917 and 1918, when the cornerstone of federal labour policy became the shop committee. From the point of view of liberals within the Wilson administration and among Democratic lawmakers and federal functionaries, the shop committee resolved an otherwise intractable dilemma for the wartime mobilisation efforts. It was essential for the American war effort that both industrial workers and their employers be on board. Industrial workers and employers made conflicting demands, however.

The price of wartime cooperation by the American labour movement was public protection for the right of workers to organise in trade unions. Since 1912, there had developed within the American labour movement an impetus toward the formation of all-grades unionism, industrial unionism, and various forms of combined action or federation on the part of the different occupations, which was especially strong on the railways (where it stretched back to 1877), in engineering, in men’s clothing, in the garment industry, in steel, and in meat packing. Amidst the rise of this ‘new’ unionism, the outbreak of World War I in Europe led to booming demand in American industry’s product markets and ever-tightening labour markets. In this context, masses of workers sharply raised their material expectations and demands. In the summer of 1915, the munitions strikes swept out of New England across the whole northeastern part of the country. Bridgeport, Connecticut, and the Westinghouse plants in the East Pittsburgh district were the center of intense struggles involving the skilled and craft workers and semi- and unskilled labourers and operatives (many of the non-skilled being ‘new’ immigrants). In 1915 and 1916 (the latter years setting a record for the number of workers on strike), ‘munitions’ strikers were joined by machinists, textile workers, and clothing operatives. The years between 1916 and 1922 were to see between 1.5 and 4 million workers strike each year in “the most continuous strike wave in the history of the United States”—the ratio of strikers to non-agricultural workers being more than double those in the periods of intense labour unrest 1886-1887 and 1933-1934. In this period of mass unrest, most of the major strikes and organising campaigns involved the key issue of union recognition. To labour activists and employers alike, the term ‘union recognition’ meant granting the union the exclusive right to speak and bargain for workers. Striking workers and union activists were convinced that any concession they might pry from an employer under favourable wartime conditions could be rescinded in the absence of permanent organisation. Hence, the one demand that wartime strikers often deemed non-negotiable was precisely the one that the employers resisted most





fiercely: union recognition and union security, backed by the administrative powers of the federal government.<sup>13</sup>

The price of cooperation in wartime mobilisation by non-union employers was, on the contrary, the maintenance of the 'open shop', that is, non-union and unilateral workplace governance. In mass-production industries, in particular, employers had historically resisted union recognition aggressively. At the root of their anti-unionism lay their determination to control their employees and their work practices free of restrictions. Late nineteenth-century changes in production methods and the scale of capitalist industry had both fuelled labour unrest and pitted management prerogatives against 'restrictive' craft customs. It was largely against the background of the ensuing battles over workplace control that a recognisably modern 'labour problem'—including a frank acknowledgment of separate and recurrently opposed interests of labour and capital—became an object of widespread debate and alarm among employers and political and intellectual elites.<sup>14</sup> By the late 1890s, national unions had begun to acquire sufficient centralised administrative and disciplinary capacity to be able to offer employers routinised accommodations in exchange for uniform wages and conditions, and trade agreements with provisions to regularise relations between employers and unions and subject workplace conflicts to the rule of law were proposed as an alternative to open shops. With the victory of open shop workplace governance after 1904, however, there consolidated within the business community a growing conviction that union recognition and an employer's 'right to manage' could not be reconciled, and employers moved to develop unilateral mechanisms for workplace governance to take the place of craft traditions. During the first two decades of the twentieth century, the autonomy which skilled craftsmen had customarily exercised in the direction of their own work and that of their helpers thus came under attack as the owners and managers of large enterprises developed more direct and systematic controls over the production side of their firms.<sup>15</sup> Beyond the walls of the workplace, too, the employers launched an organised movement in defence of the non-unionised workplace. Their collective defence of open shop workplace governance did more than deny workers an independent collective voice; it also led to the developed unilateral mechanisms to take the place of craft traditions, and expressed broader efforts to insulate workplace labour relations from unions in order to discourage ties between employees and community-wide labour institutions capable of mobilising broad working-class identities and action. The

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<sup>13</sup> D. Montgomery, "Immigrants, Industrial Unions, and Social Reconstruction in the United States, 1916-1923," *Labour/Le Travail*, vol. 13 (1983), 104 (quote).

<sup>14</sup> Cf. J. Swinton et al., *Striking for Life: Labor's Side of the Labor Question* (New York, 1894); J. R. Commons, *Trade Unionism and Labor Problems* (Boston, 1905); R. H. Wiebe, *The Search for Order, 1877-1920* (New York, 1967); J. Haydu, "Counter-Action Frames: Employer Repertoires and the Union Menace in the Late Nineteenth Century," *Social Problems*, vol. 46, no. 3 (1999).

<sup>15</sup> Cf. L. D. Ullman, *The Rise of the National Trade Union* (Cambridge, Mass., 1955), 190-200, 519-535; D. Nelson, *Managers and Workers: The Origins of the New Factory System in the United States, 1880-1920* (Madison, 1975); D. Montgomery, *Workers' Control in America: Studies in the History of Work, Technology and Labor Struggles* (Cambridge, 1979), esp. ch. 5; D. Montgomery, *The Fall of the House of Labor: The Workplace, the State, and American Labor Activism, 1890-1925* (Cambridge, 1987), ch. 5; J. Haydu, *Between Craft and Class: Skilled Workers and Factory Politics in Great Britain and the United States, 1890-1922* (Berkeley, 1988), ch. 2.



employers' defence of the open shop, in effect, was one of several strategies they used to balkanise industrial conflicts.<sup>16</sup>

Against the backdrop of a consolidating open shop regime, World War I precipitated intense conflicts in American mass-production industries as unions, empowered by economic boom and government intervention, demanded recognition and supported more broadly based worker mobilisation. As in Britain, workers combined strong patriotic sentiments with determined efforts to take advantage of the tight labour market and keep pace with inflation. In 1917, in fact, strikes reached a record level, and workdays lost surpassed the record of 1912-1913 and 1915-1916.<sup>17</sup> From the point of view of liberals in the Wilson administration, however, the swelling demands of workers and the intransigence of open-shop employers could temporarily be reconciled through innovative institutional reforms because, in principle at any rate, the employers' open-shop policy did not discriminate against union members but only stood against recognising or dealing with trade unions—a position employers justified as an attempt to safeguard of the 'liberty to work' of non-unionised workers. For liberals within the Wilson administration, the institution of the shop committee proved an elegant solution to the 'labour question', which cut right to the core of the wartime dilemma: Workers would get representation, but on a non-union basis that could be reconciled—it was hoped—with the prevailing managerial and judicial traditions.

Since early in the course of the development of industrial capitalism in the United States, 'liberty of contract' had been the ruling employment principle in American labour law, applying even to agreements for which the condition of the job was not joining a union or going on strike.<sup>18</sup> As an answer to the wartime epidemic of strikes and industrial conflict, however, the U.S. Commission on Industrial Relations recommended by 1915 the adoption of a collective bargaining law. "Political freedom", read the 1915 Report of the U.S. Commission on Industrial Relations, "can exist only where there is industrial freedom; political democracy only where there is industrial democracy".<sup>19</sup> This call for 'democratic' reforms in industrial relations was based on a simplistic syllogism: America is a liberal democracy; but industrial America is not; therefore, industry must be democratised. Yet, the language provoked much controversy. Indeed, a majority of commissioners refused to sign the 1915 Report. But what did 'industrial democracy' mean practically? For most liberal reformers, who were not only disquieted by mass labour unrest but also aware of the growing prominence of organised labour in Democratic politics—and Wilson's re-election

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<sup>16</sup> B. D. Palmer, "Class, Conception and Conflict: The Thrust of Efficiency, Managerial View of Labor and the Working Class Rebellion, 1903-1922," *Review of Radical Political Economics*, vol. 7, no. 2 (1975); B. Ramirez, *When Workers Fight: The Politics of Industrial Relations in the Progressive Era, 1898-1916* (Westport, Conn., 1978), ch. 7; D. M. Gordon, R. Edwards, and M. Reich, *Segmented Work, Divided Workers: The Historical Transformation of Labour in the United States* (New York, 1982), 127-162; L. J. Griffin, M. E. Wallace, and B. A. Rubin, "Capitalist Resistance to the Organization of Labor before the New Deal: Why? How? Success?," *American Sociological Review*, vol. 51 (1986).

<sup>17</sup> Montgomery, *The Fall of the House of Labor*, 370.

<sup>18</sup> Cf. W. E. Forbath, *Law and the Shaping of the American Labor Movement* (Cambridge, 1991); D. Montgomery, *Citizen Worker: The Experience of Workers in the United States with Democracy and the Free Market during the Nineteenth Century* (Cambridge, 1993); D. Brody, "Free Labor, Law, and American Trade Unionism," in *The Terms of Labor: Slavery, Serfdom, and Free Labor*, ed. Stanley L. Engerman (Stanford, 1999).

<sup>19</sup> U.S. Commission on Industrial Relations, *Final Report of the Commission on Industrial Relations* (Washington, D.C., 1916), 17-18.

in 1916—industrial democracy mainly meant granting organised labour the rights to organise and bargain collectively that the AFL had long since been requesting. At the top of the ‘evils’ of American industrial life liberal reformers placed the ‘workplace autocracy’ condemned by the Hoxie Report on scientific management, by which they meant the almost unfettered authority employers enjoyed in administering whatever personnel policies were deemed appropriate with regard to hiring, firing, pay, discipline, and work speed. Employment was ‘at will’ and workers could be summarily fired for any reason. Formal grievance systems were nearly nonexistent outside unionised establishments. Since employees had little avenue for redress of grievances, quitting, striking and physical violence were thought to be the principal means of resolving disputes. Liberals argued that the endemic industrial conflicts of the day were caused by the ‘opportunism’ present on both sides of the wage relationship, but that it impacted employees with far more harm than employers as the former were the more ‘dependent’ and ‘vulnerable’ party to the labour contract. They believed that this imbalance of ‘bargaining power’ between labour and capital—and the relationships of *domination* in which it translated in practice within firms—required some correction, and justified the association of workers in properly regulated trade unions in order to achieve a countervailing power.<sup>20</sup>

Just as liberal reformers were proposing to remedy the spreading epidemic of strikes and industrial violence through the adoption of a collective bargaining law, wartime full employment, inflation, business attacks on unions, and worker opposition to piece rates and time studies created conditions which contemporary observers likened to a situation of ‘industrial chaos’. By late 1917, American workers “had broken all records for work stoppages, threatening the entire war effort” and prompting federal intervention in industrial relations.<sup>21</sup> It was in this context that the federal state’s involvement in industrial relations reached hitherto unprecedented heights. The Justice Department quickly moved to eliminate from contention one interpretation of the meaning of industrial democracy—that which suggested collective ownership of the means of production—by raiding the offices of the radical Industrial Workers of the World (IWW) and indicting dozens of its leaders. The massive strike wave of 1917, however, brought home to federal state officials the “inadequacy of the existent agencies for dealing with industrial strife” and pushed the Wilson administration toward important breakthroughs in the protection of work and employment standards and of trade union rights.<sup>22</sup>

With the creation of the National War Labor Board (NWLB) in April 1918, the shop committee became the official federal industrial-relations policy. Instituted as an

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<sup>20</sup> J. R. Commons, *Industrial Goodwill* (New York, 1919); D. Lescoghier, *The Labor Market* (New York, 1919); S. H. Slichter, *The Turnover of Factory Labor* (New York, 1919); J. Fitch, *Causes of Industrial Unrest* (New York, 1924); C. Nyland, "Taylorism, John R. Commons, and the Hoxie Report," *Journal of Economic Issues*, vol. 30, no. 4 (1996).

