



AMERICAN
COMPASS
READER



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AMERICAN COMPASS

Our Mission

To restore an economic consensus that emphasizes the importance of family, community, and industry to the nation's liberty and prosperity—

REORIENTING POLITICAL FOCUS from growth for its own sake to widely shared economic development that sustains vital social institutions.

SETTING A COURSE for a country in which families can achieve self-sufficiency, contribute productively to their communities, and prepare the next generation for the same.

HELPING POLICYMAKERS NAVIGATE the limitations that markets and government each face in promoting the general welfare and the nation's security.

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A Seat at the Table:

A Conservative Future for the
American Labor Movement

S E P T E M B E R 2 0 2 0

The American labor movement's slow descent into obsolescence has deprived American workers of a vital institution. A well-functioning system of organized labor affords solidarity, mutual aid, bargaining power, and workplace representation, all of which can benefit workers, their families and communities, and the nation—both economically and socially. Especially for conservatives, who cherish the role of mediating institutions, prefer private ordering to government dictates, and believe prosperity must be earned rather than redistributed, reforming and reinvigorating the laws that govern organizing and collective bargaining should be an obvious priority.

Unfortunately, today's dysfunctional system, a relic of the Great Depression, has become a polarizing partisan issue. National unions exert more influence through their lavish funding of the Democratic Party than through actual organization, representation, or bargaining. One party thus focuses intently on getting more workers into those unions, while the other's priority is to get them out. A different conversation is needed.

In *A Seat at the Table*, American Compass hopes to help start that conversation. We begin with a statement from a group of prominent conservatives who possess a remarkable breadth and depth of expertise and share the conviction that labor is an issue ripe for conservative reform. Essays from Brian Dijkema, Amber & David Lapp, and Michael Lind situate labor's role in the American economy, in partisan ideological debates, and in the lives of actual workers. A report from American Compass's Wells King describes the many and varied forms that systems of organized labor can take. And a range of experienced policy experts and labor organizers discuss with each other potential pathways for reform.

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Coverage & Impact

A Seat at the Table has launched a national conversation across the political spectrum on a conservative future for the American labor movement.

THE WALL STREET JOURNAL.

“Among modern institutions, one stands out for the breadth of conservative priorities it could advance: generating widespread prosperity, limiting government intervention, preserving families and ways of life, revitalizing communities and fostering solidarity. That institution is the labor union.”

USA TODAY.

“Approaches that work in other countries cannot be imported wholesale to ours. But their examples should inspire us to think more broadly about what we might attempt, and to recognize a revitalized labor movement as an opportunity that should excite both liberals and conservatives.”

Public Discourse THE JOURNAL OF THE WITHERSPOON INSTITUTE

“Ensuring that workers have power and can bargain on equal footing should be a core principle for setting up a well-functioning market economy.”

“I would not call American Compass ‘dissident,’ but the future of conservatism.”

STEVE HILTON



NEW YORK MAGAZINE

“We need workers to have more power. Either we’re going to have to turn to the government to give them that, or we’re going to have to see a better balance in the private sector. And I think conservatives will certainly prefer the latter.”

The New York Times

“[T]he most intriguing sign of a potential union resurgence comes from the [right] side of the political spectrum. As conservative policy experts have begun imagining a post-Trump Republican Party, some are arguing that it should drop its longtime antipathy to unions.”

NATIONAL REVIEW

“These thinkers don’t support the status quo, but they would like to see a new system where labor has a place at the economic table.”

"Community is the product of people working together on problems, of autonomous and collective fulfillment of internal objectives, and of the experience of living under codes of authority which have been set in large degree by the persons involved. ... People do not come together in significant and lasting associations merely to be together. They come together to do something that cannot easily be done in individual isolation."

– Robert Nisbet, The Quest for Community (1953)



Conservatives Should Ensure Workers a Seat at the Table

Statement on a conservative future for the American labor movement.

AMERICAN CONSERVATIVES rightly place economic freedom and limited government among our dearest values. The defense of *markets*, though, has at times made us overly solicitous of *businesses*. As we advocate for owners and managers in their pursuit of profit, and celebrate the enormous benefits their efforts can generate for us all, we must accord the same respect to the concerns of workers and ensure that they, too, have a seat at the table. In a well-functioning and competitive market, participants meet as equals able to advance their interests through mutually beneficial relationships.

Institutions of organized labor have traditionally been the mechanism by which workers take collective action and gain representation and bargaining power in the private sector. Strong worker representation can make America stronger. Unfortunately, our nation's Great Depression-era labor laws no longer provide an effective framework, many unions have become unresponsive to workers' needs and some outright corrupt, and membership has fallen to just 6% of the private-sector workforce. Rather than cheer the demise of a once-valuable institution, conservatives should seek reform and reinvigoration of the laws that govern organizing and collective bargaining for three reasons:

1. ECONOMIC PROSPERITY. We believe that workers share more fully in our nation's prosperity when they have a seat at the table. Free markets have proved their

unmatched capacity to generate growth, wealth, and innovation, but they offer no guarantee that the gains will reach all participants. We pursue and celebrate tight labor markets because we know that the result is beneficial to workers and their families and communities; likewise, we should support institutions that reinforce those effects through economic agency and self-reliance, rather than retreat to dependence on redistribution.

2. LIMITED GOVERNMENT. We prefer the private ordering of bargains between workers and management to overbearing dictates from Washington. Policymakers have stepped into the void left by workers' loss of collective representation with a vast and unwieldy edifice of employment regulation. By contrast, when workers have a seat at the table, discussions occur on a level playing field and the parties can make trade-offs tailored to their circumstances and preferences, rendering much bureaucratic oversight superfluous. Layered atop extensive regulation, the process works poorly; as a substitute, it can yield fairer outcomes that better meet people's needs.

3. STRONG COMMUNITIES. We consider solidarity indispensable to the health of our communities and the nation. Well-functioning private-sector worker organizations are vital mediating institutions for establishing stronger bonds among workers, facilitating mutual aid, and affording meaningful participation in the public square. Giving workers a seat at the table also fosters shared understanding and mutual respect between workers and the managers, owners, and political leaders who have become socially and economically isolated from the American mainstream.

The standard partisan arguments over labor have tended to accept our nation's current legal framework as the only

one, and thus to present its expansion or contraction as the only options. Entirely different arrangements deserve consideration. In parts of Europe, for instance, “right-to-work” is the norm, but so is sectoral bargaining. On the one hand, labor and management in Germany often partner on “works councils,” which are illegal in the United States and opposed by American labor unions. On the other hand, such “codetermination” can also extend to labor holding seats on corporate boards, which American unions support but shareholders resist. In some places, unions manage functions like unemployment insurance and job training that we take for granted as government responsibilities. In Canada, collective bargaining offers the parties autonomy to depart from government mandates in regulating their own workplaces.

Conservatives should be willing to consider all these approaches, and others besides. We endorse no specific proposal but believe that various combinations hold the potential for substantive reform that would advance our priorities of improving the lives of workers and their families, deepening our communities, and strengthening the nation. We are eager to pursue discussions with policymakers from across the political spectrum and representatives from all facets of the economy. Here, too, workers must have a seat at the table.

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for identification purposes only.*

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American labor movement from Big
Labor's partisanship and restore its
community-building purpose.*





Labor's Conservative Heart

BRIAN DIJKEMA

IT IS NO COINCIDENCE that what finally broke the Soviet Union was a Catholic trade union—a group of shipyard workers, led by an electrician and motivated by a faith that their oppressors deemed an opiate. Christianity and its sweeping social vision enlivened the workers in Gdansk and their entire nation, and, a decade later, a totalitarian superpower claiming to speak on behalf of all workers around the world had vanished. The forbidden revolution of workers bound together in solidarity around a shared vision of dignity, work, and the common good did what tanks and armed divisions had failed to do. It ended communism and gained freedom for millions. When we celebrate the triumph of Solidarność over Stalin's heirs, we should never forget that the movement that toppled the Soviets started because a woman was unjustly fired. It was a workers' movement before it was a political movement.

The Cold War is receding into history, but conservatives rightly hold fast to its vital lessons. One of those lessons is that the conservative mind and the conservative heart should take a keen interest in a thriving labor movement. Trade unions—associations of workers who organize together for the purpose of achieving justice in the workplace—are not, and should not be considered, the exclusive domain of the political left. Rather, the principles of a vital labor movement have more in common with the principles of the healthiest tenets of conservatism today. The institutional representatives of the conservative movement ought to take organized labor seriously.

Labor and the Right

Enthusiasm for a strong labor movement is anything but Marxist. Labor in America—while certainly influenced by a wide range of intellectual and religious sources—has been pragmatic and should cast doubt on any narrative that places ideology at the center of its history, past or



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present. It was not *simply* a matter of workers looking after their stomachs—there is plenty of concern and discussion about what constitutes life, liberty, and the pursuit of happiness in American labor history. But in most cases, one finds less concern with Marx and a workers’ revolution than with dignified work that provided for a well-stocked family kitchen. The same is true today. Graduate students hired as union administrators in Washington might be interested in social constructs, but most moms with SEIU membership cards are more interested in a job that allows time to help with their kids’ social studies.

Even on purely theoretical grounds, thriving trade unions are a failure of the Marxist program. Karl Marx saw trade unions as integral parts of a capitalist system to be “dispensed with” as soon as capitalism was overthrown. By contrast, and contrary to common conceptions, a thriving trade-union movement with a sustained focus

on improving the lives of working people is indicative of robust and mature democratic capitalism, not Marxism. This is why communist countries such as China and Cuba will not tolerate free-trade unions, even today. The compromise, trust, integrity, and democratic character needed to make trade unions flourish are the very things that totalitarian regimes wish to suppress.

Unions are, in many ways, a quintessentially Tocquevilian association. As the libertarian philosopher Jacob Levy notes:

The fact that workers have so often and in so many places sought to organize, and the fact that firms have so often and in so many places resorted to illiberal restrictions on freedom of association if not outright violence to prevent them from doing so, itself looks like prima facie evidence from the world in unions' favor. Whatever one's complaints against the regime of employment relations created by positive legislation such as the Wagner Act, unionization comes first, before the state action and initially in spite of state action.

Conservatives, who pride themselves on their support of liberty, emergent order, and association outside of the state, should see the spontaneous ordering and pre-political nature of organized labor as something in line with, not opposed to, their principles.

Trade unions can, in turn, bolster other social institutions—most notably, the family. Catholic social teaching encourages not only that decisions be made at the level where their effects will be felt most tangibly but that social institutions play a mutually supportive role. Good education allows for good work, good work allows for good wages, good wages provide security to form a family, a stable family provides the best context in

which to receive a good education, and so on. As Andrew Cherlin and others note, labor unions have played, and still might play, an important role in providing Americans with the financial and social stability to proceed along that virtuous circle.



Conservatives, who pride themselves on their support of liberty, emergent order, and association outside of the state, should see the spontaneous ordering and pre-political nature of organized labor as something in line with, not opposed to, their principles.

We know, for instance, that stable income from the state can function as a stabilizer on marriages—at least for men.

Why, if we care about restraining the role of the state, should we not look upstream to institutions that secure higher wages that might also help to stabilize marriages? We know that parenting with less stress leads to better outcomes for children’s educational and economic prospects but is increasingly the domain of the wealthy. Why should it stay that way? Why not support institutions that give workers real input on their work schedules?

Labor and the Left

Most conservatives today see matters quite differently. The right-of-center’s conventional narrative about labor markets is one in which individuals—totally unconstrained by any other institution—form contracts with their employer in their personal interest and in response to the laws of supply and demand. If trade unions arise,

it's because an employer failed in some way—either to recognize market forces or to address workers' demands— or else because unions have coerced workers into joining. In a debate about Catholic social teaching on labor, Charles Baird encapsulated this perfectly when he said: “Good jobs are union-free jobs.”

This conservative hostility is perhaps grounded in politics more so than ideology. American labor unions have in practice been owned by—or, in a sense, are the owners of—the Democratic Party. In the last presidential election, America's big unions spent hundreds of millions of dollars, the majority of which went to the left's political causes, and Hillary Clinton received over 97% of labor's spending on the presidential race. This, despite union households favoring Hillary Clinton over Donald Trump by only 8 points, according to exit polls. Among national politicians, only one Republican is among the top 20 recipients of labor's contributions. The relationship goes far beyond the cash. Most of labor's activism—from its on-the-ground support of Democratic candidates to the proliferation of labor-funded community organizations—tilts left.



The conservative tendency to reject labor outright, rather inquire how such a vital institution might be better ordered, is neither appropriate nor conservative.

As a result, most people, both right and left, believe the principles of labor—its intellectual, even spiritual, roots—to be fundamentally leftist. The story goes something like this: Organized labor assumes that capital, usually in the form of the business corporation, is inherently exploitative. Both assume an adversarial relationship between the worker and the employer in

which collective bargaining is but a means of achieving a ceasefire that can never yield lasting peace.

This plays out not just in constant martial metaphors—“Fight for 15!,” “union busting!”—but in the legal structures of labor relations. The Wagner Act, created in the middle of the Great Depression, and which forms the backbone of American labor relations law, manifests an ideological belief that workers and owners are adversaries. Other, more cooperative or communal, structures of labor relations are, in most cases, explicitly prohibited. Instead, the law requires that workers, their unions, and the companies they work with act in opposition as they organize and bargain to reach an agreement that maximizes workers’ interests—even if it comes at a cost to the company or the economy, even if it means that labor uses the powers of the state to achieve those interests.

It’s that last item that makes many people, especially on the right, particularly nervous. They worry that the slight whiff of Marxism wafting around some organizing campaigns will drift into rank Marxism when unions enter the political sphere. The fact that the hierarchy of Big Labor in the U.S. exhibits an only thinly veiled hostility to families (the union movement has fully embraced a libertarian sexual ethic in recent years) and that the “widespread indifference and even hostility toward religion among progressives and Democrats in recent years” make many conservatives even more nervous.

A Better Future for Labor

So yes, the way trade unions work in America today is unquestionably a problem. They force membership—through the law, through thuggery, or through sweetheart deals with government. One can’t deny that most of this behavior is a violation of what John Paul II calls

“the subjectivity of the individual.” But none of this is inevitable.

The conservative tendency to reject labor outright, rather than inquire how such a vital institution might be better ordered, is neither appropriate nor conservative. The vision of labor espoused by many conservatives (and embodied in much right-to-work rhetoric and law) leaves individuals to deal directly with companies and leaves the state to adjudicate between them. The result has been an expansion of state authority into all sorts of areas—health and safety, wages, and, in some jurisdictions, even scheduling. Is this the conservative vision? This seems more like what political philosopher Jonathan Chaplin calls “an intentional strategy at work to reshape the independent associations of civil society in the uniform image of an ever-expanding set of identical individual rights, imposed with the monopoly power of public authority” than the diffused power and plural social responsibility that are the hallmarks of conservatism.

In the Christian tradition, the subjectivity of the individual is not complete unless it is expressed socially. Thus, John Paul II also spoke about the “‘subjectivity’ of society.” By this, he did not mean to suggest that there is some “society” that exists apart from individual subjects and whose will can be divined in the halls of government. I hesitate to say it, but I think his holiness would have agreed with Thatcher’s claim that “there is no such thing as society” if it was meant in that sense. What he meant, rather, was that

the social nature of man is not completely fulfilled in the State [nor, of course, by himself], but is realized in various intermediary groups, beginning with the family and *including economic, social, political and cultural groups which stem from human nature itself and have their own autonomy*, always with a view to the common good [emphasis added].

Now put this conception of subjectivity alongside the high view of work rightly held by most conservatives, which is expressed so well by John Paul II: “Human work has an ethical value of its own, which clearly and directly remains linked to the fact that the one who carries it out is a person, a conscious and free subject, that is to say a subject that decides about himself.”

The ethical nature of work implies that the worker is able to “decide about himself” *in the workplace*. She is not simply a tool of the corporation, or someone whose agency is subsumed by her ability to leave the workplace if she doesn’t care for it. There is more to agency than the right to exit. Ethical work assumes the subjectivity of the individual, and, per above, the subjectivity of the individual “is realized in economic groups which stem from human nature itself.” Trade unions, at their best, help workers exercise this agency within, alongside, and sometimes against, the business corporation.

They also serve a key social function. It’s not that unions will become social clubs (having a drink at the union hall doesn’t really happen these days), but they do serve as institutions that provide a community of practice that, in our bifurcated society, can provide real meaning. Matthew Crawford notes that the judgment received from one’s fellow workers—about one’s work, one’s character—is one of a few remaining places of objective measurement in a world where impressions and preconceived biases rule the day. Knowing that your colleagues value your work and acknowledge your excellence is a type of more immediate and valuable social judgment of which America could use more. They might not vote the same way, but a plumber from the Bronx has plenty in common with a plumber from Boise.

Such communities can be terribly closed in some ways, but they can also serve as places of real and unexpected human encounters. At a conference exploring means

of reviving solidarity in America last year, I spoke with labor leader David Rolf, who noted that, for many in the civil rights era, the trade union served as one of the few places where people who were segregated referred to and treated one another as “brother” and “sister.” Surely, Americans can use more, not less, of this today.



A renewed labor movement will have more in common with a renewed conservative movement than it does with the current left or right. But it will also seek, find, and engage with the voices within the existing labor movement that are calling for something new—identifying points of agreement and starting there.

Pope John Paul II’s caveat “always with a view to the common good” is key, and it is also what differentiates a conservative view of labor unions from socialist ones. Properly understood, the trade union functions as a body representing workers within other bodies whose goods must also be pursued alongside the individual interests of the worker. This view recognizes that there will be regular occasions during which employers and employees are at odds, and will work, as Levy notes, “to mitigate workplace power imbalances between managers and employees.” But it also recognizes that both worker and boss are members of a community that will thrive only if the greater good is kept front of mind.

Germany provides an example of that cooperative approach. As Samuel Hammond recently observed, “collective bargaining was associated with wage

restraint, as German trade unions agreed to push wages below marginal productivity in an effort to boost the competitiveness of their exports.” This cooperation goes beyond finances. The relationship between trade unions and businesses in skills training, for instance, is another example of the benefits of cooperation in the labor market and the workplace.

To be clear, the importance of the voluntary nature of unions does not imply that the state has no role. It does. As Pope John Paul II noted, “The state has the task of determining the juridical framework within which economic affairs are to be conducted, and thus of safeguarding the prerequisites of a free economy.” And among these prerequisites is an assumption of “a certain equality between the parties.” The government’s task is not to interfere or to absorb but to perform its proper role as an enabler.

A renewed labor movement will have more in common with a renewed conservative movement than it does with the current left or right. But it will also seek, find, and engage with the voices within the existing labor movement that are calling for something new—identifying points of agreement and starting there.

Conservatives should actually live out the belief that the responses to a social problem are best led by voluntary organizations. They should work to form worker associations that enable individuals and families to thrive and articulate the grounds on which to approach collective bargaining as well as the view of work and business that supports it. In doing so, the conservative movement will come to better understand the existing limits of policy on organized labor in America and can begin to build support for reforms among conservative voters. This doesn’t preclude current politicians from starting the renewal on their own—they should!—but

structural change will be far more likely, and far more stable, if it starts from the ground up.

In all cases, the conservative movement should listen to the needs of actual workers and attempt, in classic American fashion, to meet those needs. American conservatives are proud of America's tradition of government of the people, by the people, and for the people. In the nation's labor movement, they should see an opportunity to advance it. ■

Meet Alex and Lance, two blue-collar workers in southwestern Ohio. One had union representation as he sought a foothold in the labor market; the other did not. Their lives remind us that there is still power in a union.





Workers Are People, Not Widgets

AMBER LAPP & DAVID LAPP

In 2010, Amber and David Lapp began interviewing white working-class young adults in southwestern Ohio about their views and experiences of marriage, family, and work. Their research was initially sponsored by the Institute for American Values and then the Institute for Family Studies. The names of some people have been changed to protect their identities.

Alex

In the fall of 2009, Alex got a factory job after five months of working for minimum wage at the Food Mart in his small southwestern Ohio town. “I want a real job,” he told his stepdad one day. “Can I work at the factory with you?”

Alex’s stepdad was a plant manager at a factory that made steel oil drums, and he had an opening on the second shift for “environmental quality,” a glorified name for cleaning boy, Alex said. But it was a union job (United Steelworkers) that started out at \$12.75 an hour. It was a position that typically required you to prove yourself as a temp before getting hired full-time with eligibility for insurance and full benefits. But mainly because it was his stepdad who was doing the hiring, Alex had a direct route.

