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THE NATIONAL LABOR RELATIONS ACT AFTER SEVENTY YEARS: AN ASSESSMENT. Discussion

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British prime minister Harold Macmillan (1957-63) was once asked by a reporter what major problems he faced. He replied, "Events, dear boy, events." In their paper, Barry Hirsch and Jeffrey Hirsch say they are choosing to look forward rather than backward in considering the Wagner Act at age seventy. They then propose forward-looking changes in federal law such as modifying the Wagner Act to allow employee voice systems other than unions. I choose in my comments to look backward in order to look forward. Paula Voos similarly proposes a legal change to give managers and professionals more collective (bargaining) rights. Freeman wants Congress to give more authority to the states to regulate such matters. The difficulty with the Hirsch, Hirsch, Voos, and Freeman approaches is that they all ignore the role of great events in opening up the labor policy regime.

The Wagner Act was a product of the Great Depression. It is inevitable that seven decades after its passage the Act's provisions seem dated and are debated as to their present-day relevance. As I see it, the key presumption in the Wagner Act was not top-down management, as Hirsch and Hirsch suggest. Rather, the presumption was that, given a free choice, most workers would want to join a union. If workers could join unions, Senator Wagner thought, they would collectively determine terms and conditions with employers. Government regulation would be limited to setting minimum standards for those somehow left outside the union sector. So the new law aimed at providing a peaceful election mechanism for unions to represent workers.

In fact, the explicit presumption concerning firm authority structures came in the later Taft-Hartley Act (1947), with its definition of supervisors and separation of professionals from other workers, as Voos notes. And, by the way, most firms are still hierarchical, even if today's more educated workers have more day-to-day discretion. Frederick Taylor would not be shocked by much of contemporary management practice, once he learned to see past the latest buzzwords and fads. If you do not think so, see any *Dilbert* comic strip.

Why would Senator Wagner and other lawmakers have assumed that most workers would want to be represented by unions? Workers, disillusioned by what they could expect from management, and society in general, were at the time flocking into unions. And there were often violent disputes as unions sought recognition and employers resisted. Moreover, the political scene had taken a definite turn to the left with the New Deal. In essence, the Depression had killed two prior national assumptions; the public was disillusioned, not just workers.

First, before the Depression, it was assumed that the economy—which had been prosperous in the late 1920s—would continue to deliver the macro goods thanks to some combination of scientific management and new technology (mass production, Model Ts, radio, talkies, etc.). Second, it was assumed that welfare capitalism would deliver the micro goods, with benevolent employers providing pensions, job security, and even employee voice mechanisms. While it is easy to find fault with both assumptions, even viewed from the cyclical peak of 1929, these were the animating beliefs and hopes of the period.

The first assumption was destroyed by the Depression itself. Popular culture of that era took up the theme of World War I veterans who fought for their country and were then betrayed by the economic collapse and the political response. Songs such as "Brother, Can You Spare a Dime?"[1] and "Remember My Forgotten Man"[2] picked up the theme of the betrayal of the veterans, as did films such as *Heroes for Sale, Gabriel Over the White House,* and *Gold Diggers of 1933.* The Veterans' "Bonus March" on Washington in 1932—which ended in the military attacking World War I vets under presidential orders—symbolized the economic, social, and political world turned upside down. How could President Hoover order an attack on former U.S. soldiers who had saved democracy and brought permanent peace to the world? The veterans were betrayed by their country.

The second assumption was destroyed by the collapse—for the most part—of welfare capitalism. Most firms, and most workers, were not in the nexus of welfare capitalism even at the 1929 peak. But high-profile firms, once seen as model employers, ended up cutting wages and their nascent benefits under severe economic pressure. And, of course, job security was not on offer in the 1930s. Workers were betrayed by their employers.