<sup>21</sup> J. A. McCartin, *Labor's Great War: The Struggle for Industrial Democracy and the Origins of Modern American Labor Relations, 1912-1921* (Chapel Hill, 1997), 63 (quote); W. J. Lauck and E. Sydenstricker, *Conditions of Labor in American Industries* (New York, 1917), esp. 183, 195, 249, 360, 376; D. Montgomery, "New Tendencies in Union Struggles in Europe and the United States, 1916-1922," in *Work, Community, and Power: The Experience of Labor in Europe and America, 1900-1925*, ed. James E. Cronin and Carmen Sirianni (Philadelphia, 1983), 97-109.

<sup>22</sup> D. L. Jones, "Organized Labor and the Wilson Administration" (Ph.D. dissertation, Cornell University, 1954), 346 (quote); Montgomery, *Workers' Control in America*, 95-98; Montgomery, *The Fall of the House of Labor*, 373; V. J. Conner, *The National War Labor Board: Stability, Social Justice, and the Voluntary State* (Chapel Hill, 1983), 18-34.

industrial court of sorts, the NWLB was chaired by William Howard Taft and labour attorney Frank P. Walsh and composed of an equal number of employers and AFL unionists. The members of the tripartite board adopted a set of liberal reformist principles to set a benchmark in settling wartime labour disputes, including the right to join a union, the duty to bargain collectively, and the impropriety of several of anti-union tactics prized by employers. As a concession to open shop employers, the NWLB did not require them to recognise unions if they had successfully resisted doing so prior to the war. In such cases, collective bargaining was to be accomplished through worker-elected shop committees. In implementing this policy, the NWLB fashioned a new body of rules that called, among other things, for federal supervision of elections, balloting off company premises (despite employer objections) and plant-wide jurisdictions (despite objections by craft unions). The installation of shop committees may have been the most important policy the NWLB pursued, but close attention to its founding reveals there was no general mandate. The NWLB would act on a case-by-case basis where industrial conflicts threatened war production so that, aside from certain industries such as railroads and mining that came under broad federal administration, shop elections would be held at only about 125 firms by the Armistice, although these included some of the biggest employers in the United States.<sup>23</sup>

In promoting its program of reforms, the NWLB helped popularise the slogan industrial democracy. In particular, as McCartin argues, the interventions of government agencies “helped legitimize three things that resonated deeply among working people: their demand for a rule of law in the workplace, their call for a voice in determining the conditions of their work, and their desire to claim their rights as citizens through their labor”. NWLB-supported shop committees thus “contributed directly to the surging demand for democracy that marked so much political discourse during the era of the war”. Walsh precociously proclaimed that the NWLB defence of the workers’ right to organise and bargain collectively was creating “a new deal for American labor”. Certainly, historical evidence about the continuing realities of control in industry is inconsistent with the idealised conception of the impact of unionism that the notion of industrial democracy came to express in the vernacular of liberal reformers like Walsh. Yet, McCartin and Haydu provide much evidence that in some industries at least, the wartime gains of unions affected the impact of managerial prerogative on workers. Many employers soon felt frustrated because under wartime regulations, “blunt resistance to workplace representation was difficult to sustain [...]”. Intervening in over one thousand strikes before the Armistice and applying its guiding principles on a broad basis, the NWLB’s activity facilitated workers’ efforts to curb employers’ prerogatives by controlling some of the most arbitrary aspects of their exercise.<sup>24</sup>


Under the protection of the board, union membership grew by nearly one million by the war’s end. This was an achievement which was understandably valued by trade

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<sup>23</sup> A. M. Bing, *Wartime Strikes and Their Adjustment* (New York, 1921); McCartin, *Labor's Great War*, 90-93; J. Haydu, *Making American Industry Safe for Democracy: Comparative Perspectives on the State and Employee Representation in the Era of World War I* (Urbana, 1997), ch. 2.

<sup>24</sup> Walsh is quoted from Conner, *The National War Labor Board*, 33; J. A. McCartin, "An American Feeling': Workers, Managers, and the Struggle for Industrial Democracy in the World War I Era," in *Industrial Democracy in America: The Ambiguous Promise*, ed. Nelson Lichtenstein and Howell John Harris (Cambridge, 1993); McCartin, *Labor's Great War*, 95, 102, 103 (quotes); Haydu, *Making American Industry Safe for Democracy*, ch. 3-5.

unionists with experience of the pre-war state of industrial affairs, and it did not take civil servants like Franklin Delano Roosevelt much to bring organised labour on board of liberal reforms of workplace governance. In fact, AFL president Samuel Gompers, in conjunction with liberal reformer Felix Frankfurter, had already broached the idea of establishing shop committees before the Advisory Commission of the Council on National Defense. The AFL's official endorsement of shop committees was decidedly ambivalent, however, predicated on "the basic principle" that workers had the right to organise and the conviction that while shop committees mattered, collective bargaining was "the foundation of all effective [and] just labor administration".<sup>25</sup> What overrode the suspicions of U.S. organised labour vis-à-vis shop committees was the *absence* of trade unions from much of American industry, which in turn was a result of the effective resistance of the judiciary and employers to workers' efforts at self-organisation. For American workers, however, favourable wartime conditions created by industrial mobilisation offered the opportunity to make up that deficit, sparking the surging union activity and organising strikes that threatened military production. Amid these organising struggles, it quickly became clear to rank-and-file militants that the shop committee could be made to work for the unions, whose slates everywhere swept the NLRB-supervised elections of employee representatives.<sup>26</sup>

From the viewpoint of employers and managers, authority within the workplace was under threat of being considerably circumscribed by wartime reforms and workers' mobilisation. It was not to be expected, of course, that they would roll over and play dead. The more belligerent among them resisted NLRB intervention, preferring in few instances government seizure to compliance (as with Smith & Wesson Co.). Yet, institutional innovation and institutional emulation at the level of workplace governance could be an alternative to severely sanctioned resistance to NLRB decisions. A new strategic weapon had indeed come to hand in the employers' anti-union repertoire, which was peculiarly well adapted to the purpose of resisting 'outside' interference with the right to manage. This was company unionism in the form of the 'employee representation plan', which John D. Rockefeller, Jr.,  been promoting ever since a bloody strike at the coal mines of his Colorado Fuel and Iron Company in 1914—the famous 'Ludlow massacre'—had exposed him to public scrutiny. Rockefeller's particular innovation, distinguishing his scheme of company unionism from earlier ones, was that it called for *joint* councils, with management and labour accorded equal votes and a majority required for any action—a transparent management veto, of course. The details varied, but the small print invariably left the final word to management and simultaneously discouraged any independent voice by the workers' representatives. Such was the advantage of the Rockefeller scheme in the long run. The immediate attraction of the 'employee representations plan', which led several embattled open-shop employers to emulate Rockefeller's managerial practices during the war, was that the employer stage-managed the entire development of workplace governance, initiating the representation plan, overseeing the nomination and balloting, and

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<sup>25</sup> J. R. Commons, ed., *Trade Unionism and Labor Problems*, 2nd series ed. (Boston, 1921), 345-346 (quote); H. M. Gitelman, *The Legacy of the Ludlow Massacre: A Chapter in American Industrial Relations* (Philadelphia, 1988), 224-225; J. Greene, *Pure and Simple Politics: The American Federation of Labor and Political Activism, 1881-1917* (New York, 1998).

<sup>26</sup> McCartin has shown that in several cases the shop committee became, *de facto*, a union vehicle or, from perspective of employers, "mere camouflage" for the closed shop. McCartin, "'An American Feeling,'" 75; McCartin, *Labor's Great War*, ch. 5-6, quoted on p. 103.

creating the right atmosphere. The ‘employee representation plan’ (ERP), by providing for shop floor elections, gave workers just what the NLRB’s shop committees did, but in a manner more to the liking of employers.<sup>27</sup>

In the midst of the institutionalisation of company unionism, the Armistice suddenly arrived, and with it, an abrupt end to the federal state’s role in the shop-committee experiment in U.S. industry. Mass labour unrest did not simply subside with the war’s end. The Seattle General strike of 1919, the national steel strike of the same year, the miners’ and railway switchmen’ strikes of 1920, running disputes in construction, textiles and clothing, and the attempts to unionise meatpacking were all illustrative of the magnitude and persistence of industrial conflict. The politico-institutional context in which these conflicts developed, however, was fundamentally transformed as those wartime labour agencies that had promoted ‘industrial democracy’ “collapsed”, and “by the end of 1920, despair reigned among those who had recently felt that the democratization of industry was imminent”.<sup>28</sup> The reasons for this precipitous retreat of federal agencies from intervention in employee representation are complex, in part merely reflective of a larger conservative reaction against wartime control, an in part a failure of nerve by the liberals in the Wilson administration, who were gambling everything on peacemaking in Versailles. Yet it also needs to be remembered that the entire wartime industrial-relations administration had been created by emergency presidential initiative, and hence lacked a solid legal basis. The hopes of liberal reformers and unionists that the NLRB would be put upon a more secure legal footing after the war were quickly dispelled by the 1918 congressional election, during which conservative legislators bent on rapidly dismantling the wartime controls swept into office. By then, employers’ hostility to wartime interference with their ‘right to manage’ had crystallised and coalesced into a powerful lobby for the deregulation of industrial relations.