He was only 19 and finishing up his certificate at a broadcasting school, where he met his future wife, Hannah. Before he met Hannah, he was friendless and depressed, ready to give up. He agreed to attend broadcasting school only to satisfy his mom and stepdad’s emphatic wishes to get some kind of further education. He figured he’d stick

around for a few weeks, maybe a few months, and then drop out. But Hannah delivered him from alienation, and he threw himself with purpose and energy into work.

With his new factory job, the last few months of broadcasting school had Alex waking up at 5:00 in the morning for classes, and rushing home at 2:00 in the afternoon to grab lunch and pack his dinner in his grandpa's old metal lunchbox, before rushing to the factory for the 4:00 – midnight shift. By 1:00 in the morning, his head finally hit the pillow. At 5:00 in the morning, his alarm rang, and he did it all over again. After a few months of the rigorous routine, Alex and Hannah made a sudden decision to marry, after thinking that Hannah might be pregnant.



The bottom line is that there is something fundamentally misaligned about an America in which a law-abiding, decent, and hardworking husband and wife are both working full-time but cannot consistently pay rent, much less save for homeownership and other life goals.

At the factory, Alex quickly earned a reputation as one smart helluva worker. In his first position, sticking “HAZARDOUS” and “NOT HAZARDOUS” labels on steel drums and cleaning the paint booth, he learned everything he could about the chemicals. When the plant hired a new second-shift crew, they asked Alex to be the inspector. That position paid \$13.50 an hour. And with the new shift came a new round of employees and temps who didn't know anything about steel drums. But Alex did.

“I’m gonna make you my line leader,” Alex’s supervisor at the time told him. “Because you do a damn good job and you know it all.”

Alex was now making \$16.50 an hour for 12-hour night shifts and taking whatever overtime he could get (at \$24 an hour), which meant that during a typical week he worked anywhere from 70 to 90 hours. There was a sign-up sheet that said that anybody who wanted overtime had to sign up by 1:00 the day before. Every Monday, Alex would go in and sign up for Monday, Tuesday, Wednesday, and Thursday—whatever overtime he could take.

Working as the line leader also meant that Alex often had to do the work of two or three people, “because we kept on getting crappy temps in,” he said. “People we got in didn’t want to work.”

Granted, the factory was no paradise. For one thing, it didn’t have any heating or air conditioning, so in the winter you saw your breath and in the summer your skin shone with sweat.

But as Alex saw it, when it comes to how people view work, “something has been lost” since his grandfather’s generation and since his West Virginia pioneer family moved to America. “We come over here a bunch of industrious folks trying to escape persecution, trying to escape a hard life,” he said. “Come to the land of milk and honey, if you will, the streets are paved with gold. Work your way up, become a Rockefeller, become a Carnegie. You know what I mean? Work your way up. And now I don’t know what the hell has happened. Now, we wanna work our way down.”

Alex wanted to work his way up. But then he got a different supervisor he didn’t get along with. One day, they had a conflict that culminated with the supervisor ordering Alex to clock out and go home.

“I don’t recognize your authority anymore,” Alex remembers shouting back. “You can’t tell me to clock out and go home. Get out of my face, or I’m gonna have my truck loaders beat the f*** out of you.”

The supervisor called his maintenance men to throw them on Alex, and Alex countered by calling his truck loaders. The battle lines were drawn, and it might have turned violent had the plant’s United Steelworkers representative not intervened and told Alex to go home.

“Look, I can’t show you favoritism,” Alex’s plant manager stepdad told him the next day. “As far as I’m concerned, you’re a speeder, and the policeman caught you speeding. I’m gonna have to throw the book at you.”



Indeed, you can see in Lance’s story the declining power of the ordinary worker in a hypercompetitive environment, and in Alex’s story both the power that still resides in a union and the corruption that threatens its legacy.

He suspended Alex for five days on two charges: disobeying the supervisor and “something like starting a revolution,” Alex remembered.

Alex could have been fired for insubordination, but following typical policy that had been agreed upon by the union and management, Alex, with the help of his union rep, filed a grievance stating why he should be reinstated after his five-day suspension. In the factory parking lot, Alex delivered the letter to his union rep, who then made the case to management that Alex was a good worker and should be retained. After Alex’s five-day suspension,

Alex and the union rep met with Alex's stepdad, the plant manager, to decide Alex's fate.

It was a standard process, Alex said, that typically resulted in the suspended employee getting his job back—a direct result of the union's strength, Alex said. Only a minority of cases resulted in the worker getting fired—for example, if the worker had a particularly bad work record. In Alex's case, he was retained, an outcome that Alex chalked up to his union rep's advocacy on his behalf. "I was supposed to get fired, but luckily I got rescued," was how Alex put it. "The union guy was like, 'Look, Alex was totally in the right and you know it.'" Because of the union's protection, Alex says, "I didn't get screwed."

Alex was demoted from his position as line leader, which included a reduction in pay. But Alex quickly ascended in his new position and hoped to rise to the level of supervisor and retire from the company. He always got the overtime he needed, and he was grateful for the work.

Lance

Lance, his wife, Tonya, and their five kids rented a house a few doors down from the home that Alex and Hannah lived in as newlyweds. Lance and Tonya also married young, in 2009, the same year Alex and Hannah married. They were high school sweethearts who said they didn't care to buy a big house in a new subdivision or to make a bunch of money. They were happy to live in a small house and raise five children, sometimes even taking in a struggling friend or family member in need. But despite both Lance and Tonya working full-time, financial stability has been elusive for them.

During his long job history, Lance has mostly been in and out of temp jobs and service jobs, a narrative that highlights the powerlessness of low-wage employees in America's de-unionized economy.

To hear Lance tell the beginnings of his work history more than ten years later begins with an admission and a regret from Lance: looking back, if he were the supervisor of 19-year-old Lance in those jobs, he'd fire the kid. For instance, Lance's first full-time job, at Kroger, ended with Lance cussing out the supervisor and walking off the job. But as Lance entered his early twenties as a husband and a father, he thinks that he matured and that his attitude toward work shifted.

A formative part of Lance's early work history—after the Kroger firing and his subsequent attitude change—was through temp agencies, a history that includes a series of questionable firings and run-ins with management. First, there was a manager who threatened to fire him for clocking in one minute late (despite never having called off or clocked in late), followed by a factory that fired Lance for smoking at a picnic table a couple of hundred feet away from the factory building, thereby violating a company no-smoking policy that Lance didn't know anything about. The temp agency, in turn, fired Lance for that, stating that his violation of company policy would have to go on his record and make it harder for them to find him a job.

But the incident that really soured Lance on temp agencies was a job at an industrial lighting company for \$10 an hour, a job he had found through a different temp agency. The company made streetlamps, and Lance was a ballast picker, which meant picking 150-pound boxes of steel ballasts, stacking them on a skid, and sending them to the assembly line. Lance loved the job—mainly because he got a paycheck every Friday for up to \$550. The temp agency had a strict six-month “hire-or-fire” policy, and Lance really wanted this job; he was determined to win it with extra conscientiousness.

One day, while waiting for the forklift driver to move a huge metal bin out of his way, Lance grew impatient and

set out to move the metal bin with his own hands. But as he did so, his left shoulder popped, and his arm dangled and went numb.

Lance pressed on as if nothing had happened, but he felt burning all the way up his neck for the next two hours.



Is there an appetite in working-class America for a new labor movement? It's true that we're not aware of anyone in our white working-class town chomping at the bit to form this new movement. The new labor movement, like the old labor movement, will need Catholic priests and Mother Joneses to summon and organize the requisite leadership and self-capacity.

Finally, when the pain was just too intense, Lance told his plant manager, Ray, that he wasn't feeling well and needed to go home, not daring to tell the plant manager the real reason for his early exit.

"I know if you say 'I got hurt at work,' they find a reason to fire you," he said.

He went straight to the hospital, and when the nurses asked him what had happened, he lied and said that he'd blown his arm out moving cinder blocks in his backyard. The doctor put his arm in a sling and told him not to work for two weeks. When Lance gathered the gumption to tell Ray how he'd actually injured his arm at work, he made sure to emphasize that he wasn't going to file any complaints.

“Okay, well, do whatever you gotta do to get your arm healed so you can get back in here,” Lance remembers Ray assuring him.

Lance returned to work after the two-week absence his doctor had ordered, and as the six-month “hire-or-fire” point approached, Lance made sure to ask Ray repeatedly about the prospect of getting hired full-time, always reminding Ray of his diligence.

“Most definitely,” Ray told him. “You seem to be a hard worker.”

But the day before the six months were up, Lance took a call from the temp agency representative at the plant.

“We don’t need you anymore,” she said.

“How come?” Lance asked, taken aback. He explained that he had just spoken with Ray, who’d assured him that he’d be hired.

“Oh, it’s because of your attendance,” the temp agency rep explained.

“Well, you guys told me it was okay to take two weeks out of work,” Lance pointed out, “whatever it took to get my arm healed.”

“Well, I’m sorry,” the representative responded—and hung up the phone. His services were no longer required. As Lance put it, “They basically screwed me over.”

After that experience, Lance set out to find work on his own, apart from a temp agency. But Lance has encountered similar frustrations in those jobs.

For instance, there was the landscaping company whose dozens of lawn signs advertised a wage that seemed

too good to be true: \$510 a week. But after tearing open his first paycheck, he quickly discovered an important caveat: it was only true if you finished the daily routes the company expected you to complete—a feat that Lance found impossible with a work truck and equipment that kept breaking down.

There was the Popeyes franchise, where Lance worked as a crew leader for \$9.75 an hour in 2015. He had been working there for about a year when, on the way to his shift, his only car was totaled, the victim of a texting teen who veered across the median and plowed into his car. Sitting in the back of the police cruiser filling out an insurance claim, Lance called his district manager to explain that he wouldn't be able to go to work that day, that the policeman had told him to take the children, who were in the backseat, to the emergency room. Unimpressed, the district manager said that either Lance would show up to work that day or be fired. That evening, Lance called the corporate office to report what the district manager had told him and was assured that somebody higher up would get back to him. Lance also called back his district manager, threatening to hire a lawyer if she didn't let him come back to work, but the district manager ultimately demoted Lance, saying that he was setting a bad example for other employees. His dignity offended and his pay cut, Lance said he didn't want the job back and left. No one at the corporate office ever returned Lance's call.

Most recently, there was the automotive repair chain where Lance had worked for a couple of years. The work was steady, the pay decent. But in mid-February 2020, Lance's wife, Tonya, a thirtysomething mom and a cancer survivor with a diabetic condition, got sick after the children she nannied got sick with coughs and fevers—only days after their father had returned from a trip to Hong Kong. She became so sick that she had to be admitted to the hospital, and her doctors suspected that it could be a case of the new coronavirus that was then

ravaging China. But there was no way to test for it at the time. As Tonya spent several days in the hospital, Lance took a few days off work to care for their five children. He took what days he had left of his week of vacation, but when he had used all those up, he had no option but to call in sick. None of this mattered to Lance's employer, who fired him just days after he'd called in sick. Weeks later, Lance's application for unemployment was denied—he had been fired after all.

Lance has since moved on and found work elsewhere, first at an Amazon warehouse, and recently as a utility locator.

A Tale of Two Workers

The history of organized labor in America is tumultuous and complex, a struggle that echoes in the lives of Alex and Lance. Neighbors and newlyweds little more than a decade ago, today they lead rather different lives. Alex worked his way up again at the factory after his first suspension, making \$18 an hour, plus all the overtime he ever wanted, enabling him and his wife to save enough to buy a house in a new subdivision for their family of six, and for Hannah to stay at home full-time to care for their children.

Lance and Tonya, meanwhile, both work full-time and continue to experience financial precariousness, recently moving from their single-home rental to a trailer park—tight quarters for their family of seven.

The divergent paths of these two families cannot be reduced to a single factor—there is a lot going on in the two stories. For one thing, Lance will be the first to volunteer that he thinks he was “lazy” and hardly a model employee during the first year of his marriage. Whereas Alex was willing to tolerate extreme heat and less-than-ideal conditions at his unionized factory, Lance left factory work and tries to avoid it in general. But Lance thinks he's matured a lot

in the last 15 years, and, having been neighbors to Lance and Tonya for the last five years, we've watched them soldier on with decency, kindness, hard work, and nary a complaint through the latest job upheaval, a cousin's opioid addiction (they adopted the baby), Tonya's health scare, and the coronavirus pandemic.

The bottom line is that there is something fundamentally misaligned about an America in which a law-abiding, decent, hardworking husband and wife are both working full-time but cannot consistently pay rent, much less save for homeownership and other life goals.

What's going on? Why have Alex and Hannah been able to rise to relative stability, whereas Lance and Tonya are as fragile as ever? Despite the complexities of their stories, one difference stands out: whereas Alex benefited from unionized labor, Lance has consistently experienced the vulnerability of nonunionized labor.

Alex's story points to both the promises and limits of the modern-day union. The promises are evident in the stability and benefits that Alex experienced in his almost decade of work at the unionized factory: the path to full-time work with plenty of overtime, health insurance, vacation time, and sick days; the pay raises every November (up to a limit) "because it's a union place," as Alex put it; a grievance process and union representatives to defend you when an angry, entitled supervisor claims you've been insubordinate; and a company pension (\$0.75 for every hour Alex put in) that he could reap upon retirement at age 65. All of those were reasons that Alex envisioned retiring from the factory. That stability is what gave Alex and Hannah the means and the confidence to buy a new home.

But we shouldn't just accept the simplistic narrative that unions are good, nonunionized workers are vulnerable, and America just needs more unions—end of story.

Alex himself rejects it, arguing that “the institution of the union is trash.” He believes that the basic needs that necessitated unions in the first place—child labor, egregiously dangerous working conditions—have been resolved and that the necessary standards have been set. Now, he believes, it’s best to let companies be guided by market forces and to let individuals and companies work out agreements between them.

“The union, as far as I can tell ... only ever helped people who were no good,” he had said about five years into his job at the unionized factory. Despite the support of his union rep, Alex believes that, overall, the union too often works against the best interests of the company and of hardworking employees, by protecting the jobs of less-than-hardworking workers. He pointed to one coworker known for absenteeism who was fired. “Union saved his job. Whatever the rules, you know, flipped out on management, saved his job. Well, he quits about a month later—just quits. Why’d you save his job?” He saw this as a waste of resources and unfair to those who work hard and follow the rules. “The only thing a union is good for is saving people who are no good.”

And when other factory employees asked Alex to be a union rep, he told them, “ ‘I don’t want no part of the union! I’m a Republican, I don’t want no part of that!’ As far as I’m concerned a man comes into work, earns his pay, and goes home to his wife.... You do your job, you go home. You’re not in here to screw around, or to drink your beer, do drugs out on the parking lot—that’s not what it’s about. It’s about the American Dream.”

At the same time, Lance’s story is the near flip side of Alex’s; it’s what you get when it’s one isolated worker versus a whole corporation—a maze of temp work and low-wage jobs and questionable-to-unjust firings, with no real possibility for recourse, a shifting and confusing pathway to stable, full-time work that enables you to buy

a home and enjoy a secure retirement. In many of his jobs, Lance has gone without health insurance, paid vacation, or paid sick leave. (The absence of the last is also true for his wife: she once elected to go back to work three days after delivering her baby, so that they could keep paying the bills.) In some of the jobs he's held, he's struggled to see a path to steady full-time work. At Popeyes, for instance, from his position making \$9.75 an hour as a crew leader, he looked up and figured that he could get promoted to assistant general manager, for a mere \$10.50 an hour. After that, he could become a general manager, a salaried job that he figured paid about \$45,000 a year but that could come with 70-hour workweeks and loads of stress. Plus, there was only one of those salaried jobs per location.



If modern-day unions are imperfect, is that really a reason to lean in the direction of leaving the worker to fend for himself? Or is it all the more reason for workers to seek new and better ways to assert and defend their rights?

It's possible that a confident and highly motivated person like Alex, willing to work 70 hours a week regularly and certain in his ability to win a well-paying job, can make it in that libertarian, de-unionized economy. But it's perhaps more likely that average but decent workers like Lance—not drug-addicted but responsible, not driven by an ambition to climb the corporate ladder but content to work a normal workweek—are acutely vulnerable to getting screwed.

Indeed, you can see in Lance's story the declining power of the ordinary worker in a hypercompetitive

environment, and in Alex's story both the power that still resides in a union and the corruption that threatens its legacy. But if modern-day unions are imperfect, is that really a reason to lean in the direction of leaving the worker to fend for himself? Or is it all the more reason for workers to seek new and better ways to assert and defend their rights?

Among the white working-class young adults we've interviewed over the last decade, there is a general attitude of helplessness—expressed in a shrug of the shoulders, a sigh of resignation—when it comes to workers' rights. “True hardworking Americans get screwed over in the long run,” was how Lance put it in 2015, just as Trump was beginning his campaign. “We're screwed,” is a common lament. Union membership has declined dramatically since the mid-twentieth century, and research suggests that most workers aren't that interested in joining a union. Part of the story may be that, among some young adults, a loss of agency has given way to cynicism, the belief that one's choices and actions are of little consequence in the face of larger forces.

But also important is the way that Big Labor today fails to meet the real needs of working people. A neighbor of Alex's with whom we spoke—also a millennial but one who leans more progressive—commented that though he is not antiunion, in his experience unions aren't functioning as they should. “Mercifully, I'm not part of a union anymore,” he says, adding that the union at the grocery store where he works “hasn't shown much, if any, usefulness.” And yet, he sees the need for a stronger labor movement with real bargaining power to address the needs of workers. “Otherwise these ‘essential’ workers are just expendable workers instead,” he says.

A More Perfect Union?

What we need are reimagined and reformed worker

associations that transcend partisan politics, eschew the national machines of Big Labor, and instead deliver direct benefits to workers. This is the kind of labor movement that might resonate with people like Lance and Alex, and conservatives should see merit in a new labor movement along these lines.

The American labor movement is but one expression of what Alexis de Tocqueville famously admired as the American penchant for forming associations, large and small, political and otherwise. According to Catholic social teaching, the right to form associations is a natural, God-given right of which neither the state nor the employer may deprive workers. Pope John Paul II reaffirmed this right in his 1991 encyclical, *Centesimus Annus*:

Here we find the reason for the Church's defence and approval of the establishment of what are commonly called trade unions: certainly not because of ideological prejudices or in order to surrender to a class mentality, but because the right of association is a natural right of the human being, which therefore precedes his or her incorporation into political society.

Worker associations function as one of the mediating institutions in civil society that exist between the state and the individual: an intermediary that exists precisely so that Lance neither has to rely on his own devices when confronting a wayward boss (calling corporate, but never getting a call back), nor to depend on a supposedly omnipresent, omniscient government bureaucracy (for instance, a flood of regulations that may go ignored or unenforced). In this way, worker associations could be an antidote to alienation in white working-class America—summoning personal and communal agency and creating opportunities to take meaningful control of their own lives and communities.

The labor movement has historically been a vital part of the broader social fabric, and it can meaningfully reinforce other institutions of civil society. For instance, it's not unusual today to see businesses post placards near checkout, boasting of how much they've given to



[A] new labor movement would also have the opportunity to be a force for multiracial solidarity and provide an antidote to America's polarizing racial tensions. In the working class, Black and brown and white people would all stand to benefit from reforms that a new labor movement would raise. It would be an opportunity for working people to labor in a common cause, regardless of whether they're more likely to participate in a Black Lives Matter march or to hang a Blue Lives Matter flag from their porch.

local charities—a convoluted and backward approach to promoting the general welfare. A company might pay its workers as little as possible and even deny them the ability to form a union, but donate a windfall to social service providers or defer to the state to pick up the tab. Wouldn't it be better—for workers and for civil society—if instead labor unions secured the better wages, benefits, and scheduling practices from those same businesses? Would that not more directly support families, enable

marriages, and create more time for involvement in churches or volunteering at kids' Little League?

A new labor movement would have the opportunity to achieve something that previous labor movements in America have largely failed to do and, in some cases, not even attempted: a cooperative relationship between employers and employees. This approach to organized labor could prove more popular with workers, as one landmark study found that “[w]hen respondents had the option of joining a union or participating on a cooperative management-employee committee for discussing problems, union support fell to 23 percent; the committee concept proved more than twice as popular.” Indeed, there need not be an inherent struggle between the workers and the employer—in fact, as Catholic social teaching has emphasized for the last century, we ought to reject the idea that there is an inherent struggle between the two.

Beyond the context of the workplace, a new labor movement would also have the opportunity to be a force for multiracial solidarity and provide an antidote to America's polarizing racial tensions. In the working class, Black and brown and white people would all stand to benefit from reforms that a new labor movement would raise. It would be an opportunity for working people to labor in a common cause, regardless of whether they're more likely to participate in a Black Lives Matter march or to hang a Blue Lives Matter flag from their porch.