What seems to be the main lesson from history with regard to labor policy over the past seven decades is that true turning points come from crisis and disillusionment often external to the employment setting. The fact that unions—particularly in the CIO—were linked to radicalism and communism meant that in the Cold War-era policy would shift against the union-friendly Wagner Act. Taft-Hartley and Landrum-Griffin were more products of the Cold War than they were of policy wonks tinkering with the rough edges of the Wagner Act. The Civil Rights movement turned the solid Democratic south into solid Republican states. Stagflation, race riots, busing, and student rebellions of the late 1960s and 1970s created "Reagan Democrats" and further shifted the country to the right. While major amendments to the Wagner/Taft-Hartley/Landrum-Griffin Acts did not occur, certainly the tenor of policy toward unions changed at the NLRB and elsewhere.

Given this history of events and shocks often external to labor relations, it is hard for me to see that there will be a major change in federal labor policy— including Freeman's abandoning of federal preemption—until the next external crisis and disillusionment occurs. Fiddling with the "company union" provisions of the Wagner Act to promote what used to be termed "quality circles," or even some kind of quasi-voice mechanisms, would inevitably open the door to a wholesale review of the entire Act, which no one is pushing for at present. Moreover, employers who want to institute quality circles or voice committees are de facto largely free to do so. The Wagner Act is basically a "don't ask, don't tell" policy. If no one complains, nothing happens. Unless a union is running a serious organizing campaign, no one is likely to complain. Employers were upset by the *Electromation* decision in the mid-1990s, which dismantled one company's employer-initiated consultation arrangements.[3] But who even remembers that case today? And, yes, there is some vague desire for voice by employees in surveys—but not enough for a single politician to want to run for Congress on the issue.

So from where will the next big shift in federal labor policy emerge? Maybe it will come from a decision of Chinese and other Asian central banks not to hold vast dollar reserves. (The old Ricardian version of comparative advantage was that every country did what it did best. Today's version seems to be that the Chinese are good at producing and lending and America is good at borrowing and spending.) Some observers see scenarios in which such a decision could trigger a worldwide financial crisis. Maybe the impetus for a new labor policy will come from another terrorist attack on the U.S. mainland. Or maybe—my favorite candidate—as baby boomers face retirement and the nation's bills for income support and health care come due, there will be political turmoil (Mitchell 2000). Whatever the triggering mechanism may turn out to be, I doubt it will consist of policy wonks, or academics weighing alternative systems of employee voice, or self-regulation of safety standards, or redefinition of supervisors, or dropping federal preemption.

What about action at the state level, as Freeman suggests, but without federal changes? California is about as labor-friendly nowadays as a state is likely to be. Governor Arnold Schwarzenegger learned in November 2005 that taking on unions over such issues as "paycheck protection" was a losing proposition (no pun intended). All of his proposed initiatives—including paycheck protection—were defeated in the special election he called. Los Angeles is where the Justice for Janitors campaign achieved real traction. Still, in the private sector, the 2004 union representation rate in California was 10.2 percent (and roughly trendless since the late 1990s) versus 8.6 percent (and declining) for the United States as a whole. The public sector, where state law dominates, showed a more dramatic difference: 57.5 percent versus 40.7 percent. I would take that outcome and difference as about as much as can be expected from state policy. If all states were like California, but federal law remained unchanged, the overall U.S. union representation rate in 2004 would have been about 18 percent—where it was in 1990— instead of the actual 14 percent. The private sector rollback would be only to 1999. For a major shift beyond that, you will have to await "events."

Notes

1. *"Once in khaki suits, gee we looked swell; Full of that Yankee Doodly Dum; Half a million boots went slogging through Hell, And I was the kid with the drum! Say, don't you remember, they called me Al; it was Al all the time; Say, don't you remember, I'm your pal? Buddy, can you spare a dime?"* ("Brother, Can You Spare a Dime?" E. Y. Harburg/Gorney 1932).

2. *"Remember my forgotten man; You put a rifle in his hand; You sent him far away; You shouted, "Hip, hooray!" But look at him today!"* (From the film *Gold Diggers of 1933*).

3. Electromation, Inc., 309 N.L.R.B. No. 163, 1992; *Electromation v. NLRB,* 35 F.3d 1148, 1158, 7th Cir. 1994.

Reference

Mitchell, Daniel J. B. 2000. *Pensions, Politics, and the Elderly: Historic Social Movements and Their Lessons for Our Aging Society.* Armonk, NY: M. E. Sharpe.