In the case of labour policy, at least formal assent by the parties always had been part of the equation. The NLRB was constituted equally of employer members (chosen by the National Industrial Conference Board) and labour members (chosen by the AFL), with co-chairs selected by each side. During the war industry’s co-chair William Howard Taft, who had a strong anti-union record on the bench, astonished everyone by robustly defending labour’s wartime rights. In general, however, the employers’ representatives were already restive before the Armistice, and after the Versailles Treaty they were bent on sabotaging the board. The labour co-chair, Frank P. Walsh, made one desperate effort to save it, proposing that the huge backlog of cases be settled with the automatic establishment of shop committees, with the board transforming itself into a court of appeals to resolve impasses. When the employer members voted Walsh down, he resigned. In any event, the NLRB no longer had the power to enforce even the decisions it had made. As employers’ defiance stiffened, the board subsided into impotence and soon dissolved. The

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<sup>27</sup> The real brains behind the ‘employee representation plan’ was Canadian industrial-relations ‘expert’ and future Prime Minister W. L. Mackenzie King, who in his capacity as Rockefeller’s advisor moved around the U.S. during World War I dispensing advice to big, visible employers like Bethlehem Steel, General Electric, Youngstown Sheet and Tube, and International Harvester. On the development of Company unionism in this period, see in particular Montgomery, *The Fall of the House of Labor*, ch. 9; McCartin, *Labor’s Great War*, 28, 54, 212, 214-215; H. M. Gitelman, “Being of Two Minds: American Employers Confront the Labor Problem, 1915-1919,” *Labor History*, vol. 25, no. 2 (1984), 214-216; D. Nelson, “The Company Union Movement: A Reexamination,” *Business History Review*, vol. 56 (1982).

<sup>28</sup> McCartin, *Labor’s Great War*, 175, 198.



Wilson administration also pulled its support for pro-labour liberal reforms, concluding that postwar union demands would fuel spiralling inflation. The White House set itself against postwar wage demands, with Wilson no longer attacking ‘autocratic’ employers but targeting ‘irresponsible’ unionists and using the authority of the government to block the unions’ wage demands.<sup>29</sup>

#### INDUSTRIAL AND POLITICAL CONFLICTS OVER WORKPLACE GOVERNANCE, 1919

There was nonetheless no return to either industrial peace or the pre-War status quo. The United States in 1919 experienced more extensive strike activity than in any other year in the nation’s history, with over 20 percent of all employed workers involved at one time or another in work stoppages. In response to this postwar crisis in industrial relations, Woodrow Wilson called a National Industrial Conference, to which representatives of management, labour, and the public were invited to develop a consensus as to the best means of achieving more harmonious industrial relations. These deliberations, which began on October 6, 1919, took place while the greatest strike for union recognition in the country’s history, the national steel strike, raged. After the collapse of the national conference Woodrow Wilson called in a corporatist attempt to find a common ground between capital and labour, liberal reformer Bernard Baruch assured the president that, despite irreconcilable differences, the participants “did not, at any time, reject the principle of the right of workers to organize and bargain collectively with their employers”.<sup>30</sup> The exact form of workplace governance, however, remained an object of contentious politics, and the stalemate that rapidly became evident at this level explains the failure of postwar attempts at corporatist intermediation in the United States. During the war, many American employers had already been forced to devise means to make the operation of management authority less arbitrary and to grant formal representational rights to mobilised workers. The more ‘progressive’ employers had accepted the fact that the more ‘autocratic’ management methods of the past had to give way to a new form of workplace governance—but one well controlled by the mechanisms which company unionism was putting in effect. What was not yet settled in the immediate aftermath of the war was what place workplace structures of representation might have in the schema of U.S. industrial relations, and in particular, how independent a voice would be afforded to—or seized by—workers.

What if workers demanded union representation? Employers remained intent on erecting barriers between workplace labour relations and community-wide union institutions—a goal company unionism helped to achieve in the face of workers’ efforts at self-organisation. This anti-union impulse behind the employers’ representation plans labour leaders understood all too well, but in early 1919 they could not be sure, any more than could management, where employee representation might lead. Between 1917 and 1919, and despite the development of company unions, the membership and bargaining power of AFL unions had been increased by favourable federal legislation, high levels of

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<sup>29</sup> M. Dubofsky, "Abortive Reform: The Wilson Administration and Organized Labor, 1913-1920," in *Work, Community, and Power: The Experience of Labor in Europe and America, 1900-1925*, ed. James E. Cronin and Carmen Sirianni (Philadelphia, 1983), 214; McCartin, "An American Feeling," 79; Haydu, *Making American Industry Safe for Democracy*, 77-84.

<sup>30</sup> Baruch is quoted from D. Brody, *Labor in Crisis: The Steel Strike of 1919*, 2nd ed. (Urbana, 1987), 127.



economic activity, and worker militancy. In this context, 'industrial democracy' had provided an attractive organising principle for unionists as long as the NWLB continued to play an active mediating role in labour conflicts, since under such conditions militants could exploit the stance of the government to advance a brand of confrontational factory politics under this label. During the war, as McCartin and Montgomery explain, union militants had in effect laboured in an ideological space that Wilsonian labour reforms had inadvertently created. With demobilisation, however, the ideological terrain upon which workers had begun to organise was being radically constricted, and unionists revised their view of company unionism. At its June 1919 convention, the AFL finally took a stand against Company unionism, which it defined specifically as "systems of collective bargaining akin to the Rockefeller plan". The resolution that was adopted contained an incisive and uncompromising conclusion. These plans, which were by now firmly designated by the damning term "company unions", were "a snare and a delusion", and unionists should "have nothing to do with them". The AFL demanded "the right to collective bargaining through the only kind of organization fitted for this purpose—the trade-union".<sup>31</sup>

The sponsor of this resolution against company unions was the National Committee for Organizing Iron and Steel Workers. This is a fact of cardinal importance, which marks the manner in which the model of workplace governance seen in the employee representation movement, which used the forms and language of industrial democracy for strictly managerial purposes, was contested by workers in the course of their struggle for union recognition and collective bargaining. The opposition of AFL unionists to management-initiated employee representation programs came mainly from the fact that the horizons of company unionism were restricted by the institutionalised interests of the existing corporate order. They depended strictly on managerial initiative and commitment for their existence, and if in theory they did not exclude trade unions totally or for all times, they certainly did not grant workers' independent organisations the status they claimed of being the *only* vehicle for the genuine democratisation of industry.<sup>32</sup> Mike Davis is thus correct to argue that collective bargaining and the regime of welfare capitalism in which company unions became embedded in the mass-production sector were opposed institutional strategies to respond to the larger problem of "regulating the wage relation while reinforcing coercion with consensus".<sup>33</sup>

As David Brody has vividly recounted, the first big clash between the rival models of workplace governance occurred when the AFL's steel drive met a company union at Midvale's giant Cambria works in Johnstown, Pennsylvania. Few industrial workers had laboured in an environment more impervious to their expression of a collective voice than steel workers. In the early decades of the twentieth century, the steel industry indeed stood as the great bastion of the open shop model of workplace governance: it was highly

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<sup>31</sup> The AFL resolution is quoted from L. L. Lorwin and J. A. Flexner, *The American Federation of Labor: History, Policies, and Prospects* (New York, 1970, orig. 1933), 174-175. See also McCartin, "An American Feeling," 78; D. Montgomery, "Industrial Democracy or Democracy in Industry? The Theory and Practice of the Labor Movement, 1870-1925," in *Industrial Democracy in America: The Ambiguous Promise*, ed. Nelson Lichtenstein and Howell John Harris (Cambridge, 1993), 40-41.

<sup>32</sup> H. J. Harris, "Industrial Democracy and Liberal Capitalism, 1890-1925," in *Industrial Democracy in America: The Ambiguous Promise*, ed. Nelson Lichtenstein and Howell John Harris (Cambridge, 1993), 62.

<sup>33</sup> M. Davis, *Prisoners of the American Dream: Politics and the Economy in the History of the US Working Class* (London, 1986), 108.

concentrated, well financed, its owners were implacably against collective bargaining, and they boasted about their programs of welfare capitalism. The latter programs sought to subsume every aspect of the reproduction of labour-power—including the management of the worker's household budget—under a system of authoritarian productivism. For a long time the labour movement was hard put to respond, hobbled as it was by a craft structure at odds with the industry's continuous-flow technology and by nativist disdain for the mass of immigrant workers labouring 12-hour days in the steel mills. Only late in the war did the AFL bestir itself, prompted by its unexpected triumph in meatpacking—another archetypal mass-production industry—to establish on August 1, 1918, the National Committee for Organizing Iron and Steel Workers.<sup>34</sup>

Steel was also an industry in which, even before the onset of the AFL-sponsored national organising drive, company unionism had made considerable inroads. The most militant and strategically placed of war workers were the metal crafts in arms-producing factories—Remington, Smith & Wesson, General Electric, Bethlehem Steel, and Midvale Steel & Ordnance. The last two firms also operated basic steel plants and were the largest 'independents' in the industry. Both had been hit by the machinists' wartime strikes in the spring of 1918, and like other firms threatened by NWLB intervention, both invoked Rockefeller's company unionism. Bethlehem's manoeuvres to institute an ERP failed, however, and management drudgingly accepted NWLB-supervised elections at its main South Bethlehem works. Midvale fended the NWLB off and installed an ERP, which in early 1919 won a stamp of approval from the expiring NWLB. George Soule reports that despite their scepticism vis-à-vis the company union, union organisers decided "to give it a fair trial by campaigning for and electing as representatives union members who would demand the 8-hour day".<sup>35</sup> A number did win in the January 1919 balloting—only to be fired wholesale along with hundreds of other unionists the next month when the company cut back sharply production. After the union presence ended at Cambria, the representation plan turned farcical, treated mainly as a soft touch by elected representatives, many of them foremen. At a cushy Atlantic City Conference in August of 1919, employee representatives rewarded the company by denouncing demands for wage increases and proposing harder work as a remedy for the high cost of living. As a result, steelworkers everywhere began to scorn company unionism. Thus, at a rank-and-file conference in Pittsburgh on May 26 intended to air grievances, the company unions were sharply attacked from the floor. The direct consequence came a few weeks later, with the National Committee resolution at the AFL convention. From then on, the repudiation of company unionism became an imperative of workers involved in the iron and steel organising drive. The proof of their resolve was in the turnout when the strike started at Cambria on September 22, 1919. International Harvester's Wisconsin works also shut down on September 22. Even at Bethlehem, where the shop-committee system of wartime still survived, the workers overrode the advice of leadership and joined the strike after a week, demanding full union recognition.<sup>36</sup>

It is important to understand that it was not the 1919 steel strike itself, but the failure of desperate political efforts to end it through a corporatist settlement that finally

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<sup>34</sup> The standard account of these events remains Brody, *Labor in Crisis*.