Is there an appetite in working-class America for a new labor movement? It's true that we're not aware of anyone in our white working-class town chomping at the bit to form this new movement. The new labor movement, like the old labor movement, will need Catholic priests and Mother Joneses to summon and organize the requisite leadership and self-capacity. But in that effort, there is something to tap in to—despite the strong individualist

and even libertarian sentiments that one often hears among our neighbors. You can hear it in the frustration when Lance said, in 2015, “I come home every day mentally, physically exhausted from the amount of work I’ve put in, and my checks are pocket change basically. I personally don’t think it’s fair.” You can hear it in Alex, who, despite his strong antiunion and libertarian sentiment, does believe in a solidarity that begins at the bottom and works up.

After strongly condemning unions and Democratic policies that he believes amount to socialism, Alex told us about how one day he went down to Cincinnati for a walk along the Ohio River, where he noticed a statue of Cincinnatus, the celebrated Roman general who is said to have left his plow standing in the field to lead Roman forces to victory against the invading Aequians. The statue had Cincinnatus with one hand on the plow, the other hand holding out an ax bound by sticks. Studying the statue, Alex had recognized the ax bound by sticks as the symbol of fascism—but there was another meaning here, he thought. He noticed that the bunch of sticks around the ax protected the ax handle “so that it can chop even harder,” and the sticks were bound together with a rope so that it would be “one strong, unbreakable thing.”

Alex worked a parable in his mind: it was like how his relatives in West Virginia back in the day hunted the land and shared the bounty of their labors with one another because they were family and that’s what family did. It was “the idea of a union even in a factory,” he said, that if “all men band together, we’re way the hell stronger than we are individually.” One stick alone, you could break, the statue said; but if you bound a bunch of sticks together, you couldn’t break them.

The statue made such an impression on him that years later, even the recollection of it would move him deeply, his hands shaking and his voice welling up with tears. The

statue spoke for the idea, he said, “that men are supposed to work together for the common good. Not in a socialist, communist kind of a way, but in a moral, Jesus kind of a way where you take care of each other and you give. If I have ten dollars in my pocket and I go along and I see someone in need and I—I don’t need ten dollars—I give it to them, they can use it. That’s how it’s supposed to be.”

With our national family polarizing into hostile groups, don’t we need that bottom-up solidarity? Wouldn’t it be astonishing if a new labor movement of Trump-supporting factory workers in small-town Ohio and Black Lives Matter-supporting fast-food workers in New York City would be the protagonists of that surprising new union? Yes, and what an American achievement it would be. ■

American labor law has become worse than useless: a lower share of the private-sector labor force is organized today than before the National Labor Relations Act was passed in 1935. The time has come for an entirely new model.





The Once and Future American Labor Law

MICHAEL LIND

AMERICA'S SYSTEM OF ORGANIZED LABOR is a failure. The 6.2% of private-sector workers represented by unions today is not only a shadow of the one-third represented in the mid-twentieth century, but also a decline from the level of representation before the passage of the National Labor Relations Act in 1935. The American legal framework for labor relations has failed workers, employers, and taxpayers alike, creating a vicious and unsustainable cycle of waning worker bargaining power, falling wages, and growing state-administered redistribution.

What Killed the American Private-Sector Union?

What accounts for the steep decline of unionization?

Labor arbitrage is routinely offered as a reason for organized labor's decline, and in certain sectors, such as manufacturing, geographic labor arbitrage has been an important factor. For instance, firms may transfer production to jurisdictions hostile to unionism either in the U.S., as in the antiunion "right-to-work" states, or abroad, as in China, Vietnam, and Mexico. The movement of entire manufacturing supply chains to the American South or overseas has forced many formerly unionized workers and their descendants into low-wage, nonunion service-sector jobs.

Firms also practice labor arbitrage by importing legal and illegal immigrants or guest workers as substitutes for American workers with labor rights, including the right to organize. Employers in low-wage sectors like agriculture,

construction, meatpacking, hotel maid service, and fast-food restaurants, as well as some high-wage sectors in Silicon Valley, have used illegal immigrants or legally authorized guest workers to evade U.S. labor laws and weaken unionization.

The long decline of American organized labor is also often blamed on the Taft-Hartley Act of 1947. Among other obstacles to unionization, the Taft-Hartley Act authorized state right-to-work laws that allow workers to refuse to join a union or pay dues to a union as a condition of employment at a unionized business. Today, 27 states, concentrated in the South, have right-to-work legislation.

Trade Union Density and Collective Bargaining Coverage (2018)

	Union Density (%)	Collective Bargaining Coverage (%)
France	8.8	98.5
United States	10.1	11.6
Germany	16.5	56.0 ⁽¹⁾
Japan	17.0	16.5
United Kingdom	23.4	26.0
Austria	26.3	98.0
Canada	29.4 ⁽²⁾	28.1

(1) 2016 figure, (2) 2015 figure

Source: "Trade Unions and Collective Bargaining," OECD.Stat, Organisation for Economic Cooperation and Development (OECD)

But labor arbitrage and right-to-work laws, while important, cannot be the predominant factor in union decline. After all, offshoring and high levels of immigration have taken place in other Western democracies with voluntary union membership without producing comparable declines in labor union membership (union density) or the percentage of the workforce covered by union-negotiated agreements with employers (collective bargaining coverage). Trade-union density and collective bargaining coverage vary dramatically among countries, depending on national labor laws.

The main difference among national labor systems involves the presence or absence of “sectoral” bargaining, in which one or more unions negotiate with multiple employers to determine wages, benefits, and/or working conditions for an entire industry or profession. Low levels of union membership can be accompanied by high numbers of workers covered by union-negotiated agreements, as in France, where 98.5% of workers are covered by sectoral agreements, even though only 8.8% of French workers belong to unions.

The alternative to sectoral bargaining is “enterprise-based” bargaining, in which unions attempt to unionize a single firm or sometimes only one of several workplaces within a single firm. The enterprise-based system creates a number of destructive incentives. In the absence of industry-wide standards, individual firms have incentives to avoid unionization, to prevent being undercut by rival firms that can charge lower prices because of their cheaper, nonunion labor. From the perspective of workers, unionizing a single company or a single worksite can be a Pyrrhic victory if it incentivizes the company to close the site or to go out of business altogether.

The decentralized, enterprise-based system also creates opportunities for corruption that would be easier to expose and punish in a more centralized system. As Robert Fitch observed:

Like feudal vassals, local leaders get their exclusive jurisdiction from a higher-level organization and pass on a share of their dues. The ordinary members are like the serfs who pay compulsory dues and come with the territory. The union bosses control jobs—staff jobs or hiring hall jobs—the coin of the political realm. Those who get the jobs—the clients—give back their unconditional loyalty. The politics of loyalty produces, systematically, poles of corruption and apathy. The privileged minority who turn the union into their personal business. And the vast majority who ignore the union as none of their business.

The Road Not Taken

A case can thus be made that the seeds of destruction of organized labor in the United States were present in American labor law itself, which favors bargaining at the level of the individual enterprise over multiemployer collective bargaining. With a few exceptions, the American labor system is enterprise-based, with low union density and correspondingly low collective bargaining coverage.

The existing American system of enterprise-based bargaining is an accident of history. In 1933, Congress passed the National Industry Recovery Act (NIRA), modeled on tripartite business-labor-government arrangements during World War I. The main purpose of the NIRA was to allow what became the National Recovery Administration (NRA) to oversee the establishment of industry-wide codes of fair competition, as long as these did not encourage monopoly, and to formulate industry-specific wages and hours laws. Section 7(a), which allowed workers to unionize and engage in collective bargaining, triggered a wave of labor organizing.

Claiming that it represented an unconstitution-

al delegation of power from Congress to the executive branch, the Supreme Court struck down the National Industrial Recovery Act on May 27, 1935. As a partial replacement for the NIRA, Congress hastily passed the National Labor Relations Act (or Wagner Act) a few weeks later on July 6, 1935. The Wagner Act remains the basis of U.S. labor law. But had the NIRA system survived and evolved, tripartite bargaining in various sectors might be the norm today.

While multiemployer bargaining is permitted under the Wagner Act, both employers and unions must consent to it, making it rare in the U.S. outside of a few industries such as professional sports and the hotel industry. To get a sense of what the condition of U.S. organized labor today might be in the absence of both labor arbitrage and enterprise bargaining, we can look at two labor law regimes outside of the Wagner Act system: the Railway Labor Act (RLA) and state wage boards.

Signed into law by Republican president Calvin Coolidge in 1926, the RLA, which today governs airline as well as railroad employees, sought to prevent strikes from disrupting the rail-based transportation system by putting in place an elaborate system of mediation and arbitration that included multiemployer collective bargaining. In the most recent 2020 national bargaining round in the railroad industry, the National Carriers' Conference Committee, representing 37 railroads, including CSX and Union Pacific, negotiated with 12 rail unions that represent roughly 125,000 employees, including the International Association of Sheet Metal, Air, Rail, and Transportation Workers (SMART-TD), the Transportation Communications International Union (TCU), and the American Train Dispatchers Association (ATDA).

The contrast between industries covered by the Wagner Act and those covered by the Railway Labor Act is striking, in terms of both union density and coverage. In 2018, 81%

of subway, train, and rail workers were covered by union agreements, and 77% were unionized. According to the Bureau of Labor Statistics (BLS), even though the typical entry-level credential of a railroad worker is a high school diploma or equivalent, the median pay of railroad workers in 2018 was \$61,480 per year. In contrast, in transportation and warehousing, defined by BLS as “private-sector industries with high unionization,” only 16.1% of workers were unionized. Truck drivers make \$47,000 a year, and school bus drivers only \$34,820.

In addition to operating under a labor law regime that permits and encourages multiemployer bargaining, railroad and airline workers are protected from the threat of geographic labor arbitrage by their employers. Unlike factories, railroads and subways cannot be offshored, and for national security as well as economic reasons, the U.S. government maintains a domestic airline industry. While legal permanent residents can work in these industries, railroad and airline workers cannot be replaced by illegal immigrants—unlike many factory, agricultural, and service workers in the U.S. The same immunity to arbitrage helps to explain the relative success of public-sector unions. Their employers are geographically immobile and public-sector workers, in most cases, are protected from being replaced by non-visa guest workers such as H-1Bs, to say nothing of illegal immigrants.

Like the Railway Labor Act, state wage board laws provide an alternative to the enterprise-based bargaining of the Wagner Act. Wage boards are government bodies that bring together representatives of labor, employers, and government to set wages, benefits, and working standards for entire industries or occupations.

In the early twentieth century, in the U.K. and other English-speaking countries, as well as the U.S., wage boards were devised as a supplement to trade unions, to be limited to so-called sweated trades like piecework

sewing that were low-wage, often dominated by female workers, and difficult to unionize.

A short-lived federal wage board system in the U.S. was created in 1938 by the Fair Labor Standards Act (FLSA), which established today's minimum wage, maximum hours, and overtime laws. The FLSA initially created federal wage boards or "industry committees" with tripartite representation of unions, employers, and the public that were authorized to set minimum wages (though not working conditions or benefits) in particular industries. In 1949, however, during a backlash against pro-labor laws led by segregationist Democrats and anti New Deal Republicans, the FLSA was amended to eliminate the tripartite federal wage boards, except in the cases of Puerto Rico and the Virgin Islands.

A few states, including New York, California, New Jersey, and Arizona, have state statutes authorizing tripartite wage boards to set wages or regulations in specific industries that date back to the early twentieth century. Other states allow the executive branch, following public hearings, to regulate wages or hours in specific occupations. Using a law passed in 1933, for instance, the State of New York convened a wage board to raise wages in the fast-food industry to \$15 an hour in 2015. New York also authorized a wage board for farmworkers in 2019. But most state wage boards have lain moribund for decades.

The Worst System, Except for All the Rest

Sectoral bargaining under the RLA and wage boards is the exception to the rule. The present U.S. labor law system is based on decentralized, enterprise-based bargaining that offers few real advantages to workers but grants employers many opportunities to resist coming to the bargaining table. While industries governed by multiemployer contracts have created stable employment,

established living wages, and resisted arbitrage, those that fall within the Wagner framework have witnessed a near-extinction of organized labor and left workers with only the minimal, standardized government safety net.

In the place of union-negotiated agreements stands a federal regulatory regime governing minimum wage, maximum hours, and overtime rules that was never intended to be a stand-alone system. Its supporters assumed that standards would provide a floor, on top of which unions in various sectors could negotiate better deals with employers, and that tripartite wage boards would be needed only in a few low-wage sectors that were difficult to unionize. But the difficulties of enterprise bargaining have made federal and state minimum standards the norm by default, rather than a baseline. As FDR's Secretary of Labor Frances Perkins declared, "I'd rather pass a law than organize a union."

So why not simply achieve the goals of collective bargaining through direct legislation?

To begin with, relying on legislation and regulation alone to protect workers is bad for the economy. A single set of one-size-fits-all rules for wages, hours, and benefits cannot reflect the diversity of occupations and working conditions in different sectors of the economy. And trying to legislate different standards for different sectors in detail would require a level of bureaucratic micromanagement that might give even the most ardent progressives pause. In contrast, organized labor and organized employers can negotiate standards appropriate to their respective industries, revising them, as needed, without additional legislation or regulation.

Moreover, members of Congress, executive-branch policymakers, and federal judges of both parties inevitably reflect the biases of business lobbies and the college-educated professional class from which almost

all politicians, civil servants, and political appointees are drawn. Given an opportunity for collective bargaining in one or another form, representatives of American workers may have a better chance of cutting a good deal through direct negotiation with their employers than they do of outspending and out-lobbying trade associations or mega-donors in the hope of influencing Congress or regulatory agencies.

Collective bargaining among labor and employers in some form can also minimize the need for an excessive welfare state. Today, most public policy experts left and right take for granted a future of weak unions and low wages in which American workers' incomes can be sustained only by greater levels of direct, after-tax redistribution from "winners" to "losers." As their preferred vehicles of redistribution, left-neoliberals opt for more public services and social insurance, while right-neoliberals propose vouchers and centrist neoliberals propose tax credits.

But higher wages and employer benefits achieved through collective bargaining can reduce the need for massive redistribution by an expensive welfare state. Instead, centralized wage bargaining that guarantees living wages and perhaps employer-provided benefits can be supplemented by a relatively small "residual" or minimal welfare state for the retired or unemployable, at limited cost to taxpayers. Indeed, a version of this, without the centralized collective bargaining, was the American model in the prosperous post-1945 era, with a limited welfare state supplementing employer-provided health insurance and pensions.

Most important, organized labor gives workers voice and agency in their own workplaces. If democracy is to be more than casting a vote for a few candidates every few years, it should include giving the majority of citizens a say of their own and a seat at the table in the occupations

in which they spend most of their waking hours as adults.

To paraphrase Winston Churchill on democracy, collective bargaining is the worst system of labor relations except for all the rest. As for its prospects in the U.S., in familiar or novel forms, another quote from Churchill may be relevant: “The Americans can be counted on to do the right thing, when they have exhausted the alternatives.” ■

*Labor leader David Rolf and
American Compass's Oren Cass
discuss the potential for sectoral
bargaining in America.*





Would Sectoral Bargaining Provide a Better Framework for American Labor Law?

DAVID ROLF & OREN CASS

MOST AMERICANS TAKE FOR GRANTED that our enterprise-based system of organized labor is simply the way collective bargaining works: employees at a worksite vote on whether to unionize; if the union wins, it bargains with the employer. This, in fact, represents an outlier among advanced economies, most of which use a system of “sectoral bargaining” that requires industry-wide representatives for workers and employers to bargain over industry-wide standards. As Michael Lind argues in his essay “The Once and Future American Labor Law”:

The present U.S. labor law system is based on decentralized, enterprise-based bargaining that offers few real advantages to workers but grants employers many opportunities to resist coming to the bargaining table. While industries governed by multiemployer contracts have created stable employment, established living wages, and resisted arbitrage, those that fall within the [current American] framework have witnessed a near-extinction of organized labor and left workers with only the minimal, standardized government safety net.

But sectoral bargaining is not a panacea. In the United States, where industry-wide agreements have been struck (e.g., among the “big three” automakers and the United Auto Workers), the result has sometimes been an uncompetitive sclerosis that led to stagnation and decline

benefiting neither firms nor workers. The nationwide agreements reached in small European countries may not be practical in America's larger and more diverse economy, but allowing separate agreements at the state level could trigger the same "race to the bottom" that has afflicted the current regime.

In this exchange, labor leader David Rolf and American Compass's executive director Oren Cass discuss the case for and against sectoral bargaining and the potential for adopting it in America.

The Wagner Act's Original Sin

Dear Oren,

Thanks for the invitation to converse on what's wrong with American labor law, how to fix it, and the potential for sectoral bargaining, in particular. I thought I'd use this first volley to share my own thinking about the history, trajectory, successes, and failures of 85 years of U.S. labor law and unions, which provides the context for why I think sectoral bargaining is a far better model than the workplace- and enterprise-based bargaining system that has largely failed American workers.

Where I think you and I start with a lot of agreement is that things aren't going particularly well for most American workers right now. Wages have been largely stagnant for a generation. Intergenerational economic mobility is now lower than at any point since World War II. The risk

and cost of retirement and higher education has been transferred from employers and governments to families. Housing, higher education, and health-care costs have grown 2.5x to as much as 7x faster than wages.

And as you've pointed out, it now takes 53 weeks of median male earnings or 66 weeks of median female earnings to pay for (only) housing, health care, a vehicle, and college tuition, up from 30 weeks of (male) earnings in 1985. Additionally, according to research released this week by the RAND Corporation, a strikingly disproportionate share of the nation's GDP growth since the mid-1970s has been captured by the top 1% of income earners, at the expense of the bottom 90% (despite the significant increase in women's workforce participation rates over the same period of time); in fact, the share of taxable income going to Americans in the bottom 90% has actually fallen from 67% to 50%, while the top 1% more than doubled its share.

And this was before the COVID-19 recession, which has done nothing but accelerate the already historically high levels of income inequality and erode family financial security even further.

As I've noted before, unless workers can wield real power—economic power, bargaining power, political power—no amount of policy discussion is likely to result in any different outcome. In the United States and most other developed countries, unions are the vehicle through which workers have united for power and for a seat at the table with their employers, within their industries, and at various levels of government decision-making.

But America's system of labor law—the rules governing the organizing of workers into unions and then their collective bargaining with employers—is on its deathbed, with only 6% of private-sector workers covered by collective bargaining agreements, even though record-high numbers

of American workers, especially millennials, would prefer to be represented by a union. This is in part because withering attacks on unions by employers and their political proxies have been so effective, but the underlying problem is that the United States has a uniquely flawed set of labor laws to begin with, creating unions that were simultaneously too optimized for workplace-level conflict but too weak to prevail, too focused on existing members and employers and not enough on broader economics or the common good. Employers, in turn, have every incentive imaginable to oppose unions and erode worker power, even if that's bad economics in the long run.

The Wagner Act: A Workplace-Centric Model

Inequality, financial insecurity and instability, and a deep economic crisis are the same problems that Congress sought to address when it passed the National Labor Relations Act (or Wagner Act) in 1935. The preamble of the act reads, in part:

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain

recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

In other words: in an era of powerful corporations, we needed unions to ensure that workers had the bargaining power to increase wages, for their own family financial stability but also to enable them to participate fully in the economy as customers and to ensure that there were lawful ways to solve industrial disputes, short of crippling strikes and lockouts.

For a few decades, the new system worked—especially in large industrial settings like manufacturing and transportation, and later in hospitals and hospitality. American workers joined unions by the millions, a new middle class arose, poverty declined, and American consumers powered three decades of economic growth, in large part through consumer spending and rising demand. Big business and Big Labor existed in a *de facto* detente in the postwar era, agreeing to limit spheres of conflict to periodic bargaining and strikes while each benefited from a growing economy and the proverbial tide lifted all their boats. For most of the twentieth century, inequality was an inverse function of unions' market share (or, in labor argot, "density"): when unions were stronger, more national income flowed to the middle class and less to the wealthy.

But the Wagner model was deeply flawed. Because it was, at its core, a workplace-centric model, nonunion workplaces had lower costs and more flexibility than unionized ones, even within the same company. As long as the dominant employers in major industries like autos, steel, and transportation were heavily unionized, unions

were able to raise wages and improve benefits during periods of economic growth and protect hard-won gains during recessions, without putting their employers at any real disadvantage versus one another. But the opt-in, voluntarist, workplace-by-workplace system of collective bargaining coverage created ample opportunities for union avoidance. The more any given industry became nonunion, the more remaining unionized companies perceived a need to limit union gains at the bargaining table, or bust their unions entirely, to remain competitive. Improved transportation and communication networks and increasingly mobile capital allowed employers to relocate work to nonunion geographies in the U.S. South or the global south, or simply to nonunion workplaces, subcontractors, or franchisees.

Unions, meanwhile, faced their own set of perverse incentives. Only union members vote in union officer elections and only union members pay dues, so many unions tended to focus only on extracting short-term economic gains for their existing members from existing employers and not on organizing the competition or making long-term partnerships with industry to improve quality and productivity along with compensation, in turn creating even more disincentive for firms to tolerate unions, at least if they had any other choice. And America's unions never had a real seat at any table beyond the workplace—not in the boardroom, much less at an industry-wide or economy-wide level.

The collective bargaining system of the 1930s was already under stress by the early 1970s. Then came the perfect storm: the rise of a market-fundamentalist ideology that equated shareholders' interests with the common good, labor-saving technological advancements, globalization, and governments both Democratic and Republican that increasingly saw unions as (variously) outdated, irrelevant, or pernicious. Most of the big strikes of the 1980s failed. Multiple attempts at federal labor law reform

within the Wagner framework failed. Unions went from representing one in three American workers to one in ten. The weaker unions became, the less impact they could have on wages and benefits and the more fiercely they clung to existing employer, industrial, and geographic strongholds. In the absence of industrial power, they turned to political power and public policy to bolster organizing and bargaining campaigns, and to secure via regulation what they could not attain through bargaining. Today's geographic and industrial map of still-strong unions thus reads like a list of publicly funded or publicly regulated industries (transportation, telecommunications, commercial construction, health care, education, public service, gaming, hospitality) in states and cities with pro-union politics (basically, the route of the Acela Express, the Pacific coast, and a handful of cities in the upper Midwest).

And just as the middle-class share of national income grew while unions were strong, since the 1970s it's been declining at a nearly identical rate as unions themselves. While union members are unquestionably better off than nonunion workers, enjoying higher pay, better benefits, and more job security, they are now a tiny fraction of the private-sector workforce. After 85 years of the National Labor Relations Act, we're back where we started: stagnant wages; high levels of inequality; financial insecurity and instability for a majority of families; low rates of economic mobility; and unions that are too weak and inaccessible to solve the problems that most workers face.

Moving Beyond Wagner: Sectoral Bargaining

The American model isn't the only model. In most European countries, and several in the global south, bargaining doesn't take place primarily at the workplace level, and collective bargaining coverage isn't restricted to workplaces that have affirmatively opted in through

a government-supervised representation election. Rather, unions bargain (often with trade associations) to set terms and conditions of employment by industry and geography, regardless of the union membership at the workplace or firm level. This is called “sectoral bargaining.”

In my view, sectoral bargaining has several advantages over enterprise- or workplace-level bargaining.

First, sectoral bargaining covers all (or most) of the workers in a sector, leading to much more extensive coverage, which, in turn, means that far more workers benefit from negotiated wages, benefits, and working conditions. Only 10% of U.S. workers benefit from union contracts, but 95% of workers do in Austria, 96% in Belgium, 91% in Finland, etc.

Second, sectoral bargaining also covers all employers in a sector, eliminating incentives for employers to oppose union formation. With labor costs within a sector taken out of competition, it’s both less appealing and infinitely harder for employers to engage in a race to the bottom through outsourcing, subcontracting, or workplace-fissuring. And with labor costs far more equal among competitors within a sector, more productive firms become more attractive to capital investments.

Third, with the issue of union representation and labor costs settled through sector-wide agreements, not through workplace conflict, unions and employers can focus on more than just their disagreements: partnering to provide worker voice and productivity improvements through works councils, establishing union-provided employee benefits, and calibrating negotiating demands to promote economic growth, high employment levels, and long-term competitiveness for a nation’s industry.

The result? According to the OECD, the developed

countries with some sort of sectoral bargaining generally have higher employment levels, higher wages, lower levels of wage inequality (overall and specifically for women, immigrants, and non-college-educated workers), and more leisure time for workers. Enterprise-bargaining countries (the U.S., along with the U.K., Japan, Canada, and South Korea) generally have lower wages, more inequality, and longer workweeks.

Finally, the more problems can be solved through bilateral collective bargaining between private-sector actors (unions and trade associations), the less need there is for government to directly intervene in the employment relationship. The unions and trade associations in Sweden, for example, are fiercely resistant to government meddling in anything that can be solved at the bargaining table. And Angela Merkel argued against a minimum wage law in 2013 as unnecessary because wages are best determined through collective bargaining coverage.

When your book *The Once and Future Worker* was published, I found myself agreeing with you on far more than I thought I would, and was especially delighted that a serious policy thinker on the political right would argue for a set of worker-centric economic policies. But I was disappointed by your skepticism of pattern or association bargaining (the closest tools available in the U.S. to European-style sectoral bargaining).

I've enjoyed our conversations on this issue over the last couple of years and am curious as to how your views have developed. Is it hopeless for a progressive former labor leader like me to imagine a zone of potential agreement with a right-of-center policy leader like you?

In solidarity,

David Rolf

Sectoral Bargaining's Promise and Peril

Dear David,

I'm delighted for the opportunity to discuss labor reform with you. As you note, while we approach the discussion from different perspectives, we agree generally on the economic struggle of the American worker and the need for a policy framework that goes beyond the fundamentalism of trusting that free markets will necessarily generate good outcomes. We also agree that a well-functioning system of organized labor that gives workers a seat at the table should be part of that framework, and we share a frustration with the American left-of-center for focusing on driving more workers into a dysfunctional system and with the right-of-center for celebrating the system's demise. The question, of course, is: How would an effective system look?

I've learned a lot since publishing *The Once and Future Worker* two years ago, but by far the area in which my thinking has changed most is on the question of "sectoral bargaining" as a model for organized labor (in no small part, thanks to conversations with you). What struck me then as an obviously undesirable framework now seems the most promising, and one that should hold particular appeal for conservatives.

In *Worker*, I argued for new forms of worksite representation and bargaining but specified that "multiemployer bargaining should be banned." My thinking was influenced particularly by the experience of the domestic auto industry, whose "pattern bargaining" between the United Auto Workers and the big-three carmakers yielded comparable contracts industrywide:

Collectively bargained terms that applied to all industry producers would maintain the

competitive balance among them; if costs rose, they would raise prices together, preserving profit margins.

This translated into higher prices, lower output, and slower innovation for the economy as a whole—and weaker job growth, harming prospective employees. Union members were also consumers, of course, which meant that they were often negotiating against themselves—balancing their desire for higher wages and benefits against their desire for lower prices. If nonunion consumers were the deal’s real losers, well, then, that was all the more reason to join a union.

In recent decades, the collectively bargained concessions that unionized firms have adopted often put them at a disadvantage against foreign competition as well as against new, nonunionized domestic rivals. Unionized firms, as a consequence, have sought to shift their capital toward plants, regions, and countries where they can operate free of union constraints.

As a description of what happened in some domestic industries, I still think this is correct. The once-world-leading American auto industry was badly, perhaps mortally, wounded. But that may not require a categorical rejection of sectoral bargaining. Some facets of such a system could be features rather than bugs, especially if operating within a more coherent framework. On the other hand, some seem like serious bugs, and it is on those points that I am particularly interested in your thoughts.

Why Sectoral Bargaining?

To begin with, I think the appealing features are:

Maintaining the competitive balance. Negotiations that encompass all competitors have the potential to take areas of potential differentiation off the table and thus channel competitive energies in other directions. If labor relations are standardized, no one can seek to outperform everyone else by squeezing workers harder, potentially triggering a race to the bottom. Conversely, investing in productivity gains, innovation, customer retention, and so forth becomes that much more important. Broadly speaking, that seems like an attractive description of how we want our markets to operate and what outcomes we want them to generate.

Negotiating against themselves. When the relevant bargaining group is broad enough, workers reaching “too good” a deal is likely to have negative macroeconomic effects—for instance, driving wages up ahead of productivity will land back on the same workers as inflation. A union negotiating with an individual firm may try to get whatever they can and hope to free-ride on more reasonable agreements struck elsewhere, but in sectoral bargaining all sides have incentives to be reasonable in negotiations that affect the entire labor market’s behavior.

Regulatory flexibility. In the American system, federal regulation must address every issue in anticipation of most workers having no representation, and then where a union is present the bargaining must go above and beyond the regulatory default. By contrast, in many sectoral-bargaining systems, umbrella agreements struck at the national or sectoral level are the starting point, not the final word. In parallel, and especially with the most contentious issues already addressed, workers and management at the enterprise level are able to work more collaboratively on workplace issues and also agree to depart from the baseline where they might prefer some other arrangement. More issues can be bargained rather than regulated, and greater self-government is possible within the workplace.

As these potential benefits of sectoral bargaining suggest, part of the problem with examples of American “pattern bargaining” may have been that the system only went halfway. For one thing, three automakers may not be a sufficiently broad sector. For another, federal employment regulation was granting workers ever more protections, leaving the private bargainers to focus on productivity-dampening work rules, seniority systems, and so on. Broader coverage and freedom to depart from baseline regulations, seem at least partial solutions.

Labor market flexibility. While sectoral bargaining can seem particularly constraining on the economy, given the breadth of its coverage, I find appealing the greater flexibility it yields within the labor market. For instance, independent contractors and gig workers are easily covered by sectoral agreements, whereas our 1930s-style “vote at the worksite” mode of unionization is plainly inapposite. Likewise, structural obstacles posed by franchises, joint employers, fissured workplaces, and so on become resolvable—workers can be covered regardless of who signs their paycheck. Employers are covered based on the activities they engage in, not how they’ve structured their ownership or whether they’ve beaten back an organizing campaign recently.

Why Not Sectoral Bargaining?

All that said, I still see at least two major, perhaps dispositive, obstacles:

Competitive disadvantage. Part of the downfall of American unions in the manufacturing sector has been competition from differently organized foreign firms and nonunion domestic ones. While the story of sectoral bargaining taking a low-wage model off the table is appealing in theory, in practice it seems likely that there will usually still be competition from sources not covered by an agreement, and we may be setting covered firms up

for failure on a broader scale than before. How does the system avoid that? And if it can't, and we're still left with competition in a partially organized market, haven't we just brought back many of the old system's infirmities?

Sclerosis. Even where we do bring everyone under the agreement—something easier to accomplish in service industries provided locally—we still have a question of whether the sides would behave in ways conducive to a healthy labor market. Is there any reason for confidence that minimum wages, for instance, will be set at levels conducive to growth rather than levels that simply benefit interests already entrenched? How do we avoid ending up with the sorts of productivity-reducing, innovation-slowing, price-increasing, output-constricting agreements we have gotten in the past, complete with “rubber rooms” for employees paid not to work?

European countries seem to have largely avoided these pitfalls, though both labor and management will eagerly list everything far from perfect about their systems. But it's not clear to me *how* they've managed a greater focus on productivity, international competitiveness, and so forth. I'm always wary of resignedly chalking things up to “culture,” but when it comes to questions like modes of industrial organization and the understood obligations of businesses and workers, I do wonder what role unquestioned norms and expectations (with social sanction for departure) play alongside legal structures.

Perhaps in cases like the American auto industry, assumptions established at a time when competition was not a concern produced institutional inertia that precluded adaptation. By contrast, in places like Germany and Japan, perhaps the need to compete globally with lean and flexible operations was built in to industry DNA from the start. This seems wishy-washy, but it could also be true. We'd still need to believe we've learned our

lesson. Is there any evidence that if we restructure, more constructive bargains would be reached this time around? Or should we really be focusing on domestic services industries anyway, and we can expect the dynamics there to be somehow different? Give me some confidence that we can be successful here.

Fair warning—I still have other questions! How do we figure out who bargains with whom? How do we ensure that agreements happen? Who pays for it? What political compromises are necessary and plausible—for one thing, are existing labor organizations even in favor? But I thought we should start with why we should even want to make it work.

Yours in managerial prerogatives,

Oren Cass

With Labor Power Will Come Labor Responsibility

Dear Oren,

You actually make the argument for sectoral bargaining quite convincingly! Let me take your points one by one and add some thoughts of my own.

The Case for Sectoral Bargaining

Maintaining competitive balance. As you note, sectoral bargaining tends to “maintain the competitive balance.”

By standardizing labor costs and the specific contours and details of labor agreements within a sector, firms are free to compete on everything else—the quality of their products and services, responsiveness to customers, price, innovation, etc., but without creating downward pressure on worker wages and benefits.

This isn't just good for workers. It's also good for the economy. Workers whose employers aren't incentivized to constantly find ways of minimizing labor costs will likely be compensated better, which means they'll be better customers and taxpayers as well, and more able to save for a rainy day, for a child's education, and for retirement. Walmart may be famously opposed to unions, but its former CEO Lee Scott was an advocate of higher minimum wages for just this reason—the increased labor costs would be borne by all of its competitors as well, while its customers would have more money to spend at its stores.

Negotiating against themselves. As a longtime labor leader, I have a somewhat different take on your second argument, that sectoral bargaining disincentivizes workers getting “too good” of a deal. On the one hand, of course, this is correct. When the UAW functionally bargained for all U.S. autoworkers from the 1940s through the early 1970s, its leaders had to be mindful of potential inflationary impacts of wage bargaining on the broader economy, and its contract demands related not only to wages but to the price of automobiles. I have heard northern European union leaders describe the same pressures today because they see themselves, along with business and government, as the stewards of their national economies, not just as the representatives of employees in a particular “bargaining unit.”

But virtually no one in the U.S. today was even in the workforce the last time that private-sector workers got “too good” of a deal (arguably following the inflation-

ary strikes of the early 1970s). We have the opposite problem: union strength is so low that most workers haven't benefited from the country's economic growth for decades. Shareholders and the C-suite executives, by contrast, do seem to do exceptionally well regardless of the broader economy's performance.

Sectoral bargaining solves both problems: by making unions co-stewards of the economy, their incentives change from "polishing the apple" and making the lucky few union members even better off, to focusing on the common good for all workers within an industry. (Longtime SEIU leader Andy Stern used to talk about "justice for all" unionism versus "just-for-us" or "I got mine" unionism.) But more importantly, in my view, nearly universal union coverage helps mitigate the opposite (and today, more prevalent) trends of short-termism, financialization, and cost externalization on the part of firms.

Industry self-governance and labor market flexibility.

I must say, you are sounding a lot like Louis Brandeis here, my friend! In the early twentieth century, union organizers and supporters imagined that where there was equivalency of power, workers and managers could solve most problems within their industries and worksites bilaterally, part of a vision of industrial democracy that ran in parallel with political democracy. Rather than one-size-fits-all regulatory approaches, bargaining counterparts would be free to craft solutions that fit their crafts and industries. Brandeis helped negotiate a landmark multiemployer agreement that covered the New York garment industry between 1910 and 1916, "the Protocols of Peace," which explicitly set out to eliminate sweatshops, stabilize wages and prices, and empower shop-floor labor-management committees to make real-time adjustments to solve problems as they arose at the worksite before they impeded production. But the agreement ultimately failed in its objectives, in significant part because it

wasn't universal enough, and the standards could still be undermined by nonunion employers.

Industry-specific labor-management innovation still occurs today in the few places where unions still have real density and engage in pattern or association bargaining covering a supermajority of employers in their market—the construction trades in many metro areas, the hospitality industry in Las Vegas, the hospital industry in New York, and the home-care sector in Washington State (where I was the founding president of the union for those workers). In these now-anomalous examples, the level of partnership between unions and employers is exceedingly high, and each party helps the other solve its problems. One CEO whom I used to sit across from at the bargaining table described the union as his “most important strategic partner” in addressing issues facing his business and his industry. But that was only possible because the union represented all his major competitors as well. It would have been nearly impossible had the union and the employers alike been constantly pressured by fissured work in competing franchises, gig platforms, and the like.

Risks: Competition and Sclerosis

You identify two major categories of risk about a potential shift to a more sectoral-bargaining model in the U.S. I don't think either one is unfounded but that there is encouraging evidence that both can be avoided or mitigated to an extent that makes sectoral bargaining a better bet than either the existing U.S. model or a future with no meaningful collective bargaining.

First of all, you point to risks associated with competition to employers covered by sectoral-bargaining agreements from those who are not. One scenario is that a sectoral-bargaining system would be too porous, leaving too many avenues for work to shift

to nonunion competitors domestically. The other is that, absent other mechanisms, powerful unions in trade-sensitive sectors such as manufacturing could make U.S. industry uncompetitive globally.

With respect to domestic risk from non-covered employers, you nailed it perfectly when you wrote that “part of the problem with examples of American ‘pattern bargaining’ may have been that the system only went halfway.” In order for a sectoral system to work, it should be as universal as possible. If a firm can avoid the costs of bargaining coverage by shifting work to a subcontractor, a franchisee, or a differently classified worker, then the model struggles. This is, of course, one of the principal weaknesses of the current enterprise- and workplace-based system. In a strong sectoral-bargaining system, one important role of government is to guarantee compliance with sectoral coverage. One could envision a future National Labor Relations Board, no longer burdened with adjudicating representation and decertification cases for tiny bargaining units and endless unfair labor practice complaints, responsible for determining which sectoral agreement most appropriately covers each group of workers. But however one achieves it, maintaining high levels of coverage is a necessary design element in any sectoral-bargaining system.

With respect to global competition, while I’m not a scholar of comparative global labor relations, I find the examples in northern Europe to be compelling. Germany compensates its autoworkers at double the rate of the U.S. and sells twice as many cars. This is partly because a powerful union, IG Metall, helps set the compensation standards and because through cooperative works councils, labor and management solve production problems together at the workplace. Because Germany is the larger manufacturing economy, the unions in Scandinavia benchmark their wage demands to IG Metall’s.

In the U.S., entire categories of manufacturing have already been offshored and are unlikely to return. About 95% of our clothing was domestically produced in 1960, but by 2008 it was about 5%. But Germany's heavy industrial sector is significantly larger as a percentage of overall employment than ours in the U.S., which leads me to believe that in the context of a permanent, mature bargaining relationship, labor and management can partner for productivity and growth—a partnership that is hard to envision in the win/lose, adversarial system in the U.S., characterized by high levels of distrust among bargaining parties.

It's true that we may never be able to compete on the price of fabric, toys, or electronic components with low-wage developing countries, but I'm not sure we need to in order to have a robust manufacturing sector with high levels of employment and family-sustaining wages. Further, as you imply, raising standards for the multiples-larger domestic service sector and the tens of millions of low-wage workers it employs would be bottom-up economic stimulus that doesn't require a dime in new government program spending.

With respect to “sclerosis,” I do think that, as you wrote, “assumptions established at a time when competition was not a concern produced institutional inertia that precluded adaptation.” But sclerosis isn't a problem limited to unionized companies. Does anyone really blame unions for the downfall of Compaq, Nokia, Blockbuster, Borders, or the old IBM? (I hope not—they weren't unionized!) And, of course, everyone can find their favorite example of an outdated work rule in an old union contract (“it cost me \$400 to move a potted plant to the conference room”), but it took two bargaining parties to agree to every single one of them. The lesson here, I think, is more about the need for organizations (including unions) to constantly adapt. Works councils, a common feature in sectoral systems in Europe, have been credited with helping companies

become more productive and adaptive by identifying and solving problems at the point of origin.

If anything, evidence suggests that unionized firms are more productive than nonunion firms. This may be because turnover is lower, workplaces are safer, morale is higher, worker voice is more taken into account, or because union firms invest more in their workforce. It could even be the case, as with UPS, that higher (and more fixed) labor costs provide a strong incentive for companies to adapt and innovate in other cost-saving strategies. In the enterprise-based bargaining context, of course, it's also likely that union firms are less profitable than nonunion competitors, but that problem is solved with a sectoral approach.

My experience has been that the biggest impediment in the U.S. to the kind of joint labor-management cooperation that we see in Europe is the enterprise-based bargaining system itself. By strongly incentivizing both union avoidance and race-to-the-bottom economics, our system virtually guarantees zero-sum adversarialism that makes trust difficult to build and collaboration difficult to sustain. The best examples of high-level collaboration and partnership within the U.S. context occur almost exclusively in high-density sectors and geographies.

I hope I've put a dent in some of your concerns. Looking forward to your response, and to your questions!

Fraternally,

David Rolf

The Long and Winding Road to Reform

Dear David,

I suppose I could do worse than sound like Louis Brandeis. Your own argument, I note, is downright Churchillian: sectoral bargaining is the worst form of labor-management relations, except for all the others.

That logic appeals to me. Indeed, I consider it among conservatism's most unfortunate hobgoblins that examples of public-sector failure are treated as decisive evidence of universal infirmity, while comparable private-sector failures are dismissed as inconsequential, which leaves "the market" entrusted with more faith than it deserves. The existence of a foolish union contract gets taken as a case against unions, full stop, even though, as you note, managers in plenty of businesses and industries have shown themselves perfectly capable of succumbing to sclerosis on their own, and taking workers down with them. No one says, "Gosh, CEO So-and-So ran that company into the ground; so much for market capitalism."