<sup>35</sup> George Soule, who investigated the situation at Cambria, is quoted from G. G. Eggert, *Steelmasters and Labor Reforms, 1886-1923* (Pittsburgh, 1981), 129.

<sup>36</sup> *Ibid.*, 126-128; Brody, *Labor in Crisis*, 112-113.

settled the question of company unionism. The occasion, as mentioned earlier, was the tripartite National Industrial Conference, called into being by President Wilson to forge a labour policy for the postwar years. The labour delegation, regarding the National Industrial Conference as the only hope for the steel strike, immediately proposed that an arbitration committee be appointed, pending whose decision the steelworkers would go back to work. A second resolution asserted, among other principles, the right of wage earners to organise and bargain collectively—which was, of course, the core issue in the steel strike. The employer group had little stomach for intervening, and given that any action required a majority vote by all three delegations, the conference would not do so without the assent of the steel industry, which Judge Elbert Gary—a ‘public’ delegate despite his position as head of the U.S. Steel Corporation—finally declined to grant. In the meantime, however, a great debate over the meaning of workers’ rights had taken center stage. The debate began with a demand by the public delegation that the open shop—“the right of any wage earner to refrain from joining any organization or to deal directly with his employer if he chooses”—be endorsed by the National Industrial Conference. The labour group swallowed hard and agreed, in exchange for an explicit recognition of “the right of wage earners to organize in trade and labor unions, to bargain collectively, [and] to be represented by representatives of their own choosing [...]”. Initially, the public delegation accepted this formulation, and Rockefeller—another ‘public’ member—spoke in its favour. Thus, as Brandeis later noted, the labour, employer and ‘public’ delegations all expressed support for the general principle of worker organisation. The public and labour delegations jointly offered a resolution which affirmed “the right of wage earners to organize in trade and labour unions, to bargain collectively”, and “to be represented by representatives of their own choosing”.<sup>37</sup>

Rockefeller’s acceptance of the right of employees to representation, however, used the wartime rhetoric of industrial democracy to invoke company unions.<sup>38</sup> By contrast, the labour delegates tended to think that only independent trade unions legitimately represented workers. The labour delegation satisfied the public group by offering a compromise position, which, that called for the recognition of “[t]he right of wage earners to organize without discrimination, to bargain collectively, to be represented by representatives of their own choosing in negotiations and adjustments with their employers with respect to wages, hours of labor, and the relations and conditions of employment...”. ‘Representatives of their own choosing’ implied a more or less formal process of choice by workers, standards ensuring the integrity of the process, and overseeing it, an external, probably state-empowered agency. In a proposal resembling the British Whitley Councils plan, the AFL-dominated labour delegation called for each of the nation’s industries to create a ‘national conference board’ on which “the organized workers and associated employers” would be equally represented. Given the preceding debate, what was contemplated would be real, systemic choice, with company unionism just as valid as trade unionism. At a less fraught

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<sup>37</sup> U. S. Department of Labor, *Proceedings of the First Industrial Conference* (Washington, D.C., 1920), 141 (quotes); H. Hurvitz, "Ideology and Industrial Conflict: President Wilson's First Industrial Conference of October, 1919," *Labor History*, vol. 18 (1977).

<sup>38</sup> John D. Rockefeller, Jr, defended this resolution with a general line of argument that had become quite familiar during the war: “Representation is a principle which is fundamentally just and vital to the successful conduct of industry. [...] Surely it is not consistent for us as Americans to demand democracy in government and practice autocracy in industry”. Department of Labor, *Proceedings of the First Industrial Conference*, 144.

moment, AFL leaders might have drawn back from a proposition so at odds with their self-definition as representatives of an organic, autonomous movement. In 1919, however, when everything they had won during wartime was at stake, employee choice offered potential political allies among liberal reformers the reassurance that what unionists were after was a 'level playing field', with a prize unions seemed incapable of collecting by their own power—recognition by employers.<sup>39</sup> Aware of this dynamic, the employer delegation rejected labour's resolution, refusing to accept an unqualified endorsement of collective bargaining. The delegation conceded the right to organise and bargain collectively—a mark in itself, of course, of how far the ideological ground was shifting amongst employers. Yet, this only hardened their anti-union resolve.<sup>40</sup> The employers argued that shop organisation was preferable to the industry-wide scale of organisation associated with trade unionism and that shop councils would be more effective in re-establishing the sense of 'intimacy' between labour and management that had once characterised industry. They claimed that it would be counterproductive to have workers choose as their bargaining agents individuals who were not fellow employees and who, therefore, might actually be representing "outside influences" that threatened to undermine "harmonious relations" within the shop. With the employer delegation rejection of the resolution of the labour delegates, the union delegation walked out, and the President's Industrial Conference collapsed.<sup>41</sup>

#### UNION RETREATS AND EMPLOYER DOMINATION OF WORKPLACE GOVERNANCE, 1920-1931

Most historians have not tracked New Deal collective bargaining policy back to the impasse of 1919 because the trail turned cold in the 1920s. Republican victories in the congressional and presidential elections of respectively 1918 and 1920 provided the green light to militantly anti-union political forces, the Red Scare was increasingly exploited to make patriotism synonymous with anti-radicalism, and during the witch hunt against 'alien radicals' of the years 1919 and 1920 those suspected of harbouring 'impure' or 'un-American' thoughts and deeds were routinely deported. The Republican shield added strength to the general business clamour for an end to wartime regulations, controls, and federal restrictions upon market 'freedoms'. Deflation, deregulation, cost cutting and anti-unionism proceeded apace from 1920 onwards. As is well known, the combination of recession of 1920-21 and the anti-union offensive of the employers' 'American Plan' rapidly stripped the labour movement of most of its important wartime gains. Company unionism persisted—1.5 million workers were covered at the end of the 1920s—but not the debate over 'industrial democracy' that had animated the wartime politics of industrial

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<sup>39</sup> Ibid., 59; Hurvitz, "Ideology and Industrial Conflict," 514-518; L. G. Gerber, "Corporatism in Comparative Perspective: The Impact of the First World War on American and British Labor Relations," *Business History Review*, vol. 62, no. 1 (1988), 119.

<sup>40</sup> In a close reading of the debate, Hurvitz finds an uncompromising indictment being forged, with trade unionism cast in the grimmest light, driven not by any genuine interest in uplifting workers, but only by the ambitions of the 'union bosses'. It followed that employers had to stand fast on the question of union recognition—to insist in fact that their freedom of choice was the 'correlative right' of labour's freedom of association: "No employer should be required to deal with unions"; workers' rights would be fully satisfied by choosing representatives "from their own numbers". Quotes from Hurvitz, "Ideology and Industrial Conflict," 522.

<sup>41</sup> See Department of Labor, *Proceedings of the First Industrial Conference*, 81-82, 240-244; Hurvitz, "Ideology and Industrial Conflict," 515, 521; Brody, *Labor in Crisis*, 123, 128; Dubofsky, "Abortive Reform," 216.

relations. When employers were compelled to cut labour costs, as in the short but sharp recession of 1920-21, the company unions found themselves bypassed and thereby deflated, and, in general, on wages and the basic terms of employment, they got nowhere.

Herbert Hoover was tapped to serve as vice-chair of a Second Industrial Conference, but in a context highly unfavourable to unionisation its corporatist recommendations had little impact. Its final report, which was tabled in March 1920, proposed that democratic workplace representation be made the foundation of labour governance in the U.S. industry. In addition to recommending the creation of a National Industrial Board and a system of regional adjustment conferences to assist in the voluntary arbitration of labour disputes, the report also came out strongly in favour of the principle of 'employee representation' in the form of shop organisation. The resolution of industrial conflict, it was asserted, "must come from the bottom, not the top" and must arise from "deliberate organization" of the relations between workers and employers at the shop level. Hoover acknowledged that labour leaders had cause to regard "shop representation as a subtle weapon directed against the union", and that plans so conceived would never be "a lasting agency of industrial peace". In contrast to the position taken by the employer group at the First Industrial Conference, the participants in the Second Industrial Conference (which was restricted to 'public' members) made clear their belief that the relation between unions and shop committees ought to be "a complementary, and not a mutually exclusive one"; bargaining with autonomous unions should take place over the contractual terms of employment, while shop committees should devote themselves to local grievances, production problems, and more broadly, "whatever subjects the representatives come to feel as having a relation to their work". Any effort by employers to utilise employee representation as a means "to undermine the unions", they declared, would prove an obstacle to any hopes of fostering industrial peace. The conference report also expressed approval for attempts to extend "the principles of employee representation beyond the individual plant" and described the 'voluntary joint councils' already established in the clothing and printing industries as fruitful experiments in industrial organisation. What was advanced was nothing less than an American version of the works council systems emerging at this time in Europe—only by means of voluntary action rather than state policy.<sup>42</sup>

When Hoover took this programme of reform on the road, however, he ran into unmoveable opposition. At a private meeting, Hoover told leading employers—probably the Special Conference Committee, formed of representatives from very large firms—that if they wanted a New Era of stability, prosperity and progress, they ought to embrace collective bargaining and establish relations with the AFL. No minutes of the meeting survive, but years later, one participant reminded Hoover that his idea got "a very cold reception".<sup>43</sup> Therefore, Hoover turned to organised labour. At an extraordinary session with the AFL executive council, Hoover made his pitch for a 'new economic system' based

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<sup>42</sup> Gerber, "Corporatism in Comparative Perspective," 120; G. D. Best, "President Wilson's Second Industrial Conference," *Labor History*, vol. 16 (1975), 517-518; C. E. Harvey, "John D. Rockefeller, Jr., Herbert Hoover, and President Wilson's Industrial Conferences of 1919-1920," in *Voluntarism, Planning, and the State: The American Planning Experience, 1914-1946*, ed. Jerold E. Brown and Patrick D. Reagan (New York, 1988). On the development of works councils in Europe, consult Haydu, *Making American Industry Safe for Democracy*, pt. 1; J. E. Cronin and C. Sirianni, eds., *Work, Community, and Power: The Experience of Labor in Europe and America, 1900-1925* (Philadelphia, 1983).