The real question should be: What, if any, forms of organized labor make better or worse economic outcomes more or less likely? Our enterprise-level Wagner unions do seem to make things worse, but sectoral bargaining—especially when paired with local-level works councils expressly designed to promote flexibility—might very well make things better. Or at least, whatever disadvantages they have in terms of "dynamism," they may compensate for in other ways. Certainly, the nonunionized labor market has performed poorly on the dimension of "spreading prosperity widely," and that's a dimension that matters quite a lot.

Still, a fine new system of organized labor falls squarely in the category of "easier said than done." No other

country's arrangement will fit neatly in ours, nor do we have established institutions that know how to engage in this new relationship, nor do we have laws and norms to guide them. And, of course, there's political reality. So how do we get from here to there?

The Practical Transition

It seems obvious, at least to me, that the path forward is not some 1,500-page bill overhauling the nationwide system in one fell swoop, but rather a gradual series of reforms and expansions that create space for building institutions and learning along the way. This could begin with particular geographies, particular industries, or particular terms and conditions of employment.

For instance, the minimum-wage fight strikes me as an ideal starting point. We already have wage boards in some states, and minimum-wage laws are frequently set at the state and local levels. States could, on their own, build industry-specific processes, or the federal government could establish a framework for states to operate within.

Another opportunity, thinking sectorally, is the gig economy. Again, either states or the federal government could establish a process for selecting representatives of, say, drivers, and then mandate that anyone operating a platform come together to negotiate with those representatives. Low-wage service sectors where traditional unionization is nonexistent could work, too. I'm particularly interested in your thoughts here, given the work you did in Seattle with the home-care industry. What were the biggest legal obstacles or gaps that you faced in that process, and what changes would best facilitate sector-wide representation and negotiation in such a context?

A third opportunity might be to introduce employment-law flexibility. If the federal government designated

various regulations as optional defaults—in force unless a sectorally bargained alternative were chosen—that might bring employers and workers to the table quickly. Certainly, basic provisions for nondiscrimination, etc. should be held aside. But when it comes to wages and hours, overtime, benefits, training, and so forth, why not let them have at it?

One more—either as a stand-alone mechanism or an enabler of the others—what about waivers from federal law that allow states to formulate their own alternatives? This is something that R Street’s Eli Lehrer and SEIU’s Andy Stern have written about.

Does one or more of these approaches seem particularly appealing, or particularly unwise? Which legal frameworks, processes, or institutions do you see as most important to start with?

The Political Transition

Even baby steps in any of these directions will require, and seem to offer potential for, political compromises. But those compromises will be far outside everyone’s comfort zone. Take the phrase “get rid of the minimum wage and use collective bargaining instead”: Who hates, or loves, which parts of that? And what does each side envision as an alternative to plausibly pursue instead? I’ll describe my impression of the general political dynamic, but I’m curious as to whether you perceive things differently.

Sectoral bargaining’s vast increase in worker power and the constraints it imposes on businesses seem like obvious progressive priorities. Conservatives can see benefits as well—in delivering better outcomes for workers, providing a governance mechanism that doesn’t rely on government edicts, and fostering strong community institutions—but they are rightly wary of two issues in particular: first, labor as a partisan political

force that operates as an arm of the Democratic Party; second, public-sector unions as not only an especially potent political force but also an immovable obstacle to good government. Legal reform that would strengthen these forces are nonstarters for the right-of-center, both because substantively it seems likely to compound some of the biggest challenges in public policy today and because politically it would shift power to the opposition.

I think it's important to emphasize here that the problem, in my mind, anyway, is not that unions empower their members politically. That seems to me desirable and something that people across the political spectrum should recognize as valuable, regardless of whom those members might be inclined to support. The problem is that today's American unions don't do that; instead, they "launder" the resources of a heterogenous membership into homogenous support for Democrats.

This morning, for instance, Politico reported: "Labor leaders have worked for months to sell their members on Biden, hoping to avoid a repeat of 2016 when Donald Trump outperformed among union members and won the White House. ... [U]nion leaders said they fear there's nothing they can say to the Trump supporters among their ranks to sway their opinion between now and November." So union leaders are not using union machinery to give voice to members' political priorities; they are using the political weight of their members to give voice to the union machinery's priorities. I see no prospect for a healthy labor movement so long as that continues.

Likewise, with respect to public-sector unions, the problem is not that public-sector employees have collective representation; it's that the basic framework and rationales of private-sector labor-management relations do not apply when one party is the government as representative of the people. I'm sure labor leaders are

tired of conservatives repeatedly citing Franklin Delano Roosevelt's analysis on this point, but I'll do it again, because it so clearly puts aside partisan assessments and offers a logical one:

Organizations of Government employees have a logical place in Government affairs.

The desire of Government employees for fair and adequate pay, reasonable hours of work, safe and suitable working conditions, development of opportunities for advancement, facilities for fair and impartial consideration and review of grievances, and other objectives of a proper employee relations policy, is basically no different from that of employees in private industry. Organization on their part to present their views on such matters is both natural and logical, but meticulous attention should be paid to the special relationships and obligations of public servants to the public itself and to the Government.

All Government employees should realize that the process of collective bargaining, as usually understood, cannot be transplanted into the public service. It has its distinct and insurmountable limitations when applied to public personnel management. The very nature and purposes of Government make it impossible for administrative officials to represent fully or to bind the employer in mutual discussions with Government employee organizations. The employer is the whole people, who speak by means of laws enacted by their representatives in Congress. Accordingly, administrative officials and employees alike are governed and guided, and in many instances restricted, by laws which establish policies, procedures, or

rules in personnel matters.

I might add that, unlike in the private sector, government generally enjoys a monopoly on critical services, facing no market competition to constrain the parties in their bargains. All these problems are badly compounded by the aggressive involvement of public-sector unions in politicking for the government representatives who they will then bargain “against,” seeking to ensure the other side is, in fact, on their side, and to avoid policy reforms that might introduce any competitive pressure or other scrutiny.

A sectoral-bargaining regime could address these issues by explicitly separating the political and economic functions of unions responsible for sectoral bargaining and by giving public-sector workers cooperative works-council-style representation without associated collective bargaining rights. Essentially, sectoral bargaining would be prevalent in the private sector, both public- and private-sector workplaces could make use of works councils, and both public- and private-sector workers could separately organize, and raise and spend money, for political purposes. I could see conservatives signing up for such an arrangement. Does it strike you as plausible?

Out with the Old?

A final question, both substantive and political, is what to do with the National Labor Relations Act and the existing labor framework. My inclination, at least in the short run, is to just leave it there, though with separation of the economic and political activities of a union, as described above. If workers want to organize a workplace and bargain with the employer, so be it. Perhaps, as sectoral bargaining expands to cover a given group of workers, the option of enterprise-level bargaining would disappear and works councils would be permitted. I don’t see much to be gained from trying to disassemble the NLRA

preemptively or to buttress it anew.

One thing that has surprised me in recent conversations with progressives, though, is that they tend to see further strengthening of the existing enterprise-bargaining framework as a prerequisite to meaningful reform. In particular, I've been hearing a lot about the "PRO Act," whose various provisions seek to make traditional organizing easier. I must admit that I'm perplexed by this—how is further entrenching the failed system that we are trying to move beyond a constructive step forward, let alone a must-have?

I suppose that in some sense, my questions lie at both ends of a continuum: "What is the best grand-bargain future we can hope for?" and "What are the immediate, concrete steps we could take?" I think they are closely connected. Progress on the immediate and concrete will happen only if both sides feel it is in service to some larger improvement on the status quo. If either side sees initial movement as being in a direction worse than doing nothing, well, then, we will continue to get nothing.

I'm sure you can tidy up this mess. What concessions do you think progressives might consider to make a sectoral-bargaining regime palatable to conservatives, and what are the nonnegotiable progressive priorities that conservatives will need to accommodate? And then, where would you start?

Proceeding plausibly,

Oren Cass

Economic and Political Bargaining Both Depend on Trust

Dear Oren,

I agree: the real question is what forms of labor law and worker organization make desirable economic outcomes more likely.

The real question is *not* whether workers will organize. Of course they will—as will businesses, congregations, sports leagues, political parties, etc.—humans are social animals and require cooperation to solve complex problems. In recent years, we have seen fast-food workers striking for \$15 wages, teachers organizing strikes from the bottom up without the encouragement of state union officials, public-employee unions in much of the country remaining strong despite the *Janus* decision, nonunion grocery workers striking in defense of their company's ousted management, and nonunion Amazon and Google employees walking off the job to protest climate change and gender inequity (the latter examples would have been wholly unimaginable to the framers of the Wagner Act). Globally, workers organize even when threatened with imprisonment, or worse, by right-wing paramilitaries and communist dictators.

So the question isn't whether workers will organize but rather, which legal regime for organization leads to the outcomes I think we both want: a strong economy, family financial security, dignified work, etc.

Options and Outcomes

At the risk of being reductive, from a policy perspective the U.S. basically has three options: the status quo, trying to rebuild enterprise-based bargaining, or reengineering

our labor law system for sectoral bargaining.

The status quo is easiest to understand. For the reasons I described in my first letter, fewer and fewer private-sector workers will be covered by union contracts, wages and other forms of compensation will stay low, the middle class will keep shrinking, families will continue to struggle with financial health, our economy will become more unequal, and economic growth will ultimately be impeded by low levels of demand.

The second option—trying to prop up the old enterprise-based bargaining system—was and, in many ways, remains the U.S. labor movement’s preferred labor law reform. Despite the strategy’s obvious limits, this remains the closest thing to consensus on the left-of-center, as evidenced by support for the PRO Act. To be clear, of course I believe that it would be somewhat better if more workers were represented by unions under the Wagner system. But for all the reasons we’ve discussed, the U.S. model is intrinsically weak and inaccessible, and it produces perverse incentives for labor and management alike. Tweaking the Wagner model to allow for faster and fairer certification elections doesn’t change the fact that the system tends to lead to its own demise.

Option number three is some version of sectoral bargaining. Support for this option is growing among labor leaders but is far from universal. I doubt there is any perfect system, but from the perspective of someone who has spent his adult life and career working within the limits and contortions of the current U.S. system, this option has by far more appeal for the reasons we’ve discussed—it covers more workers, creates far better economic outcomes, creates fewer incentives for a race to the bottom, focuses conflict on periodic macro-level national or regional bargains rather than on the shop floor, and allows greater avenues for labor-management partnership.

How Could This Actually Happen?

In a perfect world, there probably would be a 1,500-page federal law scrapping most of the NLRA and instituting a broad new system of sectoral bargaining in one fell swoop, and I'm not willing to give up all hope for that in the long run. But the federal government isn't famous for domestic policy innovations that haven't first been prototyped by cities and states, or in specific industries. Even the Wagner framework can trace its roots to late-nineteenth-century railway legislation, the 1912–15 U.S. Commission on Industrial Relations, the World War I-era War Labor Board, and the 1926 Railway Labor Act.

As you point out, there are several avenues for experimentation, learning, and progress, short of a comprehensive federal reform. Your three examples are all apt.

States (or, in some cases, home-rule cities) could experiment with bi- or tripartite industrial standards setting. One state might create a sectoral-bargaining framework for a specific industry with persistently low wages or dangerous work that lawmakers believe needs addressing. The existing union(s) or alternative worker groups that meet a threshold of legitimacy and the employer-representatives (probably a trade association) might negotiate directly, with a public representative or arbitrator empowered as a tie-breaker, and the resulting agreement could be binding, at least as a set of minimum standards on the industry.

This path has some limits—it seems unlikely that without a federally enacted framework, the resulting “bargains” could be incredibly prescriptive over some employment terms without running afoul of NLRA preemption. It also seems more likely to succeed in place-based service industries where firms don't have a credible threat to flee across state lines seeking less stringent labor standards. But this path has already shown promise with

state and local wage boards, some based in statute and others politically constructed. And in many cities and states, existing laws for awarding public construction contracts help create de facto sectoral bargaining in the commercial construction industry (an industry also notable for high levels of labor-management partnership around apprenticeship and training programs, retirement plans, and health insurance).

States and cities have a lot more freedom to experiment where workers are excluded from the NLRA to begin with—notably, independent contractors and gig workers but also including domestic workers and agricultural workers. We can see the beginning of this with various efforts to establish standards-setting boards of industry stakeholders for domestic workers in Philadelphia and Seattle, and to regulate the earnings of transportation-network-company drivers in New York.

Employment law flexibility and waivers—allowing industries and sector-wide unions to negotiate alternative regulatory approaches from a one-size-fits-all set of legal minimum standards—could also hold promise if there were sufficient safeguards to disallow the equivalent of sectoral-company unions or “paper locals” that operated in the interest of employers instead of workers. Perhaps, like Medicaid waivers, such bargains would need federal review to certify that they met certain public policy goals, such as improving compensation, job security, on-the-job safety, productivity, etc.

Within any of these frameworks, and especially within a comprehensive new federal framework, there are important questions to be asked, as you’ve also pointed out: Who bargains with whom? How do competing unions within a sector relate to one another? What factors or process grants legitimacy to one organization claiming to speak on behalf of workers or employers, and not to others? How are disputes resolved if no deal is reached

(or none appears reachable) at the bargaining table? These are all system design questions that would need to be worked out.

And what to do with the archaeological scraps of the Wagner model that still pock the industrial relations landscape? I tend to agree with you—until it’s possible to pass a national sectoral-bargaining law, it’s probably easier to leave the old system in place except where amendments are necessary to foster the growth of sector-wide bargaining (e.g., empowering states to establish robust sectoral-bargaining laws, or waivers, or better labor-management partnerships, or unbundling of union services, etc.). My hope is that workers and employers would then vote with their feet and embrace a sector-wide approach.

Politics and Trade-Offs

You raise a fair question: within the existing politics of the U.S., what’s in this for the right-of-center? What trade-offs would labor or the left-of-center be willing to make for a more powerful and inclusive labor law that had a far better shot at creating broadly shared prosperity?

I don’t see a future where labor leaders and left-of-center policymakers will agree with your assessment of public-sector unions. I don’t agree with you, either. If anything, I would trust the judgments of our teachers, firefighters, and public-health nurses in each of their crafts far more than I trust those of their politician-employers. I’ve heard the FDR quote before, but he was also wrong about balancing the federal budget in 1936, snubbing Jesse Owens after the ’36 Olympics by inviting only white athletes to the White House, and incarcerating U.S. citizens of Japanese ancestry during World War II. But I do agree that the problems we’re trying to solve with sectoral bargaining are principally private-sector problems.

You didn't bring up so-called right-to-work laws, so I will. Within the U.S. context, right-to-work laws are justifiably anathema to labor and progressives: there has never been a right-to-work law the principal goal of which hasn't been to weaken union bargaining power and union political power. If unions' legal obligations under U.S. labor law are to represent 100% of the employees in the 10% of workplaces that are unionized, and a state legislature removes the ability for unions to be paid for 100% of those services, unions become smaller and weaker and can't perform as well, at least in most circumstances, which can lead to eroding support among workers, still lower revenue, and less strength when bargaining with employers or acting politically.

Yet union leaders throughout Europe generally accept and even embrace voluntary membership models. Their collective bargaining model is secure enough and has broad enough political and societal support that even if not all workers join the union that represents them, the model is sustainable. When speaking privately to their European counterparts, at least a few national U.S. labor leaders acknowledge that they'd trade our current model for one that included more universal coverage and some form of voluntary membership.

Unbundling the "collective bargaining" and "political voice" functions of unions could also be interesting to explore and has ample precedent in other types of U.S. nonprofit organizations, where affiliated but separately incorporated entities serve different charitable, social, and political functions. I'm not aware of any completely apolitical labor movements in the world, but it's certainly true that we're unique in the U.S. in aligning labor interests with a single party within a two-party system.

A strong, geographically representative, and healthy labor movement would hold politicians of both political

parties accountable to the tenets that workers are valuable, work should be dignified, families should be financially secure, and prosperity should be broadly shared. Republican and Democratic politicians should be competing for union support. There should be union activists running for office in Republican primaries, not just Democratic ones. A differently constructed labor movement might have internal caucuses for Republican, Democratic, and independent members, just as some unions now have internal structures that speak for members in different regions or crafts, or different races or genders. Or, in a sectoral system where multiple unions had to bargain at the same bargaining table with multiple employers, one could imagine unions that choose to align themselves with a political party or a religious faith as what differentiates them from other union “competitors.”

Such constructs are very difficult to imagine today. In part that’s because in our national partisan alignment, labor and employers have each been cast as part of a political tribe that polices its own behavioral and social norms. But it’s hard to imagine a more cross-partisan workers’ movement if the only remaining strong worker organizations are in blue cities, and if further eroding worker power is on every newly minted conservative officeholder’s to-do list. Even though I’m a dyed-in-the-wool progressive, I can see clearly that the labor movement has not benefited from this: we now have one political party that can safely write us off, while the other can too often take us for granted. Meanwhile, unions get smaller and weaker every year, and workers get worse off.

As someone experienced in both labor negotiations and legislative negotiations, I feel like the questions of politics and trade-offs are hard to answer in the abstract: Would labor give away X if conservatives gave away Y? You only know what you’re willing to trade

once you're faced with real choices in real life. But it's certainly easier to trade with a trusted negotiating partner, and very hard to trade with a counterpart when you're pretty sure they're just trying to kill you.

What Comes Next?

One of the reasons I admire your work is your departure from market fundamentalist orthodoxy in search of a pro-worker conservatism. Another is your willingness to entertain serious dialogue with thinkers from sharply different philosophical traditions. The country needs a lot more courage and a lot more dialogue if we're going to confront the consequences of nearly five decades of that market fundamentalism.

So, what are the immediate, concrete steps we could take, and where would we start? Since you and I first talked about it a year or more ago, I have felt like the benefits of a sectoral-bargaining system should hold appeal both to progressives like me and conservatives like you, because the real question is precisely as you put it: What kind of labor law and labor movement will make desirable economic outcomes more likely?

Should there be a bipartisan blue-ribbon commission on sectoral bargaining? A bipartisan bill in Congress to support and even fund state and local experiments around sectoral strategies? A White House summit? Perhaps a red-state governor partnering with state-level labor and business leaders on a sector-specific strategy in a low-wage industry?

Honestly, I'd prefer much bigger, bolder action than that, because the hour is getting late for American workers and our middle class, and, correspondingly, for our economy and our civil society. But in building trust and collaboration, perhaps sometimes baby steps come first.

I'm eager to hear your thoughts. Especially: What are your own best ideas for actionable next steps that hold any hope for cross-partisan and truly national appeal?

In unity & strength,

David Rolf

Ending with a Starting Point

Dear David,

I thought you made an especially important point about how America might make progress on these issues when you observed that “it’s certainly easier to trade with a trusted negotiating partner, and very hard to trade with a counterpart when you’re pretty sure they’re just trying to kill you.” One facet of the institutional infrastructure needed for sectoral bargaining to work well in this country, or anywhere, is some level of trust between the sides doing the economic bargaining. But before we can make progress on such infrastructure, we are going to need some level of trust between the sides doing the political bargaining over its creation.

The challenge has been made painfully clear to me from the widespread skepticism on the left-of-center to American Compass’s work on the topic—this, from *The New Republic*, was probably my favorite:

And while American Compass-style conservatives might say they support the “reform and reinvigoration of the laws that govern organizing and collective bargaining,” their approach to strengthening labor—which they

seem to envision as a means to restoring a traditional social order, rather than a check on the power of capital—also has clear limits. According to Kate Bronfenbrenner, the director of labor education research at Cornell University’s School of Industrial and Labor Relations, conservatives’ efforts to shore up labor often simply amount to “worker management strategies” designed to defang labor militancy. “Are they pro-worker, or are they just worried that we might get a labor movement that’s even more militant?” she asked.

If American Compass is actually a clever, false-flag operation to retrench capital’s power ... well, I’m not sure we’re doing a very good job of it. Still, skepticism from the left is fair enough. The right-of-center’s priorities, rhetoric, and political strategy in recent decades make that skepticism well earned. Hopefully, efforts like “A Seat at the Table” are a positive step.

Conversely, we have heard from the right-of-center a variety of responses along the lines of, “Are you crazy? Unions are just part of the Democratic Party and always will be.” Also fair enough. The long-running obsession with “card check,” as if a true commitment to “employee free choice” demands elimination of the ballot box, has made the entrenchment of political allies in Big Labor appear a far higher priority than actual attention to workers’ interests. Also, that thing with the giant inflatable rats outside law-abiding businesses has lacked a certain *je ne sais quoi*. But the willingness of some former labor leaders, yourself included, to acknowledge some of the movement’s own excesses and back serious reform is likewise an important confidence-building step.

In our imagination (and on *The West Wing*), it’s the visionary grand gesture or grand bargain that breaks the impasse and delivers all parties to the promised land.

In real life, attempts at such things—particularly as a starting point—invariably fail and typically yield further recriminations and mistrust. Rather, it’s through the hard and unglamorous work of confidence-building measures and successful trials that actual progress occurs. This is as much a function of intra-party dynamics as inter-party ones, the fear as much about exposing one’s flank to hardliners as getting taken for a ride by the other side.

Beginning with a Single Step

Supposing this baby actually has the balance to stand; what steps might he take? I have an aversion, perhaps allergic but I think well-founded, to blue-ribbon commissions and summits. Your other suggestion of a framework for state/local experiments is promising, and you’re right to note especially the prospect for a red-state governor (in states, I would add, where traditional labor is less entrenched) to partner with labor and business leaders on a sector-specific strategy in a low-wage industry.

I also think you’re right to highlight industries not covered by the National Labor Relations Act. Agricultural, domestic, and gig workers all lack coverage for a variety of historical and logistical reasons—some outright discriminatory but also as a consequence of their industrial organization aligning poorly with the Wagner Act’s enterprise-level bargaining framework. Of course, it’s many of those same organizational dynamics that make them ideal candidates for a sectoral approach.

Two elements of such a framework that I think would be nonnegotiable from the conservative perspective are:

1. Organizations representing workers must be precluded from funding or conducting overt political activity. As you note, such a rule “has ample precedent in other types of U.S. nonprofit organizations, where affiliated but separately incorporated entities serve different charitable,

social, and political functions.” American Compass and all 501(c)(3) nonprofits face similar restrictions—indeed, that set of restrictions could be borrowed directly. The right obviously has a political objection to creating yet another set of partisan labor organizations, but an equally important nonpartisan principle is at stake: if we are going to vest an organization with public authority and benefits, and likely public funds, it cannot turn around and use that power and those funds to influence elections.

2. Waivers and flexibility must apply to both labor and employment law. We’ve discussed the ways that sectoral bargaining might conflict with the NLRA, so exemption from its terms is a technical necessity. But equally important, sectoral bargains must be allowed to depart from most of the defaults established by federal and state employment law where collective bargaining has not occurred. This, again, has both political and substantive dimensions. Of course, deregulation tends to be a generic right-of-center priority. But here, much of the rationale for an aggressive government role is that workers are unable to protect and advance their own interests individually. Where a robust collective bargaining mechanism is in place, that rationale vanishes. Further, one of the major dysfunctions of our existing system is that with the workplace already micromanaged by regulation, bargaining gets channeled in less productive directions. A key premise of reform should be that bargains can replace and tailor, not merely supplement, what the Department of Labor may have said.

I genuinely believe that federal legislation inviting states to submit plans that specify a sector and the parties therein to be brought to the table on these terms would have a chance to succeed. Could we come up with stories of how one side or the other would exploit this for its own gain at the other’s expense? Of course. But

those costs are limited, and the risk is worth taking. If, rather than merely exploit such a framework, the various sides showed that they considered it in their interest to advance it, and if the results were promising, well, then, we'd be moving.

The Journey of 1,000 Miles

Where would we be moving? Generally speaking, a process by which a sectoral-bargaining regime expands, crowding out the NLRA as it goes, strikes me as entirely plausible, provided those same two conditions hold: parties to the bargaining process must be economic but not political actors, and employment regulation is subject to whatever bargains are reached.

As our participating institutions become more confident, I also think there might be many more things for them to do. We've been focused in this discussion on unions as bargaining agents, but as Wells King points out in his report "Workers of the World," that's only one of the three functions that an effective labor movement might perform. Sectoral bargaining would open the space for a broader, more collaborative, role in workplace governance at the local level that both workers and employers would value. And unions as agents in civil society, rather than organized clusters in specific workplaces, would be a natural provider of social insurance and workforce training.

You raised the question of right-to-work, which is an interesting one that deserves further discussion. Right-to-work in a sectoral context presumably makes sense in that we wouldn't want to mandate dues payments from everyone economy-wide. And we wouldn't want employers to discriminate either for or against union members. We would want union membership to bring with it benefits. Regardless, I think you're right that an appealing trade-off exists where broader coverage and institutional strength can bring greater individual freedom.

Finally, the question of private sector versus public sector. I must say, at least in my reading, thou doth protest too much at my suggestion that a weakening of public-sector worker power should accompany a strengthening in the private sector. As I noted in introducing the FDR quote, the interesting thing is not that it is Roosevelt speaking, but because it is Roosevelt speaking, we get an argument that “so clearly puts aside partisan assessments and offers a logical one.” Certainly, there are many other things that Roosevelt was right and wrong about, but in this case, his argument has to be engaged on the merits.

I return to this issue not because we’re going to resolve it here—especially seeing as we’ve reached the end of our exchange—but to highlight the role it will invariably play in future reform and the grappling that progressives will have to do among their priorities. Of course, conservatives face comparable challenges. But I am at least hopeful that the interests of actual workers are receiving more attention than they have in a long time.

Thank you again for participating in this exchange. I look forward to continuing to discuss all this, though our readers will not have the benefit of following along. And I presume our readers look forward to not having any more that they have to follow along with.

Concluding collectively,

Oren Cass

*Labor law has failed to evolve
alongside a changing labor market.
Some labor leaders have been moving
ahead anyway.*





Q&A with Freelancers Union Founder Sara Horowitz

OREN CASS

THE FREELANCERS UNION is a nonprofit organization with 500,000 members nationwide. Sara Horowitz founded the union in 1995 and led its growth until 2018. Rafael Spinal became executive director earlier this year. Horowitz is the author of the forthcoming book *Mutualism: A New Social Contract for a New Economy* (Random House, February 2021). American Compass executive director Oren Cass asked her a few questions about lessons learned in creating a different kind of union and what the future could hold for worker organizations.

Oren Cass: Tell us a bit more about what drew you to the Freelancers Union concept and what it became.

Sara Horowitz: I've come to realize how much my family's background influenced my thinking, though I think I realize it now much more than I did when I was building up the Freelancers Union. I come from a labor tradition that was of the 1920s, where unions built housing and insurance companies and banks, and it was very entrepreneurial. Instead of being focused on a kind of extractive-profit-seeking model, it really was about building things that workers needed.

I've been working for unions since I was 18. Then I myself was made an independent contractor when I was a lawyer in the early 1990s. That experience really made me think, "Wow. We have to start to think about what this next world is going to look like." And instead of just thinking about it, I really wanted to be a doer and to start to build out the Freelancers Union. So I just started it and went from there.

OC: The Freelancers Union does so many things, but what would you say are the two or three core functions that have proven to be most valuable and important?

SH: If people take away one thing about labor, I think the most important thing is that unions have to have their own independent source of revenue. It can't be foundation-funded entirely, nor can it be government-funded entirely, nor can it be employer-funded. People have forgotten this notion of independent financing. Of course, in the case of unions, that's through dues. What I think is so important about what the Freelancers Union did was that it said that in this next era, people are going to be working for many different employers, so we have to think about the kind of economic model it can operate on. So the Freelancers Union did that through services. I would say that was the most important thing.

It's also important because in the social sector, it has become common to build political models first and not to think about the economic model, but I think that fails to ground us in the everyday, which is vital for more mature and complex politics. By building the economic base first, you have some staying power. You can marinate, you can learn, you can watch, and then you build your political base.

OC: That highlights this foundational element of American labor, where everything is tied to the workplace and the election. Organizing is a political task, and if you succeed then the dues just follow. Whereas in Europe, unions are things people have to sign up for. To what extent do you think the freelancer-type model, which is just that of an independent labor organization, is something that could be equally attractive to non-freelancers? Call it the Non-Freelancer's Union—essentially what the Freelancers Union is, but for people with regular jobs.

SH: It's funny, because when people look at the Freelancers Union model, they'll often say, "It could be like AARP but for workers," or something like that. But it has to have solidarity. People have to have some connection to one another based on their craft, or their field, or their profession or their job. And I think faith in an AARP-type model has gotten organizers into trouble in some ways because it leads them to think about things very transactionally. You get a set of services, you pay for it, and it does some generalized political work for you.

AARP has been amazing in preserving Social Security through many, many different administrations, most of which were not so favorable. So hats off to them. But I do think that there's a realization right now that we need each other more. That we really don't trust our institutions, which feel far away from us. And that if we can feel that connection to other people, that's going to be the winning way.

Freelancers Union has an interesting on-the-ground program called SPARK, which is in about 20 cities run by Freelancer leaders. So pretty much every major area that has a lot of freelancers has a Freelancers Union presence where people come and meet and have meals together, that kind of thing.



It has to have solidarity. People have to have some connection to one another based on their craft, or their field, or their profession or their job.

OC: That was going to be my next question: How do you promote solidarity? Because in a sense, an emphasis on an economic model and an emphasis on solidarity are very different. The first is, “Send us your money and we send you something of value.” Solidarity’s obviously more than that. So what has been the key to actually achieving solidarity within the Freelancers Union?

SH: I think that solidarity has two critical elements. One is economic interconnection, and the second is something spiritual—something greater than yourself. When people are sitting down and having a meal or solving a problem together, or enjoying something together, that’s where the solidarity develops. When we started building out the Freelancers Union, we had many different ways that people could get together. But SPARK, to me, has been the model for how you can have distributed networks so that people can get together in their local community, and at the same time those local community leaders are also embedded in deep networks in their local area.

OC: Was the Freelancers Union able to take any collective action, in terms of bargaining or otherwise, or has it been entirely benefits-focused?

SH: First, benefits provision is a form of collective action—you could even call it collective bargaining, though not in the traditional labor relations terminology—because you’re going collectively into the market to buy services that individuals could not otherwise access. But another example is that the Freelancers Union had an interesting campaign that we won, called “Freelance Isn’t Free.” One of the biggest problems facing freelancers is that they do work and sometimes don’t get paid. I’m sure small businesses have the same issue, but it’s a huge problem for freelancers who just don’t have other kinds of stabilizing income and who typically aren’t eligible for unemployment insurance.

We put together an amazing coalition of low-wage workers and professional workers to advance a bill that would protect freelancers—really strong unions like SEIU’s 32BJ and the teachers’ union, and one of the Chambers of Commerce came out in support. It passed the New York City Council unanimously with Republicans and Democrats both supporting it because it was kind of a no-brainer. Who on earth thinks it’s okay for people routinely not to be paid? And it really had teeth. It still exists. It’s double damages and attorney’s fees and a fine if you don’t have a contract.

For me, it showed that we are at a crossroads when we look at labor right now. We have one option of retrofitting the New Deal, looking back and seeing how to shoehorn ourselves into those protections. Or, we can say we really are in a new era and need a new infrastructure. But the second one doesn’t mean that you do away with the first. I think the American labor movement would be completely supportive of a new-era set of benefits if there were a transition plan that supported all workers. But instead, we get into a really difficult situation where we can’t move forward and we keep looking back, and we’ve been doing that for something like 50 years now.

OC: Let’s talk about the infrastructure. I’m curious to what extent you found the existing legal framework constructive, irrelevant, or an obstacle to what something like the Freelancers Union does. And what do you see as the key reforms we should be pursuing to adapt the broader system to modern realities?

SH: I think the real issue is what we mean when we say “pro-worker.” To me, that means pro-Institution-of-the-Worker. We got that from the New Deal, and we got it right. We can’t just keep making people atomized individuals. They have to be part of their union. The future agenda has to further that realization that at



The real issue is what we mean when we say “pro-worker.” To me, that means pro-Institution-of-the-Worker. We can't just keep making people atomized individuals. They have to be part of their union.

the core of this is an institution, and the institution itself has to adapt. We had craft work in the 1800s, we had industrial work in the 1900s, and now we have new and different kinds of work. You don't get rid of the safety net of the past, but you have to provide the safety net of the future. That's what brings us to the conversation about misclassification and independent contractors.

We have to start to say, “No, it's all workers.” And we have to have protections that are completely portable, and the worker has to be able to dock on to the institution that she or he belongs to and cares about. So number one, we have to enable people to group together. Those groupings have to be mission-based. Some people might say, “Well, that sounds like association health plans. That would be great.” But I don't think it should be groups driven by that kind of profit motive. I think it should be nonprofit and social-sector actors, and they should be held to a really high standard. And in return for meeting that high standard, they should be able to get patient capital that's privileged by the tax code.

OC: To your earlier point, the economic model needs to rely on funding from the members themselves. But

then say a little bit more about the patient capital concept. How does that fit in?

SH: My book, *Mutualism*, is really about the idea for this structure. It's not just a nonprofit because we have plenty of charities out there and we have nonprofit advocacy groups, but that's different from the provision of the safety net. What we have to do is have groups that demonstrate that they have members or that they serve a community, that they are institutions and have a board and bylaws, and that they have some economic resources through dues from their community of interest. These can be cooperatives, businesses that are run by faith-based organizations, mutual-aid societies, and, of course, unions.

Unions are in a perfect position to fit in this institutional framework because they already have Taft-Hartley funds and benefit funds. That's what can make this the next big idea because the second you say this—you can just imagine the ERISA lawyers out there pulling out their hair at all the different permutations this could have. And I say, bring it on. Now's the time. We have to evolve and pivot. We don't have to do it in one fell swoop; we can do these in a series of pilots and start to learn and see how it goes.

Eventually, the idea of mutualism is that we could have a whole sector in the economy that's focused on these kinds of cooperatives, which mutual-aid and faith-based groups could look to for delivery of the safety net. It will take the kind of imagination that building the New Deal and the progressive era took, but that's going to be where we start to build the next safety net that makes it so that workers in America do well again.

OC: When you think about the functions of these organizations, whether we call them unions or

otherwise, there's a solidarity and mutual-aid function and then there's a benefits function. It seems like what's potentially missing is the actual collective bargaining function. Thinking about your priorities and what is most important from a policy perspective, do you see a mechanism by which these kinds of organizations can also play a collective bargaining role? Or does it feel to you like the twenty-first-century model is just going to be less about bargaining and more about support for workers outside the employment relationship?

SH: The important point about collective bargaining is that when we invested unions with the ability to engage in collective bargaining, we also said that they would not be in violation of antitrust laws. So the moment that you let these new groups have that same ability and let unions bring in new kinds of workers, I think you would start to see that: (a) bargaining becomes a priority; and (b) it can't just be with a particular employer. I would love to see the day when we could have sectoral bargaining. But I think that we have to think carefully about the mechanism because we're talking about different kinds of workers. Job tenure is going to be shorter. Some freelancers are in the gig economy, which means, for example, they're drivers for Uber and Lyft. Others are professional freelancers who work on a variety of jobs and gigs. You have some employees and some independent contractors.

But there's another element when we talk about solidarity and collective bargaining, and that's the check on corporate power. One of the most important roles that the trade-union movement plays is it has a sophisticated mind-set about what's happening in the economy. When I think about the heyday of labor, it was clear that the trade unions of that generation towered above the leaders of the companies that they went against. When you have a really excellent trade-union movement that's empowered and isn't always fighting for its life, it actually

can be in a position to make the right kinds of arguments.

One of the things I've come to think a lot about is that we are so crazed over free trade versus protectionism, but I think we have to pick some industries that we're going to be promoting that can really pay a certain amount of money for workers. And that's the kind of thing that unions have a lot of opinions about and where they can play a constructive balancing role. ■

Few Americans realize how our system of organized labor is an outlier among Western nations. In some European countries, unions attract a greater share of workers and maintain less adversarial relationships with business. A better understanding of these alternative models can guide American policymakers as they address our labor policy challenges.



Workers of the World

WELLS KING

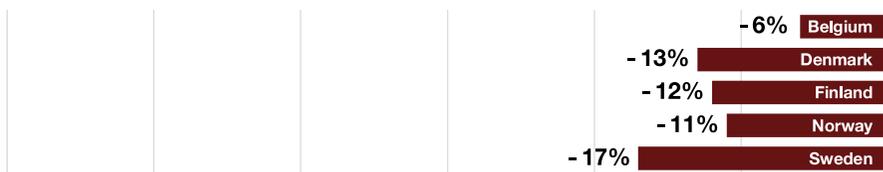
THE UNIONIZED SHARE OF AMERICA'S private-sector workforce has declined steadily for half a century and now stands at an all-time low of 6.2%. With this decline in “union density” has come the loss of benefits that once accrued to workers and their families.

Myriad explanations have been offered to explain labor's fall. But the American structure of organized labor is itself much of the problem. Most of the decline in unionization is attributable to the decline of employment growth in unionized sectors and firms, a result not only of unions' prevalence in stagnant or shrinking industries like manufacturing, but also the effect of unionization itself—raising labor costs for employers who then hire fewer workers and, with lower profitability, attract less investor capital. For instance, the labor market conflict endemic to the unionized manufacturing sector—namely, work stoppages—contributed to the decline of employment in the Rust Belt. Overall, nonunion manufacturing employment was higher in 2019 than 40 years earlier, while union manufacturing employment had fallen by more than 80%.

Other countries have witnessed declines in union density, too, but often to a lesser extent, suggesting that the decline of organized labor is not solely the consequence of economic development. The varied legal and social structures that shape and govern labor organizations play a significant role. While debate in the U.S. has focused on how to get more workers to vote for a union, or give them ways to get out of one, a much richer variety of options is available. The last decade has seen a number of proposals

Decline in Union Density¹ (1979-2018)

In countries with the “Ghent system,” unions provide safety-net benefits like unemployment insurance, and the share of workers that are formally members of a union remains high.



In other countries without Ghent, union density has fallen substantially, but forms of sectoral bargaining ensure that most workers are covered by union-negotiated agreements (e.g., 98% in Austria, 99% in France, and 56% in Germany).



In countries where unionization occurs at the enterprise level and only unionized firms have collective-bargaining agreements, union density — and with it, contract coverage — has fallen sharply. In the U.S., for example, union density has fallen from 23% to 10% and bargaining coverage from 25% to 12%.



(1) Includes both public- and private-sector unions
 Source: “Trade Union,” OECD.Stat, Organisation for Economic Cooperation and Development (OECD)

from across the political spectrum to reform the legal structure governing labor unions: from universal worker representation and sectoral bargaining to federal waivers and new employee classifications. There has also been a great deal of experimentation outside of federal labor law with the rise of “alt labor” as well as the revisitation of once-moribund state institutions, such as state wage boards, in an attempt to craft new functions for, and alternatives to, organized labor in the twenty-first-century economy. Developments like these could point the way toward a new labor law.

American workers support reform. Recent surveys show that workers want to have a wide array of organizations that give them a voice in the workplace, provide benefits and services to dues-paying members, and create avenues for advising and participating in employers' decision-making. Their preferences underscore the potential for a renewed American labor movement, but they also highlight the limitations of the present American system of labor relations: the organizations hoped for do not exist, in large part, because legally they cannot.

American policymakers interested in pursuing genuine reform should begin by looking to countries in Europe where not only is union density stable and high, but also organized labor plays a constructive economic role. No other country's model would be directly transferable to America, but familiarity with the alternatives and their trade-offs can provide inspiration and a starting point for reforms to the American system.

The many variations possible for a system of organized labor exist along three dimensions, which correspond to the institutional roles that unions might play in democratic capitalism: as an association in civil society, an economic actor in the labor market, and a partner in workplace governance. This essay explores the varied forms and roles of organized labor in Europe and outlines possible considerations for U.S. policymakers seeking to reinvigorate the American labor movement in the twenty-first century.

Benefits & Services: Organized Labor in Civil Society

Well-functioning labor markets require the presence of benefits and services that help workers manage inevitable market frictions and that increase the value of workers to employers. Americans take for granted that government or employers should provide them. Our

social safety net—including unemployment insurance and trade-adjustment assistance—is financed primarily by payroll-tax revenues and administered exclusively by the state. And our workforce development system consists of a hodgepodge of state-subsidized education programs and employer-provided training.

A more decentralized approach run through civil associations could be more flexible to local conditions and more responsive to workers' changing needs. It could also create new incentives for participation in organizations that would otherwise struggle to attract members.

Labor unions are uniquely positioned and equipped to fill this role. Unions are themselves formed to facilitate mutual aid among workers and operate in concert with government and employers to advance workers' interests in the workplace and the wider labor market. In parts of Europe, labor organizations have adopted a leading role in providing services or administering benefits that state agencies or employers provide elsewhere. By carving out a space for labor in administering parts of the social safety net and leading workforce development efforts, these countries have managed to resist—or, at least, slow—declines in union density experienced in America. Labor organizations offer a value proposition to workers beyond the traditional benefits of representation and bargaining coverage and, in turn, attract and retain more members.