<sup>43</sup> Quoted from Gitelman, *The Legacy of the Ludlow Massacre*, 326-327.

on ever-rising productivity. His contention was that if the labour movement in league with the engineers committed itself to ‘efficiency’, employers would be compelled to join the ‘partnership’. Everything depended, however, on new forms of “cooperation between management and worker” and, on labour’s part, “an acceptance of certain principles of shop councils”.<sup>44</sup> There was much in this that trade unionists liked: labour-management ‘cooperation’, in fact, would become a favourite AFL theme in the 1920s. However, trade unionists were by then immovably against company unionism. The condemnation they had already levelled against Hoover’s Industrial Conference—that it gave “encouragement and permanency to various forms of company unions and shop organizations and various forms of so-called employee representation, whose chief merit is that they serve the purposes of the employers by organizing the workers away from each other”—voiced an opposition to company unionism that, once fixed in 1919, became permanent.<sup>45</sup>

During the 1920s, of course, the most adverse tendency confronted by trade unions was not the institutionalisation of company unions but a revitalisation of the employers’ open-shop drive, which was fortified by what has been aptly called ‘government by injunctions’. Organised employers indeed embarked on a coordinated campaign to use local, state, and federal legislation to cripple unions. The open-shop movement consciously capitalised on extant legislation or court rulings to demobilise labour’s self-organisation and limit its collective action. Employers manoeuvred with increasing efficiency bring the courts to bear fully into industrial conflicts, hindering mobilisation by eliciting the application of state laws (prohibiting restraint of trade, conspiracy, and malice) and the federal ‘conspiracy statute’ and Sherman Anti-Trust and Clayton Acts of 1890 and 1914. The very right of organised labour to exist was jeopardised by legal rulings that outlawed sympathy strikes, strikes to obtain closed shops, strikes to force employers to rescind ‘yellow dog’ contracts (for which a condition of the job was not joining a union or going on strike), picketing, boycotts, and secondary boycotts.<sup>46</sup> The upshot of the combination of employer and judicial attacks on organised labour was that during the 1920s, the overwhelming majority of workplaces in U.S. mass production industries would be operated on an open shop basis. By 1922, unions would be driven out of mass production

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<sup>44</sup> R. H. Zieger, "Herbert Hoover, the Wage-Earner, and the 'New Economic System', 1919-1929," *Business History Review*, vol. 51 (1977), 171-173.

<sup>45</sup> J. T. McKelvey, *AFL Attitudes Toward Production, 1900-1932* (Ithaca, 1952), 88-89.

<sup>46</sup> The most effective anti-union legislation were the various anti-trust laws—and especially the Sherman Act—because the courts could issue an injunction restraining organised labour from pursuing certain forms of collective action if they could be interpreted as illegal restraint of trade. Such injunctions were ordered in such massive numbers during the pre-New Deal years that the period was characterised by liberal reformers Felix Frankfurter and Nathanael Greene as “[g]overnment by injunction”. See F. Frankfurter and N. Greene, *The Labor Injunction* (New York, 1930), 1 (quote). Courts construed the forms of collective associated with union organising and labour protest as coercive interferences with employers’ property rights and with non-union workers’ liberty of contract. This construction made legal repression of labour protest unproblematic. Irving Bernstein explains that in a period when many work stoppages occurred over the issue of union organising, “a union calculating a strike call contended with the strong possibility, if not probability, that a restraining order would issue”. See I. Bernstein, *The Lean Years: A History of the American Worker, 1920-1933* (Boston, 1960), esp. 195-196, 201 (quote), 206. Indeed, courts issued over 2100 anti-strike decrees during the 1920s, and as Forbath shows, the proportion of strikes met by injunctions, to the total number of strikes reached 25%. See W. E. Forbath, "The Shaping of the American Labor Movement," *Harvard Law Review*, vol. 102 (1989), pt. III-IV, esp. 1227 and Appendix B; E. Berman, *Labor and the Sherman Act* (New York, 1930); E. E. Witte, *The Government in Labor Disputes* (New York, 1969, orig. 1932), 84.



industries, and whatever remaining form of representation of workers which existed there was that promoted by the corporations themselves. During the wartime era of mass unrest, many employers used a mixture of the carrot of ‘welfare capitalism’ (company unionism, profit-sharing schemes, pension plans, and so on) and the stick of non-unionism (described as opposition to ‘outside interference’). As unemployment began to bite from 1920 onwards—remaining at persistently high levels throughout the so-called ‘roaring 1920s’—and as militant mass strikes receded, so employers began to play down company welfarism in favour of the anti-union ‘American Plan’ and the ‘natural’ discipline of overstocked labour markets.<sup>47</sup>

The employers’ anti-union offensive, which was assisted by the injunction powers of the courts, rapidly confined unions to ‘sick’ industries such as northern factory-manufactured textiles, the garment trade and coal mining, as well as the railroad operating crafts and local market industries such as construction and some service trades. Even in industries such as coal, where unionism and collective bargaining had a long history, the membership and influences of the unions declined precipitously. In such industries as steel, automobile, rubber, electrical equipment, public utility, oil, chemical and food processing, the labour movement had either failed to make headway altogether, or had been pushed out in the postwar return to ‘normalcy’. By the mid-1920s, union membership had fallen from its 1920 highpoint of 4.75 million to some 3.3 million. There were still more union members than in the pre-1914 years, but the climate of optimism and progress had been replaced by one of grim ‘realism’. Thereafter, AFL leadership indeed aimed to regain a reputation for respectability and a safe conservatism. By showing how helpful it might be in fighting radical elements of the labour movement and cooperating with managements in the solution of production and personnel problems, the AFL hoped it could win for its affiliates a secure place—however small—in a corporate-controlled American industrial system. The ‘progressive’ bloc of leaders of the United Mine Workers (UMW), Amalgamated Clothing Workers (ACW) and other AFL-affiliated industrial unions did not manage to win a majority voice within the Federation. Autocratic voices within the higher echelon of the AFL demanded opposition to radicalism and acceptance of employers’ ‘right to manage’ in the hope of preserving union recognition. In this context, even the ‘progressives’ in the AFL leadership like Sidney Hillman of the ACW counselled worker participation in all manner of Taylorite deals with employers in an attempt to minimise unionism’s losses. Anti-union employers—aided and abetted by the Republicans and judiciary anti-union injunctions—were thus seemingly in total control of workplace governance.<sup>48</sup>

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<sup>47</sup> Montgomery, *The Fall of the House of Labor*, 408, 415-416, 453-457, 459-464; D. Montgomery, "Thinking about American Workers in the 1920s," *International Labor and Working Class History*, no. 32 (1987), 5-6, 19-22; R. H. Zieger, *Republicans and Labor, 1919-1929* (Lexington, 1969), esp. chs. 2-4; D. Brody, "The Rise and Demise of Welfare Capitalism," in *Workers in Industrial America: Essays on the Twentieth Century Struggle* (Oxford, 1980); S. Jacoby, *Employing Bureaucracy: Managers, Unions, and the Transformation of Work in the Twentieth Century*, revised ed. (Mahwah, NJ, 2004), 132-134.

<sup>48</sup> On the AFL’s accord with scientific management and the Taylor Society as part of the setbacks of the 1920s for the labour movement, see S. Vittoz, *New Deal Labor Policy and the American Industrial Economy* (Chapel Hill, 1987), ch. 1-3; Bernstein, *Lean Years*, ch. 2; Jacoby, "Union-Management Cooperation in the United States: Lessons from the 1920s."; S. Fraser, *Labor Will Rule: Sidney Hillman and the Rise of American Labor* (New York, 1991), 171-177. It is Montgomery, however, who has provided the lament for ‘The Fall of the House of Labor’: “Because so many of their activists refused to abandon the dreams that had inspired them in the heady postwar days, international officers pursuing this

Now, this has fuelled many one-sided interpretations of ‘New Era’ industrial relations. Of course, the AFL had not disappeared, and its 1923 manifesto, ‘Industry’s Manifest Duty’, called for “the conscious organization of one of the most vital functional elements for enlightened participation in a democracy of industry whose purpose must be [...] the enfranchisement of the producer as such, the rescue of industry from chaos, [...] and the rescue of industry also from the domination of incompetent political bodies”.<sup>49</sup> Through the 1920s, organised labour and its liberal allies within the ‘progressive’ reform movement stepped up the campaign against ‘government by injunction’. Courts construed the forms of collective action associated with union organising and labour protest as coercive interferences with employers’ property rights and with non-union workers’ liberty of contract. In adopting this interpretation, however, the courts spurned that alternate tradition that held these activities to be the very essence of republican freedom. By linking labour protest with this alternative tradition, labour leaders could argue that the courts were violently one-sided—not only in their treatment of labour versus capital but also in their treatment of the Constitution. Slowly, a growing portion of the nation’s liberal elite would come to share labour’s sense of constitutional crisis. By the 1920s, senators and congressmen frequently attacked the imperial posture of federal and state injunction judges, complaining that the courts had defined the rights of property in a manner that threatened workers’ constitutional freedoms and to erode the first and thirteenth amendments. Congress and state legislatures alike had their popular constitutionalists and civil libertarians, and they were outraged when ‘government by injunction’ undermined trial by jury and trampled on the first amendment.<sup>50</sup> Of course, the obstacles facing the anti-injunction bills concocted by the consolidating lib.-lab. political coalition were formidable. The bills’ chief adversaries—the National Association of Manufacturers, the American Anti-Boycott Association, and the scores of industry-based employers’ associations—were usually more tightly organised and better-heeled than the bills’ proponents. Until 1932, they effectively mobilised their organisational and financial resources to persuade Congress to shelve or table *all* anti-injunction bills and legislation exempting organised labour from

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Fabian strategy resorted to autocratic control of their own organizations. Beleaguered unions clinging to minority sectors of their industries, surrounded by a hostile open-shop environment and governed by ruthless suspicion of dissent within their own ranks—that was the legacy of 1922. Most men and women who punched in daily to tightly supervised jobs where no union steward was to be found at all felt lucky to have an income. Business’s successful mobilization for the ‘world contest of peace succeeding that of war’ had persuaded them that to desire more was folly”. Montgomery, *The Fall of the House of Labor*, 410.

<sup>49</sup> Quoted from Montgomery, "The Theory and Practice of the Labor Movement, 1870-1925," 42.

<sup>50</sup> Bernstein, *Lean Years*, ch. 11; Forbath, "The Shaping of the American Labor Movement," pt. V. The AFL’s model of industrial self-government through collective bargaining also won favour among liberal politicians partly because it harmonised with a more general voluntarist approach toward social reform. As many historians have emphasised, in Gompers’ hands the AFL model of governance was a labour version of the kind of business-based ‘associationalism’ that elite reformers like Herbert Hoover and organisations like the National Civic Federation advocated during the first decades of the twentieth century and that had been the basis of wartime industrial mobilisation. In addition, the growing membership and lobbying capacities of some state federations of labour during the early 1900s encouraged legislative support for anti-injunction measures. See, generally, Greene, *Pure and Simple Politics*; Ramirez, *Industrial Relations in the Progressive Era*, 66-82; M. Green, *The National Civic Federation and the American Labor Movement, 1900-1925* (Washington, D.C., 1956), 37-89; R. H. Wiebe, *Businessmen and Reform: A Study of the Progressive Movement* (Cambridge, 1962), 159-169.

the Sherman Act.<sup>51</sup> By the late 1920s, however, the judicial system was the object of sustained attacks by liberal reformers and unionists for defending the yellow dog contract and ‘government by injunction’. Liberal sensibilities were particularly offended by what Irving Bernstein has termed “the combination of armed power and starvation” that smashed the UMW during the ‘mining wars’ of 1924-1925, and by the brutal reception received by the unprecedentedly acute revolts of 1927-1929 among textile workers, whose patience and stoicism in the face of sustained stretch-out, speed-up, and employer unilateralism generally had snapped.<sup>52</sup>

The violent tenor of these and other labour conflicts was particularly disturbing to liberal lawmakers like Felix Frankfurter, Edwin Witte, Donald Richberg and other drafters of the Norris-LaGuardia Act of 1932. These liberal advocates of organised labour and progressive reformers argued that most labour violence originated in employers’ intransigence in the face of unions, in the public and private repression that greeted labour protest, and in the legal order’s encouragement of this state of affairs. Moreover, they argued, although legal toleration of peaceful labour protest and organising would strengthen conservative and responsible trade unionism, court-constructed semi-outlawry bred ‘irresponsible’ and ‘violent’ elements within the labour movement. Increasingly, liberal reformers concluded that ‘government by injunction’ was among the prime causes of industrial unrest. The government could not keep industrial peace, they warned, if one side thought the rules laid down were fundamentally unfair. No ‘efficient’ industrial order, liberal reformers, could rely too heavily on coercion; a minimum of consent was essential. Workers seemed to be withdrawing that minimum of consent—the judge-made rules of industrial relations had begun to seem untenable.<sup>53</sup> In 1928, Frankfurter, Witte, and Richberg drafted an injunction relief bill and informed the chief advocate of liberal reform in Senate, George Norris, that it would pass constitutional scrutiny. The bill declared the yellow-dog contract unenforceable in federal law and stated that it was the public policy of the United States to endorse workers’ right to form unions of their own choosing free from employer coercion with the right to bargain collectively. The injunction relief bill also specified a whole array of trade union practices, which federal courts would not be permitted to enjoin. For almost four years, however, Norris could not get his bill to the floor because

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<sup>51</sup> Zieger, *Republicans and Labor, 1919-1929*, 72-73; Griffin, Wallace, and Rubin, "Capitalist Resistance to the Organization of Labor," 160; C. Bonnett, *Employers' Associations in the United States: A Study of Typical Associations* (New York, 1922), 309-315; A. Steigerwalt, *The National Association of Manufacturers, 1895-1914* (Ann Arbor, 1964), 128-138; P. S. Foner, *History of the Labor Movement in the United States; 10 Volumes* (New York, 1947), III, 76, 299-301, 338.

<sup>52</sup> On the conflicts of the late 1920s in mining and textiles, see Bernstein, *Lean Years*, 1-43, 130-131 (quote); J. D. Hall, R. Korstadt, and J. Leloudis, "Cotton Mill People: Work, Community, and Protest in the Textile South, 1880-1940," *American Historical Review*, vol. 91, no. April (1986), esp. 271-277.

<sup>53</sup> For a discussion of academics and other ‘experts’ who by the late 1920s with the AFL that ‘industrial peace’ and ‘efficiency’ required broad legal toleration of labour organising and peaceful strikes and protests, see E. E. Witte, "Injunctions in Labor Disputes," *Proceedings of the Academy of Political Science*, vol. 13 (1928). For other representative statements, see Witte, *The Government in Labor Disputes*, 132, 298; Fitch, *Causes of Industrial Unrest*, i, 324-354; R. F. Hoxie, *Trade Unionism in the United States*, 2nd ed. (New York, 1924), 337-339. See also Bernstein, *Lean Years*, 394-395; Zieger, *Republicans and Labor, 1919-1929*, 259; Forbath, "The Shaping of the American Labor Movement," 1227-1228.

the Hoover administration opposed it and a Republican-dominated Senate Judiciary Committee blocked his efforts to have it reported out until after the 1930 election.<sup>54</sup>

By then, as is well known, the political landscape was undergoing crucial transformation at the national level. The ‘Al Smith Revolution’ that brought urban working classes into the Democratic Party in the late 1920s and the national electoral re-alignment of 1932 helped set the stage for the passage of the anti-injunction bill. E. E. Schattschneider called the 1932 election a ‘revolution’ because it heralded nationally competitive elections outside southern states, forged a closer relations between national parties—especially the Democratic Party—and popular majorities, and dramatically shifted the content of U.S. public policy. Schattschneider argues that previously, Republican hegemony and the national state’s close alliance with business had insulated the government from the influence of the more popular social forces (workers, small farmers, the elderly, and the unemployed). But the onset of the Great Depression undermined the legitimacy of the prevailing accommodation between dominant social forces and the state, reduced the leverage and prestige of businessmen over and within the state, increased the authority of national officials and especially the president within the state-system, and awakened popular social forces to the potential of political action. These broader changes combined with the specific disrepute of ‘government by injunction’ to produce a remarkably broad support for the Norris and LaGuardia anti-injunction bills enjoyed when they finally reached the Senate and House floors on January 1932.<sup>55</sup>

#### ORGANISED LABOUR, LIBERAL REFORMERS, AND THE POLITICISATION OF WORKPLACE GOVERNANCE, 1932-1935

On March 23, 1932, Congress passed the Norris-LaGuardia Anti-Injunction Act. The passage of Norris-LaGuardia was an act of institutional demolition all too often neglected by those whose sight is fixated on the ‘Roosevelt Revolution’. Norris-LaGuardia swept out the worst of the judge-made labour law and prepared the institutional ground for the rise of a new regime of statutory labour-relations law in America. It declared the yellow dog contract unenforceable in the federal courts and withdrew from them jurisdiction to issue injunctions in most labour disputes, while for the well-specified exemptions the law laid down rigorous procedural and evidentiary protections. The Norris-LaGuardia Act took note of “the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association”. Because of the resulting imbalance in organisational capacities, the policy statement of the Norris-LaGuardia Act asserted, “the individual worker is commonly helpless to exercise actual liberty of contract and to protect


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<sup>54</sup> For important details of the debate among liberal reformers and organised labour about the exact content of the anti-injunction bill, see Forbath, “The Shaping of the American Labor Movement,” 1228-31; Dubofsky, *The State and Labor in Modern America*, 103-104. On Republican efforts to block its passage, see Bernstein, *Lean Years*, 409-410.

<sup>55</sup> Norris-LaGuardia Anti-Injunction Act, *Congressional Records*, 72<sup>nd</sup> Cong., 1<sup>st</sup> sess., 1932, 4502-10. In The House bill passed by 362 to 14; the Senate bill by 75 to 5. Bernstein, *Lean Years*, 413. On the ‘revolution of 1932’ in American national politics, see, generally, E. E. Schattschneider, *The Semisovereign People: A Realist's View of Democracy in America* (Hinsdale, Ill., 1975, orig. 1960), 84; G. Kolko, *Main Currents in Modern American History* (New York, 1976), 123-124; K. Andersen, *The Creation of a Democratic Majority, 1928-1936* (Chicago, 1979), 23, 33-38; P. Kleppner, *Who Voted? The Dynamics of Electoral Turnout, 1870-1980* (New York, 1982), 83-111.

his freedom of labor, and thereby to obtain acceptable terms and conditions of employment". With these remarkable words, liberal reformers expressed their disdain for the unequal treatment of capital and labour under the hitherto existing labour-relations politico-legal regime. The act marshaled the liberal credo of 'free labour' on behalf of workers' collective action, saying that "[u]nder prevailing economic conditions", free workers wanted to act collectively because only in this way could they exercise "actual freedom to contract".<sup>56</sup>

In the National Labor Relations (Wagner) Act of 1935, what Norris-LaGuardia asserted in principle received the force of law. The heart of the Wagner Act was Section 7, which declared that "[e]mployee shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining, or other mutual aid or protection". This declaration of rights was implemented, in Section 8, by an array of 'unfair labor practices': employers could not "interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7"; "dominate or interfere with the formation or administration of any labor organizations"; discriminate against employees or discourage union membership; or refuse to bargain with representatives of their employees.<sup>57</sup> The Norris-LaGuardia Act had contemplated nothing further, and the Wagner Act might also have stopped at this point but for the stormy period of politicised industrial conflicts that marked the years between 1932 and 1935. It was indeed out of the politicised industrial conflicts which crested under the New Deal's National Recovery Administration that came the liberal reformers' decision that the state had to get involved in workplace governance by taking charge of the process of determining representation for purposes of collective bargaining.

The institutional context in which these politicised industrial conflicts unfolded nearly defies recapturing, for the early New Deal's NIRA had initiated America's one serious romance with meso-corporatism. The immediate impetus for the drafting of the NIRA came from the ranks of organised labour and its liberal allies in Congress. At the AFL's annual convention in 1932, however, the Committee on the Shorter Workday followed the lead of ACW president Sidney Hillman in calling for the five-day week and six-hour day with no reduction in pay, and the convention voted decisively to seek the aid of the government in regulating the hours of work for women, children and men. Then, on December 21, 1932, less than three weeks after the close of the AFL's Cincinnati convention, Senator Hugo L. Black of Alabama introduced the thirty-hour bill in the 72<sup>nd</sup> Congress. This measure would have denied the channels of interstate and foreign commerce to articles produced at establishments "in which any person was employed or permitted to work more than five days in any week or more than six hours in any ",<sup>58</sup> Senate passage of the Black bill prompted the Roosevelt administration to speed action on an alternative recovery program that eventuated in the NIRA. The AFL's favoured anti-depression prescription, the compulsory thirty-hour bill, did not fit into the New Deal's schemes, for as Melvyn Dubofsky has explained, "it elicited bitter opposition from

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<sup>56</sup> The policy declaration of the Norris-LaGuardia Act of 1932 is quoted from Bernstein, *The New Deal Collective Bargaining Policy*, 21-22.

<sup>57</sup> §§ 7 and 8 of the National Labor Relations Act, July 5, 1935, in *Public Laws of the United States—Passed by the Seventy-Fourth Congress, 1935-1936* (Washington, 1936), 449-457.