UNEMPLOYMENT INSURANCE

In European countries with the highest and most stable levels of unionization, unemployment insurance is voluntary and administered through unions in an arrangement known as the “Ghent system.” Ghent unions are prevalent throughout northern Europe—namely, Belgium, Denmark, Finland, Iceland, and Sweden. The generous benefits are offered to workers for modest fees

and create effective incentives for workers to join and remain members of unions. Administering unemployment insurance is estimated to unionize an additional 20% of the workforce, and rates of unionization where the Ghent model exists are among the highest in the world. The popular system relies heavily on state subsidization and employer contributions and operates a virtual monopoly in unemployment insurance. Even though workers have the choice to receive insurance either through a government agency or a union, most choose unions because they are more readily accessible and make it easier for workers to navigate the bureaucracy.

Roles for government and unions, as well as options for workers, vary by country. In Belgium, the birthplace of the Ghent union, the unemployment insurance system is mandatory, but unions are still heavily involved in its administration, running essentially a “de facto Ghent system” that has kept unionization fairly stable into the twenty-first century. In Scandinavian countries like Sweden, Finland, and Denmark, the Ghent system remains voluntary and attracts workers from across occupations and education levels. Beginning in the early 1990s, independent unemployment funds were introduced in Nordic countries and have competed with the union-administered funds, offering the benefit without the requirement of union membership and the member dues that come with it, which may explain some of the gradual erosion of union membership in those Scandinavian countries in recent years—particularly among new entrants into the labor market.

WORKER TRAINING

Labor unions improve and complement worker training programs in measurable ways. Union involvement in worker training has been shown to produce better outcomes in the workplace than training in which unions are not consulted or engaged. In the United Kingdom,

union members receive more and better training than nonunion workers, while in Germany unions tend to increase training in existing apprenticeship programs. In the U.S. construction industry, joint-sponsored programs by unions and employers have higher program completion rates than those sponsored by employers alone.



While debate in the U.S. has focused on how to get more workers to vote for a union, or give them ways to get out of one, a much richer variety of options is available.

Germany runs a robust vocational education and training system, including an apprenticeship program in which students seeking certification earn money and learn skills on the job. The national standards for such programs are established jointly by tripartite committees of experts from government, industry, and trade unions. In the course of collective bargaining (discussed below), trade unions also negotiate the salaries of apprentices. The administration of worker training is also handled by worker organizations. For instance, the examination bodies that oversee the creation and administration of tests for certification include worker representatives nominated by workers. Works councils (discussed below), which include worker representatives, oversee the local administration of vocational training programs at individual worksites.

Collective Bargaining: Organized Labor in the Labor Market

Collective bargaining is organized labor's bread and butter, but in the United States its scope and effective-

ness are quite limited. Workers are organized worksite by worksite into independent “bargaining units” that may then bargain collectively with their respective employers if a majority vote to unionize. While bargaining units may be voluntarily merged to expand the coverage of a collective agreement (if employers consent), they rarely extend beyond a single employer, much less to an entire region or industry.

This “enterprise-based” bargaining framework creates a fragmented and decentralized pattern of unionization, in which fewer workers are covered by collective agreements and labor-management relations are aggressive and adversarial. The American legal framework for bargaining maximizes conflict and competitive pressures between not only labor and management but also unionized and nonunionized firms. Employers resist unionization while labor pursues organizing tactics that force management to assent to elections and then squeeze as hard as possible in negotiations.

Lacking effective collective bargaining mechanisms, the terms and conditions of American employment are necessarily determined through a different system: federal regulation. Government agencies establish standards and protections for those things that collective bargaining could otherwise accomplish, from wages and hours, to health and safety, to termination processes. Thus, instead of privately negotiated arrangements brokered between firms and workers’ representatives, most American workers are covered by one-size-fits-all employment standards.

This regulatory regime is simpler than a patchwork of collectively bargained agreements governing different clusters of works. It guarantees that all firms are subject to the same rules, regardless of whether their workers are unionized. But it poorly accommodates sectoral and regional differences, let alone workers’ and employers’

priorities. And it leaves unions with relatively little to bargain over; contracts are negotiated atop regulations, not in lieu of them.

Given the obvious limitations of the American enterprise-based system, some reformers and labor leaders are considering the potential for collective bargaining at the sectoral, regional, and even national level: “broad-based bargaining.” Labor market centralization is strongly correlated with higher union organization, and sectoral bargaining is the most conducive to union growth. The OECD reports that coverage by collective bargaining is stable and high only where some form of broad-based, multiemployer bargaining exists.



American policymakers interested in pursuing genuine reform should begin by looking to countries in Europe where not only is union density stable and high, but also organized labor plays a constructive economic role.

Broad-based bargaining improves the performance of unionized industries and firms along a number of dimensions. It has been shown to reduce employee turnover and to establish better, and more flexible, safety standards for particular industries. By including all employers within a given industry, it creates new incentives and collaborative forums for worker training; industries covered by sector-level agreements are more likely to invest in workforce development and devote greater resources to firm-sponsored training.

Broad-based bargaining's benefits also spill over into the broader economy, improving both labor market and social outcomes. It increases national employment by both reducing unemployment and increasing labor force participation, and it also boosts productivity rates for covered industries. Meanwhile, it compresses wage distributions across entire industries, much as enterprise-based bargaining does within unionized firms, reducing economic inequality.

In countries with broad-based bargaining—particularly those where agreements are national in scope—unions are responsive to macroeconomic issues such as wage-driven inflation and international competitiveness. They tend to strike a balance that accepts relatively lower wages but promotes healthier firms and rising productivity, which supports higher wage growth in the long run. In Germany, for instance, trade unions have agreed to set wages below marginal productivity in order to increase the competitiveness of export sectors.

Broad-based bargaining often employs what the OECD calls “organized decentralization.” While it emphasizes sectoral bargaining, it permits bargaining at multiple levels—from the national all the way down to the worksite—to ensure flexibility of broad-based agreements when applied to individual firms and locales.

In Denmark, Norway, and Sweden, for example, collective bargaining at the national or sectoral level establishes a framework that leaves room for local bargaining. Local negotiations may complement or deviate from the terms set in sectoral bargaining, enabling workers and employers to make trade-offs, choose à la carte, and establish lower standards if the parties agree. This “Scandinavian model” balances centralization and decentralization in the collective bargaining process and maximizes flexibility for workers and management, incorporating bargaining at three levels: at the national

level between employer associations and national labor confederations; at the sectoral level between unions and employers; and at the local level between individual firms and their workers.



Policymakers across the political spectrum need to be clear-eyed about the obvious limitations of America's current legal framework but distinguish between the maladies of a law passed during the Great Depression and the promise of institutions that afford workers power and representation.

In Sweden, national bargaining establishes non-wage framework agreements. Wage bargaining then occurs principally by industry, with wages for more than three-quarters of workers set through a combination of sectoral and local agreements. Employer signatories to the collectively bargained contract are obliged to apply it to all employees, regardless of union membership. As such, over 90% of workers have their pay at least partly determined by local negotiation, but centrally bargained agreements also tend to include “fallback agreements” that set wage terms for employees if no local deal is reached.

In Germany, sectoral bargaining sets standard terms from which local parties may negotiate for better terms and from which some firms may be exempted either generally or temporarily in response to an economic crisis. Collective bargaining takes place at the regional-sectoral level between employer associations and confederations

of labor unions. Collective bargaining agreements cover everything from wages to work hours to pay structures to the treatment of part-time workers to worker training. Germany also has a national minimum wage that is set by a commission of union and employer representatives in consultation with outside experts.

Several different agreements can apply to a particular German company, but if agreements are in conflict, the one signed by the larger union is binding. Agreements covering wages usually last one to two years, but agreements covering other issues can last five years or longer. Some agreements do not expire until a party opts to renegotiate the terms. Workers retain the right to strike, and unions may organize a strike to force employers to the negotiating table. Collective agreements include “peace clauses” that remove striking power so long as the agreement is in effect. This arrangement induces employers to renegotiate agreements preemptively and creates a smooth transition from one agreement to the next.

Representation & Codetermination: Organized Labor in the Workplace

In the typical American workplace, management has total authority and workers have little-to-no say in their employers’ decision-making. Unionized workers benefit from union representation that can handle grievances, file complaints, and petition management, but this leaves most American workers to fend for themselves. In theory, they individually negotiate their wages and benefits. In practice, they are presented a take-it-or-leave-it offer. As with enterprise-based collective bargaining, the relationship is inherently adversarial, and there is little to actually bargain over.

American workers would prefer less adversarial, more cooperative, relationships with their employers. A

landmark study found that workers would prefer a form of representation that had a cooperative relationship with an employer but no power to make decisions over a form with power but that management opposed by nearly three to one. Recent surveys also show that workers place a premium on collaboration with management and input on corporate decision-making and prefer these alternative means of worker voice to traditional but confrontational ones such as strikes.

As companies in the United States flirt with “stakeholder capitalism” and American lawmakers weigh proposals for worker representation in corporate governance, reformers should consider Europe’s full range of models, where different workplace organizations and corporate governance structures ensure that workers have not only a voice within their companies but a greater stake in their success.

WORKSITE REPRESENTATION

One promising model of worksite representation is the “works council,” a legal organization independent of a labor union designed to promote cooperation between labor and management at the local level. Especially in the context of sectoral bargaining, University of Buffalo law professor Mathew Dimick explains, works councils fill a “‘representation gap’ left by the more universalizing, and therefore less particularizing, industry-level representation of workers’ interests by unions.”

Councils consist of elected employee and employer representatives who adapt conditions of the broader collective bargaining agreements to local circumstances and address workplace concerns not covered. In Germany, for instance, they are directly elected and vary in size based on the size of the firm—firms with 51–100 employees have a seven-member council and serve two main functions. First, they must be consulted on critical

workplace issues such as safety or personnel decisions. Second, employers must inform and negotiate with them on a range of issues. For some issues like worktime, bonuses, payment methods, and surveillance, works councils have “positive codetermination rights,” meaning that they (or a tribunal plus a neutral chair) must agree on the decision.

Works councils are prevalent throughout the European Union. They predominate in Germany, where they are the only worker organization that operates at the enterprise level. German firms with as few as five employees typically have works councils, and among the largest firms (i.e., those with more than 500 employees) roughly 90% of employees are represented by one. Unlike the adversarial legal framework of American labor relations, the legal basis of the German works council is essentially collaborative: to work with management “in a spirit of mutual trust ... for the good of the employees and the establishment.”

The power of a works council is defined by its sets of rights for dealing with management: information (must be informed), consultation (must be consulted), opposition/refusal (ability to block employer’s decision, subject to a labor court decision), and enforceable codetermination (employer cannot proceed without agreement or approval by a “conciliation committee”). In Germany, works councils’ rights are strongest in the domain of social issues (e.g., hours, vacation, payment methods, etc.). In dealing with day-to-day social issues, in particular, works councils can exercise rights of enforceable codetermination. But works councils’ rights are weakest in the domain of economic issues (e.g., financial performance, investment decisions, work processes, operational changes like closures or transfers, etc.). They are to be informed by management about the economic and financial situations of the firm and are to be consulted on work process and operational changes,

but they do not otherwise have rights in addressing economic issues, which are considered to be the exclusive domain of the management.

On average, German works councils have 23 working agreements with management on social issues. Some collectively bargained agreements also include “opening clauses” that allow works councils and local management to negotiate over changes to the contract established at the sectoral level. Works councils may develop proposals just as the employer does, and the employer covers the full cost of the council.

CODETERMINATION

To complement worksite representation either by works councils or local unions, some countries have adopted systems of worker representation on boards of directors that set the strategic direction of firms.

These models of “codetermination” offer a number of documented benefits. A recent study on “shared governance”—in this case, giving a third of boardroom seats to worker representatives—found that it increased capital formation and reduced outsourcing, with no measurable effect on wages, rent-sharing, profitability, or debt capacity. In Germany, in particular, a combination of works councils and board-level codetermination has shown positive effects on reducing short-termism in strategic decision-making and in reducing national income inequality.

In the German model of codetermination, there are two different boards. One, an executive board (also known as a management board), is composed of the CEO and other executives, while the other, a supervisory board, represents both workers and shareholders and is involved in the appointment of members of the executive/management board, monitoring business operations,

and approving major strategic decisions made by the executive/management board. In corporations with 2,000 or more employees, workers elect half of the representatives on the supervisory board, while shareholders elect the other half and select the chair. In smaller corporations with 500 to 2,000 employees, workers may elect up to one-third of the supervisory board.

Studies of the German model suggest that workers' firsthand knowledge of business operations adds considerable value to board decision-making when they can vote for representatives, translating into increased efficiency and market value. This is especially true of "industries that require more intense coordination, integration of activities, and information sharing such as trade, transportation, computers, pharmaceuticals, and other manufacturing."

German codetermination, because it requires a balance of power between worker representatives and shareholders, also discourages "diffuse" ownership and encourages the "blockholding" of large portions of shares. In order to counterbalance workers' representatives and maintain an aligned majority, there tend to be fewer shareholders maintaining greater equity stakes in companies, giving German public companies certain "semiprivate" qualities.

A Broader Conversation About Organized Labor

A system of organized labor is an integrated structure whose parts depend on one another. The American structure is badly flawed and has produced dysfunction, no one is happy with it, and piecemeal reform isn't going to fix it. Fortunately, there are many potential avenues for reform. Indeed, most structures of organized labor look nothing like America's. Policymakers across the political spectrum need to be clear-eyed about the obvious

limitations of America's current legal framework but distinguish between the maladies of a law passed during the Great Depression and the promise of institutions that afford workers power and representation.

Looking across the Atlantic may supply promising models for such reforms. But the United States is not Europe. Our economies differ in their particulars, and (most important for labor relations) our cultures, norms, and systems of government can differ markedly. We cannot just import some other country's structure, nor can we simply define some hypothetically ideal endpoint without establishing a road map from here to there and allowing for learning, adaptation, and institution-building along the way.

But appreciating the range of options provides questions for American policymakers to consider in the American context: What could unions do outside the bargaining context entirely? What broad-based bargaining might we want? What local representation and what interaction between the two? What codetermination? What role should remain for government regulation, and where should bargained agreements be allowed to depart from it? The task is to answer these questions in ways that account for American institutions, norms, and values, advancing vital ends (e.g., greater collaboration, private ordering of labor markets and norms, greater solidarity) without destroying others (e.g., worker freedom and market flexibility). This conversation is one that conservatives should lead. ■

*Inclusion is a necessary first step
toward fixing America's broken labor
law system.*





Labor Law Must Include All Workers

SHARON BLOCK & BENJAMIN SACHS

IN JANUARY OF THIS YEAR, we published a comprehensive set of recommendations for reforming U.S. labor law. Although the recommendations were extensive, the theory that lay behind them was straightforward: our country is facing dual crises of political and economic inequality, and we can help address those crises by giving working people greater collective power in the economy and in politics. Although progressives and conservatives disagree on many things, we all ought to agree that the stark *inequalities* that now pervade American life constitute grave threats. Politically, the viability of our democracy is threatened by a government that responds to the views of the wealthy but not to those of the poor and middle class. Economically, the viability of our community life is threatened by the fact that that we live in a country where it would take an Amazon worker 3.8 million years, working full-time, to earn what Jeff Bezos alone now possesses.

Saving American democracy and American communities will take a wide variety of interventions, but labor law reform must be one of them. In fact, much of the explanation for our current crisis of economic inequality is the decline of the labor movement. Unions redistribute wealth—from capital to workers, from the rich to the poor and middle class—and without unions, we have not had an adequate check on economic concentration. The decline of the labor movement also accounts for much of the current crisis of political inequality. When unions were active and strong, they helped ensure that the government was responsive to the needs and desires of the poor and middle class. Without unions,



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these poor and middle-class Americans have lost their most effective voice in our democracy. We have seen the consequences of this decline in unionization play out dramatically during the pandemic and recession, which have had devastating consequences for workers trying to navigate their physical and economic survival with so little collective power.

We do have a statute that is supposed to enable working people to form and join unions, but that law—the National Labor Relations Act (NLRA), passed in 1935—is badly broken and outdated. In fact, in our view, the NLRA is so fundamentally flawed, so fundamentally incapable of providing workers with a viable path to effective unionization, that a complete rewrite of national labor policy is called for. That’s why we titled our reform recommendations “Clean Slate” and outlined how we would totally redesign American labor law from the ground up. Central to these recommendations is the idea that American workers need a new system of labor law, one that equips them to build power at the level of the workplace and across industries, in corporate boardrooms, and in our democracy.

We reject the idea that the kind of change we need can be accomplished through individual tweaks of the existing structure. We resist the temptation to choose which of

our reform recommendations are the most important, believing, as we do, that the proposals build on and support each other in the creation of a comprehensive, workable system of labor law.

We do not, however, have room here to review this comprehensive call for reform. Instead, we will outline where we grounded all the other Clean Slate proposals: with the effort to expand the inclusiveness of labor law's reach.

Indeed, one of the primary failings of the NLRA is its lack of inclusivity. Put bluntly, from the outset, the labor statute intentionally excluded large segments of the labor market populated predominantly by workers of color and women. As Ira Katznelson has shown, in order to secure passage of the NLRA (and companion legislation, including the Fair Labor Standards Act), President Roosevelt needed the votes of the Southern wing of the Democratic Party. Southern Democrats, however, were unwilling to support the New Deal labor laws without assurances that the enactment of those laws would leave undisturbed the system of Jim Crow segregation that defined Southern labor markets. Roosevelt, and Northern liberals, accepted the deal, and the statute was passed with explicit carve-outs for agriculture and domestic work, "the most widespread black categories of employment." Indeed, at the time of the NLRA's enactment, nearly half of Black men and fully 90% of Black women worked in either the agricultural or domestic sector.

Eighty years later, these discriminatory exclusions—baked in to the law at its passage—continue to have profound effects on workers of color and women. In fact, women and people of color constitute nearly 100% of the agricultural and domestic labor forces today, so the exclusion of these categories of employment means that union protections are simply unavailable to huge numbers of workers of color and women. Moreover,

other legal developments have reinforced and deepened these exclusions. The statute, for example, excludes from coverage anyone working as an independent contractor. And for many parts of the labor market, this exclusion makes sense: we probably don't want doctors and plumbers unionizing and fixing their prices. But with the explosion of the misuse of the independent contractor designation—by massive employers like Uber, Amazon, and FedEx—this exclusion has meant the denial of union rights to millions of workers who ought to enjoy them. Again, these sectors are predominantly made up of workers of color. Finally, and although the labor statute is itself silent on this point, the courts have carved out from labor law's full protection immigrants who are working in the country without immigration authorization.

This exclusion undermines union access not only for the millions of workers directly targeted by the carve-out but also for the many millions more who count such immigrants as coworkers and whose ability to organize depends on joining together with them. Put together, these race- and gender-salient exclusions—and similar ones in cognate employment laws—have helped construct a set of labor rights not accessible to all on equal terms. To



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put it mildly, we are seeing today the tragic consequences of this inequitable labor market as workers of color and women suffer the economic consequences of the COVID-19 pandemic in highly disproportionate ways, including higher rates of unemployment, lower access to unemployment benefits, and higher incidence of COVID-related hospitalization and death.

Any reform of our labor law must therefore *begin* by ensuring that all workers—including those who unjustly have been excluded since the outset—have access to union rights. Racial and gender equity should certainly be a bipartisan project, so it should be possible to reach agreement on a viable set of reforms designed to increase labor law’s inclusivity. At a minimum, a reformed statute should dispense with the categorical exclusion of agricultural and domestic workers—exclusions that have been inseparable from Jim Crow since they were drafted.

Given the structure of these industries, ending the exclusions would need to be accompanied by other statutory amendments. For example, the inclusion of agricultural workers would require changes to the law’s constraints on the object of collective action. Agricultural workers are employed by growers, but organizations like the Coalition of Immokalee Workers have shown that applying pressure to growers doesn’t succeed in raising wages. Why? Because downstream players in the industry, like fast-food restaurants and food retailers (e.g., Walmart), effectively set wages by keeping growers’ margins so tight. Successful labor organizing in agriculture therefore depends on workers’ ability to influence these restaurants and retailers, which means that the law must protect campaigns that apply pressure down the production chain. In particular, the law must offer protection to campaigns designed to persuade consumers to pressure restaurants and retailers to pay the growers more and ultimately to pass those increased commodities prices on to the workers. The NLRA, however,

often prohibits these types of campaigns under the ban on so-called secondary boycotts. To make NLRA organizing an effective tool for agricultural workers—and others who work in similarly structured industries—secondary boycott rules would therefore need to be adjusted.