<sup>58</sup> *Congressional Records*, vol. 77, pt. 6, p. 5901, quoted from Bernstein, *Lean Years*, 482. See also Bernstein, *The New Deal Collective Bargaining Policy*, 29-31.

industrialists whose support Roosevelt desired and acid criticism from economists who believed that its passage would drive up labor costs and further retard economic recovery”.<sup>59</sup> The bill that eventually won Roosevelt’s approval came much closer to reflecting the desires of the corporate proponents of industrial self-regulation than it did the approach favoured by the AFL in the Black bill or that favoured by the proponents of macro-corporatist planning, but the NIRA did hold the promise of some form of industry-by-industry hours limitations. In the drafting of the NIRA, moreover, Sidney Hillman along with Donald Richberg and Robert F. Wagner, who were both proponents of macro-corporatist planning, had an opportunity to incorporate a clause that won some federal recognition of labour’s right to organise and bargain collectively. Especially after Congress at the instigation of the AFL strengthened Section 7(a) of the NIRA, the law came to include wording that seemed to protect workers’ “right to organize and bargain collectively through representatives of their own choosing”, and in exercising that right to be “free from the interference, restraint, and coercion of employers of labor, or their agents”.<sup>60</sup>

As Stanley Vittoz has convincingly argued, the drafters of Section 7(a) turned to existing models of labour legislation for guidance in an area in which they felt very uncertain. Most immediately, the liberal reformers who drafted New Deal labour legislation contemplated the tradition of collective bargaining that had developed in industries where industrial unionism had made headways such as coal and clothing. These industries provided liberal reformers a model of ‘industrial self-government’ that included unions and on which they could draw. Section 7(a), moreover, advanced beyond Norris-LaGuardia only insofar as inclusion of the National Recovery Administration (NRA)’s ‘codes of fair competition’ made 7(a) more than a mere statement of policy. In fact, inclusion in the codes was not much of an advance, and ineffectuality is the standard theme of 7(a) history—of the hopes of industrial workers raised and then crushed by the resistance of powerful corporate interests and the fecklessness of the ‘New Deal’. This traditional emphasis of New Deal era labour history is perfectly appropriate, and I will not detract from it in my own treatment of the industrial conflicts of the early 1930s.

When the Great Depression had struck, the failures of company unionism and the injustices of open shops had become magnified in the minds of workers, who, facing unemployment, speed-up, and stretch-out, had enormous stake in predictable, rule-bound treatment. This was the source of workers’ explosive response to 7(a)—not from workers on the streets, but from those at work embittered by capricious and arbitrary treatment that appeared to violate the precepts of bureaucratic order of the corporate enterprise itself. The most important organisational form through which workers decided to aggregate interests, voice their grievances, and exercise their own initiatives and generate political leadership was the trade union. As many labour historians have agreed, the resurgence of trade unionism unleashed by the NIRA in 1933 and 1934 was most successful in industries with long-established union traditions and idiosyncratic yet prominent business leaders who

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<sup>59</sup> Hearings before a Senate Subcommittee of the Committee on the Judiciary, *Thirty Hour Work Week*, 72<sup>nd</sup> Cong., 2<sup>nd</sup> Sess. (1933); Dubofsky, *The State and Labor in Modern America*, 111 (quote). The terms of this debate are also laid out by L. Wolman, *Wages in Relation to Economic Recovery* (Chicago, 1932).

<sup>60</sup> Section 7(a) also reasserted the ban on yellow-dog contracts by declaring that “no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing”. §§ 7(a)(1) and 7(a)(2) of the National Industrial Recovery Act, H.R. 5755, June 16, 1933, reproduced in *Public Laws of the U.S.A. — Passed by the Seventy-Third Congress, 1933-1934* (Washington, 1934), 195-200.



regarded the NRA codes—and even strong industrial unions—as necessary to check ‘cutthroat’ price competition. The aspiration to employ trade unions, which workers had created by their own efforts, as organisational instruments of government-sponsored ‘rationalisation’ of the market behaviour of business had taken shape principally among union leaders in the coal, garment and textile industries. As Stanley Vittoz has argued in a landmark study, in those three incurably competitive industries, labour costs were decisive determinants of prices, and unions had been a significant presence since at least the turn of the century. Moreover, the national officers of the unions which benefited the most from section 7(a)—mine workers, men’s and women’s clothing workers, textile workers (who emerged strong in the North, despite resounding defeats in the South), teamsters, longshoremen, seamen and building trades—had been securely established since World War I. In addition, they had learned from those years to press for government policies hospitable to union growth, and to operate with much caution on the strategic terrain those policies opened.<sup>61</sup>

As Colin Gordon argues in one of his masterly understatements, “business was scarcely united in its admiration of the unions’ role under the NRA”.<sup>62</sup> In fact, most industrialists—and *a fortiori* their most vocal anti-union representatives in the National Association of Manufacturers (NAM)—committed themselves to a program of belligerent opposition to the resurgence of unionism and of firm opposition to the implementation of 7(a), promising to “fight energetically against any encroachments by Closed Shop labor unions”.<sup>63</sup> Moreover, it is quite misleading to assert that “[t]he most widespread expression of this anti-union sentiment was the company ‘union’”.<sup>64</sup> Even in center firms in manufacturing, company unions were far from general and the most widespread expression of anti-union sentiment was just not having any dealings with any kind of union *at all*, and employers embracing anti-unionism could very well live with the new politico-legal developments. For the supporters of the NIRA among industrialists, the bill’s empowerment of business in its efforts at self-regulation was far more significant than the uncertain protections it afforded to workers’ right to self-organisation. Section 7(a) stated some general principles about the desirability of workers’ self-organisation, but it imposed no requirements on employers to bargain and contained no means of enforcement. The legal provisions were also ambiguous, and hence easily avoided. In spite of continuing

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<sup>61</sup> Vittoz, *New Deal Labor Policy*. For instance, the conservative president of the United Mine Workers, John L. Lewis, did not interpret 7(a) as a means to organise the mass production industries, but primarily as a solution to his own particular problems of stabilising the coal industry and rebuilding the UMW’s organisation after the defeats of the 1920s. See M. Dubofsky and W. van Tine, *John L. Lewis: A Biography* (New York, 1977), 184; J. P. Johnson, *The Politics of Soft Coal: The Bituminous Industry from World War I Through the New Deal* (Urbana, 1979), 144. Thus, even the ‘lobbyists’ in favour of section 7(a) had very limited expectations, and subsequent development in New Deal labour policy depended much more on the creativity of labour activists than on any pre-organised plan for the development of a new industrial-relations regime. See D. Montgomery, “Labor and the Political Leadership of New Deal America,” *International Review of Social History*, vol. 39 (1994).

<sup>62</sup> Indeed, where Gordon actually offers quantitative evidence for his claim that employers were willingly ready to embrace union representation, it goes against the grain of his overall argument since only 23 out of more than 500 code authorities were characterised by a significant labour voice. See C. Gordon, *New Deals: Business, Labor, and Politics in America, 1920-1939* (Cambridge, 1994), 197, 207.

<sup>63</sup> Hearings before a Subcommittee of the Senate on Education and Labor, *Violations of Free Speech and Rights of Labor*, 76<sup>th</sup> Cong., 1<sup>st</sup> sess., pt. 17, 7549, 7561.

<sup>64</sup> Gordon, *New Deals*, 123.

fears about ‘compulsory unionization’, Section 7(a) fell far short of banning open shops as a mode of workplace governance and guaranteeing that unions would universally be recognised as sole representatives or workers’ interests. In other words, although Section 7(a) condemned in general terms the anti-union strategies of both the belligerent defenders of the open shop employers and the ‘progressive’ firms that had instituted company unionism, an increase in the labour movement’s numbers and strength was by no means guaranteed.

The outcome of industrial conflicts still depended on the relative strength, tactical skill, and determination of particular contestants. The complexity of the organisational context in which such struggles took place stretches the imagination. Each of some four hundred ‘codes of fair competition’ contained, in addition to comprehensive trade regulations, not only Section 7(a) but more or less detailed provisions on wages, hours, child labour, and a variety of working conditions. A profusion of agencies sprang up to intercept and enforce all this—the National Labor Board of 1933-34, the successor National Labor Relations Board of 1934-1935, regional labor boards and a few industry labor boards, other labor boards under code authority, and, finally, a whole host of NRA compliance and code committees. The question of collective bargaining rights and of the future shape of workplace governance was not only an object of intense contestation, but it was also buried in a veritable bureaucratic jungle. In this state of confusion—or, if you will, open opportunities in a context of ongoing struggles—what was at issue was not only the definition of bargaining rights but the scope of state responsibility in workplace governance. The non-statutory boards which were eventually set up to administer the labour provisions of NIRA could not oppose even the cruder anti-union tactics effectively and NRA administrators, in fact, subsequently interpreted Section 7(a) in such a way that company unions grew quite rapidly while the law was in effect. The main administrators of the National Recovery Administration (NRA) were explicitly concerned to limit the federal state’s role in helping industry to help itself, and saw Section 7(a) primarily as a symbol with no practical importance. To be granted a code, an industry had to include section 7(a), but in the important case of the automobile industry, this minimal requirement was actually avoided, and in many other industries, the section had little practical effect. In consequence, employers managed to head off the upsurge of unrest in the basic industries that were to form the centers of CIO strength. Unions made few substantial gains in members, bargaining power, or contractual relations. Open shops, individual bargaining—typically meaning no bargaining at all—and company unions survived 7(a) and where independent unions did win a foothold, it was only grudgingly and temporarily conceded.<sup>65</sup>

If we concentrate on the industrial conflicts of 1933-35, it is thus clear that employers were getting the better of the fight. Management succeeded in exploiting its own strength and the ambiguities in 7(a) and in the attitude of the Roosevelt administration toward its implementation. The vast majority of employers had decided either not to meet the test of 7(a) at all, or to adopt company unionism as their first line of employer defence against ‘outside’ intervention in workplace relations. That the later strategy would be

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<sup>65</sup> Vittoz, *New Deal Labor Policy*, chs. 5-6; Bernstein, *The New Deal Collective Bargaining Policy*, chs. 1-3, esp. p. 39; I. Bernstein, *The Turbulent Years: A History of the American Worker, 1933-1941* (Boston, 1970), chs. 2-6; S. Scheinberg, "The Development of Corporate Labor Policy, 1900-1940" (Ph.D dissertation, University of Wisconsin, 1966), 162-165; G. N. Farr, *The Origins of Recent Labor Policy* (Boulder, 1959), esp. ch. 4; S. Fine, "The Ford Motor Company and the NRA," *Business History Review*, vol. 32 (1958).

adopted was already obvious from the jockeying that had occurred over Section 7(a) before the Recovery Act was enacted. Although industry lobbyists had not gotten what they wanted—a proviso protecting ‘existing satisfactory relations’—they went away satisfied that 7(a) was loose enough to encompass company unions. Owners and managers certainly had to pay more attention to their industrial relations problems, and they could not always steer clear from involvement with independent unions. As well as devoting increased resources to traditional union-busting activities, more firms began to follow the ‘best practice’ of the ‘progressive’ companies and instituted company unions. Even under Section 7(a), however, it still seemed that there was a realistic and acceptable alternative to union recognition and collective bargaining. Thus, company unionism spread rapidly: this form of workplace governance was a way of seeming to comply with the letter of the law, while stemming workers’ own organisational efforts. As soon as NIRA was signed, there was a tremendous rush to put company unions into effect, sometimes with a charade of employee consultation, mostly not. Employers moved so swiftly that at their peak in 1934, company unions covered an estimated 3 million workers—more than the trade unions did and, in the mass-production sector where they were most heavily concentrated, very much more. The NAM organised a scheme to provide its members with help in setting up company unions under the auspices of the National Industrial Conference Board (NICB) and the American Management Association (AMA). The Special Conference Committee also used the AMA as its agent for the same purpose. Thus, the forms of workplace governance put in place by the ‘progressive’ and of the belligerent employers and those of their respective organisations began to converge, but it was clear that no fundamental departure from opposition to independent unionism was necessary under the first New Deal.<sup>66</sup>

#### CONCLUSION: THE SOCIOPOLITICAL ORIGINS OF MODERN WORKPLACE GOVERNANCE

The cynical motives behind the rapid development of company unionism as a form of workplace governance were all too plain to unionists and their liberal allies, but with 7(a) enacted, the incentives to make the functioning of company unions credible to workers were vastly greater than before. In fact, over the next two years company unions were much restructured, generally to be made more autonomous from management. Some evidence even suggests that company unions did foster local leadership and—insofar as they failed to produce results—did educate workers and strengthen the case for collective bargaining involving independent unions. Those facts—that the company unions existed, that they were functioning and that enormous business interests stood behind them—had to be taken into account by unionists and liberal reformers, and, initially, they more than any other set the terms of political debates. Yet, there was another fact of cardinal importance: With 7(a) enacted, workplace governance was no longer a private affair; on the contrary, it was deeply entangled in a massive program of industrial regulation under public supervision. Thus, at stake in deciding how to square existing forms of workplace governance with the

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<sup>66</sup> On the growth of company unions under 7(a), see U.S. Department of Labor, Bureau of Labor Statistics, "Characteristics of Company Unions," *Bulletin No. 634* (Washington, D.C., 1938); *Labor Policies of Employers' Associations*, pt. 3, *The National Association of Manufacturers*, 76<sup>th</sup> Cong., 1<sup>st</sup> sess. (Washington, D.C., 1939), 89-98; Scheinberg, "The Development of Corporate Labor Policy, 1900-1940", 165-169; Bernstein, *The New Deal Collective Bargaining Policy*, passim; H. J. Harris, *The Right to Manage* (Madison, 1982), 21-ff; Dubofsky, *State and Labor in Modern America*, ch. 5.

standard of 7(a) was also deciding what kind of authority the state would assert in labour-management relations. The decisive moment, so to speak, came when Congress chose the path leading to the National Labor Relations Act.<sup>67</sup>

In their unremitting efforts to substitute a deterministic process of elite bureaucratisation for the continuation of the politicised industrial struggles analysed above, polity-centered historical institutionalists like Kenneth Finegold and Theda Skocpol have unconvincingly downplayed the importance of labour unrest in the origins of the Wagner Act on the ground that the strike wave peaked in the summer of 1934 and trailed off in 1935, the year the Act was actually passed.<sup>68</sup> Wagner himself, however, had become personally committed to the legislation during the strike wave of 1933-34 and, even in 1935, still feared the recurrence of unrest.<sup>69</sup> At the center of Wagner's liberal conception of collective bargaining was the belief that its extension could legitimately elicit the acquiescence of workers, at least in the mass production industries. Section 7(a) of the NIRA, which already embodied that hope, had been signed on June 16, 1933. As Vittoz explains: "The number of employee-days lost because of strikes tripled between June and September [of 1933], and the calendar year 1933 (especially the last half) witnessed the largest number of work stoppages during any twelve-month period since 1921". The administrative gestation of the Wagner Act was thus unexpected. Section 7(a) of the Recovery Act was intended to diminish the number of recovery-threatening strikes, but by legitimating workers' claims to the right to act collectively in the face of stiff employer resistance to unionisation, it had precisely the opposite effect and unleashed highly politicised industrial conflicts. As a result, section 7(a) led to a degree of federal administrative intervention in workplace governance that its liberal drafters and enactors simply had not foreseen. The National Labor Board (NLB) that was jerry-built by the White House to respond to this wave of labour unrest failed to turn back the tides of worker rebellion and of employer opposition to unionism.<sup>70</sup> But the Board's failures persuaded Wagner and the other liberal officers of the NLB (and of its successor, the old NLRB) that more thoroughgoing reform of workplace governance was required.

The liberal reformers' frustration with the implementation of section 7(a) focused on two broad failings—one remedial and one substantive—that decisively shaped Wagner's labour bill. First, the NRA labour boards were not equipped with enforcement authority. After four months of successfully eliciting voluntary settlements in a string of 'easy' cases,

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<sup>67</sup> On the immediate legislative history, the best accounts remain those of Gross, *The Making of the NLRB*; D. Sipe, "A Moment of the State: The Enactment of the National Labor Relations Act, 1935" (Ph.D. Dissertation, University of Pennsylvania, 1981).

<sup>68</sup> Cf. T. Skocpol, "Political Responses to Capitalist Crisis: Neo-Marxist Theories of the State and the Case of the New Deal," *Politics & Society*, vol. 10, no. 2 (1980), 187-188; K. Finegold and T. Skocpol, "State, Party, and Industry: From Business Recovery to the Wagner Act in America's New Deal," in *Statemaking and Social Movements: Essays in History and Theory*, ed. C. Bright and S. Harding (Ann Arbor, 1984), 181.

<sup>69</sup> J. J. Huthmacher, *Senator Robert F. Wagner and the Rise of Urban Liberalism* (New York, 1968), 192. In Senate debates on his 1934 Labor Disputes bill, Wagner stated accurately that "[e]very one of its provisions is addressed to specific evils that have become abundantly manifest during the 10 months' experience of the [Wagner-chaired] National Labor Board". U.S. Congress, Senate Committee on Education and Labor pursuant to Senate Resolution 266, *Congressional Records*, 78<sup>th</sup> Cong., 1934, 12,018.

<sup>70</sup> Cf. Vittoz, *New Deal Labor Policy*, 138 (quote), 142; Bernstein, *Turbulent Years*; P. H. Irons, *The New Deal Lawyers* (Princeton, 1982), 204; M. Goldfield, "Worker Insurgency, Radical Organization, and New Deal Labour Legislation," *The American Political Science Review*, vol. 83, no. 4 (1989).

the NLB ran into a credibility-shattering wall of willful employer noncompliance in the high-visibility cases of Budd Manufacturing and Weirton Steel.<sup>71</sup> Second—and crucial to understanding the origins of the ban on company unionism in section 8(a)(2) of the Wagner Act—Wagner and his circle became increasingly committed to the organic solidarity of autonomous unionism and exclusive representation after they confronted management's deployment of company unionism as an organisational impediment to workers' self-organisation and collective action. The NRA labour boards fought tenaciously against the company unionism and proportional representation condoned by the National Recovery Administration and by Roosevelt himself. Indeed, the impertinent combativeness of the liberal reformers managing the labour board assembled by the White House itself attests both to their ideological commitment to liberal forms of workplace governance and to their frontline education about the specific modes of employer resistance to independent unionism. They, and their political allies inside and outside government and within the labour movement, became the driving force behind the substance and passage of the Wagner Act in 1935.<sup>72</sup>

In its day, the Wagner Act was celebrated—or, alternatively, reviled—as the most radical law of the New Deal era. Its passage was crucial in shaping process of working-class formation that helped spark the greatest upsurge in labour organising in American history. The organisation strike—or the real threat of it—remained as it had been throughout the interwar years the most persuasive weapon in labour's armoury, but now unions could use both traditional and novel means—in particular, recourse to NLRB procedures and the sit-down strike—to bring about a great increase in union power in the basic and strategic mass-production industries between 1935 and 1937. When employers and their conservative political allies regrouped and counterattacked, of course, the fragility of the Wagner Act's rule of law stood forth.<sup>73</sup> The processes of enforcement of a law that speak in the language of labour's rights mask new forms of oppression to which American workers have been subjected since 1935. The labour movement has demanded reforms for years, but has lacked the political clout to have them implemented. It should nonetheless continue to mobilise all its power to preserve the one provision of the law with which American management is most dissatisfied—the prohibition against domination labour organisations in Section 8(2) of the NLRA, which, one should note, is the one bar on employer interference that is not only about individual rights.

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<sup>71</sup> On the administrative crisis caused by these two cases, see Gross, *The Making of the NLRB*, 37-39; L. L. Lorwin and A. Wubnig, *Labor Relations Boards: The Regulation of Collective Bargaining under the National Industrial Recovery Act* (Washington, D.C., 1935), 105-106.

<sup>72</sup> H. J. Harris, "The Snares of Liberalism? Politicians, Bureaucrats, and the Shaping of Federal Labor Relations in the United States, ca. 1915-1947," in *Shop Floor Bargaining and the State: Historical and Comparative Perspectives*, ed. S. Tolliday and J. Zeitlin (Cambridge, 1985), 166-167, 184.

<sup>73</sup> See, in particular, the important studies and surveys by K. V. W. Stone, "The Post-War Paradigm in American Labor Law," *Yale Law Review*, vol. 90, no. 1 (1981); C. L. Tomlins, *The State and the Unions: Labor Relations, Law, and the Organized Labor Movement in America, 1880-1960* (Cambridge, 1985), pt. III; R. W. Schatz, "Into the Twilight Zone - The Law and the American Industrial Relations System Since the New Deal," *International Labor and Working Class History*, no. 36 (1989); J. Rogers, "Divide and Conquer: Further 'Reflections on the Distinctive Character of American Labor Laws'," *Wisconsin Law Review*, no. 2 (1990); R. H. Zieger, "Historians and the U.S. Industrial Relations Regime," *Journal of Policy History*, vol. 9, no. 4 (1997); N. Lichtenstein, *State of the Union: A Century of American Labor* (Princeton, 2002), chs. 4-5.