Similarly, the inclusion of domestic workers would require changes to the NLRA's constraints on which workers can organize together. In our current system, workers may organize only within the bounds of the single firm—or “employer,” to use the statutory term—where they work. Because domestic workers are often the sole employee of their employer—the homeowner or family for which they work—this limitation means that domestic workers have the right to organize unions of one worker; the limitation, that is, renders the right to organize meaningless. To address this problem, adjustments to the rules of bargaining units would be required. Ideally, sectoral bargaining would be permitted, thus enabling domestic workers and others to organize and set conditions across entire industries, a topic that David Rolf and Oren Cass have discussed here.



Inclusion is a necessary first step toward fixing America's broken labor law system, but it is only a first step because workers deserve to be included in a labor law that actually works—a labor law that enables them to build and exercise meaningful economic and political power.

In our view, ending the agricultural and domestic worker exclusions should be accompanied by two other moves, both of which would also repair some of the racial and gender inequities that have plagued labor law for too long. First, we would amend the statute to make clear that union protections extend to all people working in the United States, irrespective of immigration status. Such a reform would have clear benefits for workers' ability to organize: no longer would employers be able to defeat organizing drives by dividing workers along immigration lines. And while we understand that such a reform might generate opposition on the other side of the aisle, it actually should find support regardless of one's view of the immigration issue at stake: as Justice Breyer has explained, if you deny labor law's protection to unauthorized workers, as current law does, you make it more *likely* that employers will seek to hire them.

Finally, we would amend the statute's definition of employee such that only *genuine* independent contractors were excluded, and actual employees—like Uber drivers and Amazon delivery workers—could not be misclassified and denied union rights. As noted, because so many gig workers—and workers in other industries where misclassification rates are high—are immigrants, workers of color, and women, this move would also help make labor law significantly more inclusive. We would accomplish this reform by replacing the statute's current definition of employee with the "ABC test" for employment, which is now in place in several state jurisdictions. Importantly, the ABC test starts with the presumption that workers are employees, covered by labor protections, and puts the burden on employers to prove the exclusion. Employers must prove each of the following three factors: (A) that the employer doesn't exert control over the workers at issue; (B) that the work performed is outside the usual scope of the employer's business; and (C) that the worker is engaged in an independent trade, occupation, or business. The adoption of the ABC test would extend

collective bargaining rights to millions of workers who need and deserve labor law's protection, without sweeping in true entrepreneurs, freelancers, or business-people.

As we said at the outset, much more needs to be done. Inclusion is a necessary first step toward fixing America's broken labor law system, but it is only a first step because workers deserve to be included in a labor law that actually *works*—a labor law that enables them to build and exercise meaningful economic and political power. Constructing that kind of labor law would mean creating a diverse array of representational structures at the workplace, guaranteeing opportunities for sectoral bargaining, building power in the corporate boardroom, and expanding opportunities for political participation, and doing so in a way that ensures that all these pieces work together in a coherent whole. If we succeeded in building that kind of labor law, we could make real progress toward addressing the dual crises of economic and political inequality that now threaten American communities and American democracy.

A Reply

ELI LEHRER

I agree wholeheartedly with Sharon Block and Benjamin Sachs's proposal that we should start with a "clean slate" for American labor law. I'm with them in the beliefs that current labor law is "badly broken and outdated," has

its origins in reprehensible prejudices, and continues to present structural barriers to economic mobility. I, too, favor progress toward racial and gender equity and want to see “a diverse array of representational structures at the workplace.” That said, I find their specific proposals to be a decidedly mixed bag for which I can offer some sympathy but almost no unconditional support.

Let me start, however, on common ground: protections for immigrant workers. I think that Benjamin and Sharon make a good point in saying that employers use immigration status to divide their workforces in ways that benefit stockholders and management at the expense of less skilled workers. That said, I cannot see a practical way to assure labor rights for all absent fundamental immigration reform that includes amnesty, a guest-worker program, and more. Even if he had a statutory right to do so, what currently undocumented person would complain about a labor violation when doing so would draw the attention of authorities and risk deportation? In any case, I’m not sure that I can speak for much of the right in this: while I can point to a proud conservative heritage for my views on immigration—they’re pretty much the same as Ronald Reagan’s—they aren’t in step with the current president or with most of the Republican Party.

As for sectoral or regional bargaining—perhaps the linchpin of Benjamin and Sharon’s proposal—I think it would be an unmitigated disaster absent even more sweeping reforms reaching all corners of American labor and employment law. The well-functioning labor markets with widespread sectoral or regional bargaining—mostly in the Nordic countries—also operate without national minimum-wage laws, make business startup easier than we do, and generally don’t require union dues from nonmembers. Piled on top of a burdensome tort system, complicated employment law, and, in some cases, mandatory union dues, sectoral bargaining could be a

recipe for the denial of worker autonomy, stasis, reduced take-home pay, job destruction, loss of opportunity for the least skilled, and overall economic stagnation.

But life is complicated, and I could be wrong. Under the labor law waivers that former Service Employees International Union (SEIU) president Andy Stern and I have proposed, regional or sectoral bargaining would certainly be within the range of experiments that states or industries might try. I'd support an experiment with it under waivers that would also permit policies that would do a lot more good for American workers—such as works councils, private-sector flex time, and collective bargaining agreements that depart from non-civil rights employment law.

I'm even less enthused about their proposal to implement the ABC test on a national level and thereby severely limit the number of people who can pick where and when they work. It's a solution in search of a problem. Contrary to conventional wisdom, gig work, part-time work, and self-employment are generally becoming less common in the United States. Male workforce disengagement is a big problem, and better but still highly flexible gig jobs are a way to draw current nonparticipants back into the workforce. Moreover, gig work is what people want anyway. Most people working for the leading app-based ride platform look for these jobs precisely for the flexibility and ability to be their own boss. In the full-employment economy we had until the pandemic, all those who wanted W-2 jobs had them. "Bad" part-time and gig jobs are a key lifeline during economic recoveries. Imposing the strictures of full-time employment on these workers undermines their own desires, denies opportunities, and destroys the productive, creative business models they take part in. Over 80% of workers on this platform would prefer a sort of "third status" between contractor and employee, and such a status could even help to create new model labor organizations. This makes a lot more

sense than trying to force something desired by neither job providers nor workers.

My underlying disagreement, however, comes not from an appeal to the popular will but, rather, a difference of values: I'd rather have an economy that allows for more creativity, choice, and wealth creation even if it results in less equality. I'm personally thrilled that Jeff Bezos has become rich by creating so many jobs, so much wealth for others, so many opportunities, and such a beloved brand. Individual choice—not a search for a “perfect” system—should be the name of the game. Beginning with a clean slate, labor organizations, workers, and employers will do best when they all have an opportunity to experiment with and discover voluntary, innovative structures that maximize opportunities for human flourishing. ■

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Toward a More Cooperative Union

ELI LEHRER

AMONG ITS OTHER MANIFEST FLAWS, the system of American unionism established under the National Labor Relations Act of 1935 is intrinsically adversarial. This, more than anything else, is the reason that nearly all employers consider unions a nuisance: What managers want a third party, which they cannot play any role in selecting, standing between them and the people who make the business run? Even worse, a wide range of employee participation and co-governance methods are either illegal or suspect under current labor law. Workers and employers should have much greater freedom to come up with mutually agreeable, voluntary, and beneficial forms of organization.

The heart of the problem, as I see it, lies in section 8(a)(2) of the National Labor Relations Act of 1935 (Wagner Act), which makes it illegal “to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it” as well as most of the provisions in section 302 of the Labor Management Relations Act of 1947 (Taft-Hartley Act), which makes it illegal for employers to “pay, lend, or deliver, or agree to pay, lend, or deliver, any money or other thing of value” to unions (with some exceptions). In short, I’d make nearly any voluntary employee involvement or union business structure legal so long as it does not engage in full-scope, binding collective bargaining. Such a system—a much more expansive version of the Teamwork for Employee and Managers (TEAM) Act that passed both houses of Congress in 1996 and fell to President Bill Clinton’s veto—could offer labor organizations a new business model while giving workers new choices and employers

a reason to want a form of organized labor in many workplaces. People on the right should like this proposal because it allows greater entrepreneurial creativity and offers hope for new civil society forms; those on the left should support it because it offers hope for organized labor through a new business model, as well as a path toward more democratic workplaces.



Workers and employers should have much greater freedom to come up with mutually agreeable, voluntary, and beneficial forms of organization.

Let's begin with the almost-successful proposal from about 25 years ago that did part of what I'm proposing. The TEAM Act's specific allowances to let nonunion organizations, including those largely set up by employers, "[to] address matters of mutual interest, including, but not limited to, issues of quality, productivity, efficiency, and safety and health" outside of collective bargaining agreements would be a good start, with obvious benefits for employers and employees alike. After all, most large employers have some sort of employee involvement program, and nearly all, at least rhetorically, recognize the value of an engaged, involved workforce. As early-twentieth-century labor leader and MIT faculty member Joe Scanlon pointed out, line workers have enormous practical knowledge that can improve the productivity and finances of nearly any enterprise.

Indeed, simply implementing the TEAM Act as written would allow for the formation of health and safety committees with power to make binding decisions. Such committees had a brief flowering in the 1980s and early

1990s but were relegated to a mere advisory role after the National Labor Relations Board's 1992 *Electromation* decision (and subsequent rulings) made it clear that nearly all formal employee involvement, engagement, and comanagement activities outside of a union were either illegal or dubious. This also led to a near-death of formal quality circles and other product enhancement efforts in thousands of workplaces. While some employers and workers skirt or just flat-out ignore *Electromation* and its progeny, the decision still did enormous damage. Without 8(a)(2), works councils elected by the entire workforce and able to work with management on a range of issues would also become legal under U.S. law. They are common but informal in the United Kingdom and more or less mandatory in large enterprises in Germany, but banned in the United States for non-collective bargaining employees because of the strictures of 8(a)(2). Employers have a lot to gain from this arrangement, as would individual workers who could enjoy more participation in their workplaces.

In this context, it is reasonable to question what unions as organizations have to gain from this arrangement. After all, they successfully fought the TEAM Act the first time around because they perceived, correctly, that allowing nonunion structures would diminish their currently unique legal role as worker representatives.



In short, I'd make nearly any voluntary employee involvement or union business structure legal so long as it does not engage in full-scope, binding collective bargaining.

That's why I propose to offer unions something as well: a change to the law should also eliminate the current prohibitions on financial agreements between employers and unions contained in section 302 as well as 8(a)(2). Unions might partner with non-collective bargaining employers to take part in multiemployer benefit plans (a.k.a. Taft-Hartley plans) or serve as benefit consultants. A wide range of other forms of cooperation might be possible. For example, unions should be allowed to get financial support from an employer to advocate for mutually beneficial political changes or provide training in whatever context they could agree on. Most importantly, unions could—and I suspect would—run many employee involvement structures within firms or even approach firms with proposals to enhance employee engagement. A union, for example, might try to work with some of its best shop stewards to advise management on employee relations generally or hire such individuals directly to serve as ombudsmen in non-collective bargaining environments. Furthermore, unions should be able to negotiate contracts that benefit themselves as organizations rather than simply relying on members for dues, even within collective bargaining contexts. Unions should also be allowed to acquire as much stock as they want in the enterprises they organize, even if management doesn't like it.

Getting rid of section 302 would also remove a potential lurking threat to the labor peace agreements that have contributed to the success of many recent organizing drives. In 2012, the Supreme Court asked for briefs and heard oral arguments for *Unite Here Local 355 v. Mulhall*, which could have decided whether labor peace agreements were “things of value” under section 302. While the court eventually dismissed the case on the basis that it shouldn't have granted cert in the first place, the threat still exists. Without 302, labor peace agreements would clearly be legal.

In partnership with employers, unions and workers should also have the ability to play a greater role in benefits selection and administration. While collective bargaining that binds all employees to wage standards but forbids them from negotiating on their own should be reserved for a democratic process with independent parties, some limited forms of collective bargaining could make sense for tax-advantaged benefits even in a company union or works council setting. Current law requires almost all sizable employers to provide most tax-advantaged health and retirement benefits to almost all employees on an equal basis and penalizes them in various ways if too few (or the “wrong” parts) of their workforce take advantage of these benefits. While well-intentioned on equity grounds, the growth of nondiscrimination testing puts most workers, even very well-paid ones, in a worst-of-all-worlds situation: they can’t negotiate for better benefits than their coworkers, and these employers can’t give the collective workforce a formal voice in setting the benefits, absent a collective bargaining agreement.

The obvious solution here is to allow for limited “benefits only” collective bargaining under a wide range of situations: employers and labor organizations should be allowed to set up elected employee committees with the ability to design and implement any type of benefit plan that is subject to nondiscrimination testing or an employer mandate. Unions, likewise, should be able to organize for collective bargaining agreements that cover only these types of benefits. (This last step would almost certainly require additional legal changes beyond the scope of what I’m proposing here.) Finally, unions unleashed from current legal strictures should be allowed, and even encouraged, to experiment with entirely new business models. If conservatives—when in power—continue trying to declare worker centers to be unions (something I think they shouldn’t do), such centers should similarly be allowed to form explicit alliances with employers.

“Unbundled unions” that engage in politics but not collective bargaining might best be piloted in the context of employers that see them as beneficial to their business interests—but it would provide a way to test the idea.

All of this, of course, leaves out the question of how to prevent corruption in these entities. Pervasive corruption is one of the greatest downfalls of the modern union movement, and many of the company unions that 8(a)(2) banned were also corrupt. While some explicit company structures such as the Employee Representation Plan that John D. Rockefeller, Jr. established did achieve a measure of employee involvement (although even it had problems), there’s no doubt that the worst structures were deeply unjust to workers.

As such, the law should establish safeguards, the most obvious being: the prohibition on employer “domination” of a union that engages in full collective bargaining should be retained under any revision to 8(a)(2) or section 302, and less independent employee involvement structures should have carefully circumscribed powers. For example, even when they are largely company-run or funded, nonunion organizations that have binding authority to decide on benefits or working conditions should be subject to democratic, externally overseen secret ballot elections for officers and people elected internally to oversee benefit plans, and they should have the same legal fiduciary responsibilities as those who oversee Taft-Hartley plans. If unions as organizations receive payments under collective bargaining agreements, these should be calculated as a percentage (perhaps capped by law) of wage increase or future gain-sharing payments made to rank-and-file union members. If a company runs a works council or other structure with elected officers, the ability to vote and participate in it shouldn’t be contingent on payment of dues, and it should be illegal to make adverse, job-related decisions about workers for otherwise lawful participa-

tion in these structures. Finally, existing and, if needed, new civil rights protections related to race, gender, sexual orientation, and other protected characteristics should be enforced with regard to participation in these organizations.



Freeing employers and labor organizations alike from the strictures of section 8(a)(2) and section 302 would allow for new cooperative arrangements that, in time, could meaningfully restore power and authority to American organized labor.

I won't pretend that the radical changes in labor organizations' business practices that I'm proposing here would be good for most existing unions or entirely amenable to those on the left. Without a unique monopoly on employee representation, some now-small or shrinking unions will have to close or merge. Given a range of new business models, some of the most successful entities might well be startups created by people currently outside of the labor movement.

With interests more closely aligned with those of major employers, furthermore, it's easy to see how many new organizations might even reconsider certain aspects of the progressive agenda that so much of organized labor seems to have embraced. Indeed, this seems highly likely. One reason the labor movement has shifted so far left is simply that its strength in blue states means that it often reflects the attitudes of workers in those states rather than workers nationally. Labor structures more acceptable

to employers would likely attract more members in red states and moderate the movement as a whole.

In addition, labor organizations that took advantage of the new environment could reap huge advantages. Workplaces like fast-food restaurants that are essentially impossible to organize under current labor law because of very high turnover would suddenly become a realistic place for cooperative agreements of a different sort. Skilled workers reluctant—with good reason, in my judgment—to sign up for the all-or-nothing nature of current collective bargaining might find advantages playing a role in works councils, limited purpose, or employer-sponsored organizations. Finally, unions with real political muscle might find themselves in demand as allies of various business interests. Freeing employers and labor organizations alike from the strictures of section 8(a)(2) and section 302 would allow for new cooperative arrangements that, in time, could meaningfully restore power and authority to American organized labor. ■

A Reply

SHARON BLOCK & BENJAMIN SACHS

The premise of this feature is that both conservatives and progressives should support workers having a “seat at the table.” We agree with that premise. But it is crucial that we ask: What is the point of ensuring workers a seat at the table? It can’t merely be the symbolism of being included. It must be that the “seat” comes with actual power to influence outcomes. We see this commitment to actual power reflected in American Compass’s recent

statement “Conservatives Should Ensure Workers a Seat at the Table,” in which the authors describe their goal as ensuring that “participants meet as equals able to advance their interests through mutually beneficial relationships.” Enabling workers to meet management as equals requires that workers have the capacity to build and exercise more power than they possess as individuals. That is the point of organizing. That is the point of labor law.

Eli Lehrer recommends that we “unleash” unions and workers from the strictures of sections 8(a)(2) and 302 as a means to “offer labor organizations a new business model while giving workers new choices.” Free of the legal strictures of 8(a)(2) and 302, workers could join works councils, workplace safety committees, quality circles, and even company unions. Unions could become benefits consultants and generate revenue by serving in that capacity. According to Eli, “People on the right should like this proposal because it allows greater entrepreneurial creativity and offers hope for new civil society forms; those on the left should support it because it offers hope for organized labor through a new business model, as well as a path toward more democratic workplaces.”

We agree that our current labor law fails by, as we put it in the “Clean Slate” report, “limit[ing] workers to a stark, binary choice about collective representation: They can choose to be represented by an exclusive collective bargaining union, or they can have nothing.” Given the inadequacy of choice in current labor law, we recommend providing workers with “a menu of representational choices—workplace monitors, works councils, members-only unions, and exclusive representative collective bargaining unions . . . and making it far easier for them to embrace all of these choices.” This recommendation would certainly require changes to section 8(a)(2) and possibly to 302 as well.

So at this level of generality, we agree with Eli: workers should have more options for collective organization and representation. But there is something fundamental missing from his proposal: namely, a consideration of whether the new forms of organization he proposes will enable workers to build and exercise power. More worrying, Eli doesn't consider the very real possibility—borne out in both historical practice and theory—that the organizations he proposes will detract from worker power by undermining organizations that enable workers to build it.

Congress enacted 8(a)(2) in the first place in order to prevent employers from creating organizations that stymied, rather than contributed to, worker power. These organizations—called “company unions” at the time—had the shape and feel of legitimate worker organizations, but for a complex of reasons (which Mark Barenberg has explained well as a matter of both history and theory), they often functioned to heighten managerial control over the workforce rather than to displace it. So the central burden of any call to repeal 8(a)(2) is to explain how the organizations that repeal unleashes will contribute to, and not interfere with, the central project of power-building.

Eli's proposal to continue 8(a)(2)'s prohibition on employer dominance in some circumstances serves only to prevent the worst abuses of the law but does nothing to address the power-building question. Similarly, his proposal to allow worker organizations to derive money from their relationships with employers fails to provide a path to power. While money is often equated with power, it can entrench the power disparity—not alleviate it—if that money flows in only one direction,

In our view, allowing for alternative forms of worker organization makes sense if, and only if, two other things can be ensured. First, these alternative forms of worker organization must be structured so that they contribute

to the growth of full-fledged collective bargaining unions. This is essential because a works council consisting of, say, ten workers out of a workforce of, say, 500, has—as a matter of structural reality and constraint—approximately zero power. What could the ten workers do if they suggested something and management refused? Councils, however, can be structured so as to make real union organizing more feasible: for example, councils can be given the right to share information, consult, and collaborate with unions, and unions can be given rights to nominate workers for the councils. With design features like these in place, works councils can serve as legitimate sources of information exchange between labor and management while concurrently contributing to the growth of organizations through which workers can genuinely influence outcomes.

Second, organizations like safety committees and works councils must be embedded in a broader system of labor representation that extends from the shop floor, through the economic sector, and to the corporate boardroom. Eli cites the European example in support of his works council proposal, but everywhere in Europe—and across the globe—works councils work only because they are part of an integrated system of representation. That system includes strong unions capable of engaging in meaningful collective bargaining in the workplace and sectorally. And it includes robust provision for worker representation on corporate boards. The system works because, functioning as a whole, it ensures that workers have genuine power. But without all the planks in place, works councils would have no independent power and simply could not perform the function they are meant to perform.

In sum, we join in Eli's call for expanding the range of representational forms available to workers. But we do so only with the added insistence that these forms be designed to ensure real power—that they ensure that labor and management can truly “meet as equals.” ■



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