Precedents and Prospects for State and Province-based Approaches to Advancing
Worker Representation and Security in an Era of Globalization.

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Abstract

The federal systems in the United States and Canada have historically provided some limited space for experimentation in labor and employment policy. Economist Richard Freeman (2006) has provocatively suggested that US labor policy be returned fully to the states so that new pro-worker approaches might be implemented. He contends that the Wagner Act framework has so failed workers that state policies however varied would likely be better.

State-based reform faces difficult challenges. In the US, federal law may preempt state action. Second, mobile employers tend to punish states or provinces which favor workers with new rights and protections. Third, global trade rules privilege the rights of capital.

I propose to examine the work of movements and organizations that are testing the limits of state-based activism. What possibilities remain for state and provincial governments to address workers’ concerns for representation and enhanced security?
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Introduction

Globalization has strained and weakened most national systems of labor protection. Multinational corporations have considerable power to evade government regulations and union standards. World Trade Organization rules and so-called “free trade agreements” subject pro-worker policies to challenge as constraints on trade. One is reminded of the Anglo-Saxon common law’s prohibition of union activism and the heavy weight of “freedom of contract” on the working class. Many critics of globalization propose global labor standards as the proper remedy for the failure of national regimes. On the other hand, some activists hope for a rebirth of local activism to shape more just and self-sufficient local economies.

The federal systems in the United States and Canada have historically provided some limited space for experimentation in labor and employment policy. Economist Richard Freeman (2006) has provocatively suggested that US labor policy be returned fully to the states so that new pro-worker approaches might be implemented. He contends that the Wagner Act framework has so failed workers that state policies however varied would likely be better. Former National Labor Relations Board Chairman William Gould has countered that forms of servitude recalling slavery might re-merge under a states' rights regime. Canadian workers have fared better under a largely provincial system of labor law.
State-based reform faces difficult challenges. In the US, federal law may preempt state action. Second, mobile employers tend to punish states or provinces which favor workers with new rights and protections. Local victories are undermined as employers terminate their investments. Third, global trade rules privilege the rights of capital. The North American Free Trade Agreement and proposed Canadian initiatives like the Trade, Investment, and Labour Mobility Agreement provide the basis for employer challenges to favorable laws. Fourth, local and regional enterprise with high labor standards may lose in the marketplace to global corporations seeking reduced labor costs.

I propose to examine the work of movements and organizations that are testing the limits of state-based activism. What possibilities remain for state and provincial governments to address workers’ concerns for representation and enhanced security? What flexibility remains for policies to promote high standards employment? I will focus on efforts in the US and draw contrasts with Canadian federalism.

**The Democratic Deficit**

Progressive state action in the US is limited by impediments to democracy in the US federal system. Urban populations are under-represented in state government, as well as in the structure of the Senate. Despite the passage of the Voting Rights Act, many states erect obstacles to voting and suppress minority participation. Southern states are particularly hostile to movements in support of workers’ rights.
Southern states are characterized by an embedded anti-unionism: very low union density, public policies of union suppression, little legitimacy for union political action, and low wages. The region has welcomed anti-union employers and opposed unionized firms. (The government of South Carolina has actively discouraged employers with unionized plants elsewhere from locating there. [Fladung 1990]) Southern states have successfully contained organized labor both politically and economically. Despite the thirteenth, fourteenth, and fifteenth amendments to the Constitution (abolishing slavery, guaranteeing equal protection of the laws, and providing the vote to African-Americans), states’ rights continued to shield an exploitive subsystem of industrial relations in the South. The "one party" states of the South limited the use of government as an instrument of social reform. While organized labor made gains in the North, it met the opposition of an entrenched oligarchy in the South. (Quadagno 1987)

**Populism, Progressivism, and Laborist Capitalism**

In the Populist, Progressive and New Deal eras, US states introduced progressive economic and labor policies some of which were later adopted by the federal government. These included workers compensation programs, anti-injunction laws, unemployment insurance, and worker representation initiatives. Populist Kansas briefly introduced universal worker representation in a (short-lived) labor chamber in the 1890s. North Dakota enacted a radical program for family farmers in the nineteen teens under the leadership of the Nonpartisan League. This included a prohibition of corporate farming, an industrial commission for the regulation of labor standards, and state ownership of flour mills, grain elevators, hail insurance, and banks as a remedy for
exploitation by out-of-state interests. The League also played a role in founding the Cooperative Commonwealth Federation in Canada.

In his study, *The Nonpartisan League and Social Democracy in the U.S.; Social Networks, Class Power, State Occupancy, and Embedded Class Biases*, Patrick McGuire (undated) argues that the Nonpartisan League succeeded in introducing a significant measure of social democracy in North Dakota and some of the surrounding jurisdictions. Most importantly, many of the League's reforms endure today. Corporate agriculture has yet to roll back these gains.

In his 1932 California gubernatorial campaign, Upton Sinclair proposed a plan to promote economic recovery through a network of jobs and services for the unemployed with payment in local currency. Sinclair intended to develop an autonomous cooperative economy. The business community mobilized to defeat him and his program. Despite this, newly elected British Columbia Premier Dave Barrett cited Sinclair as his inspiration in 1972.

In the mid-forties, labor gains in organizing and political power in the US led some observers to proclaim the emergence of a “laborist” capitalism. Joseph Schumpeter wrote of increasing government regulation of the economy and a growing union sector in his *Capitalism, Socialism, and Democracy* (1947). As a laissez-faire economist, he was deeply disturbed by these developments. Schumpeter failed to note that laborist capitalism was essentially an industrial and regional phenomenon as labor failed to make
gains in the South. Moreover, women and minority group members, particularly those working in the “secondary labor market,” failed to share in this prosperity. (Doeringer and Piore 1971)

Laboristic capitalism reached its peak in the US in the 1950s. The “commanding heights” of the economy were unionized. Manufacturing companies were prosperous, providing careers and continuous employment in the US. Wages and incomes were rising for many. In the Canadian context, Harry Arthurs wrote of an analogous concept of “industrial citizenship:” “today the Canadian worker lives increasingly in a world of rights and duties created not by his individual contractual act, but by a process of public and private legislation.” (Arthurs 1967: 786)

Curiously, the seeds for the decline of laborist capitalism were sown just as Schumpeter announced its arrival. The Wagner Act, which had provided a national framework for labor organizing without employer interference, was radically modified by Taft-Hartley in 1947. Employers were empowered to oppose unionism during organizing campaigns. The prohibition of threats of retaliation or promise of benefit in order to forestall organizing left considerable opportunity for aggressive and inherently coercive behavior. Section 14(B), authorizing the ban on union security agreements by state “right to work laws,” symbolically legitimized the Southern states’ war on unionism. In fact, Taft-Hartley’s confirmation of the South’s nearly union-free status encouraged employers throughout the US and Canada to consider a "sunbelt" strategy without unions. US federal labor law provides for multiple forms of "nullification," to choose a term with a
sorry history. Prior to the civil war, Southern states declared their defiance of federal law. Today's labor law explicitly permits states to shape anti-labor regimes almost regardless of rights guaranteed at the federal level, and lax federal enforcement vitiates worker guarantees.

It remains to be seen whether laboristic capitalism can be restored. Wisconsin sociologist Joel Rogers is optimistic about the possibility of a state-centered project:

We want states to get on the "high road" of high-wage, low-waste, democratically accountable economic development, with firms competing on product quality, innovation and distinctness, and drawing on a wide range of productive public goods. We want to close off the "low road" alternative, in which firms compete chiefly on price, and wind up in an endless race-to-the-bottom on labor and environmental standards and the evasion of social responsibility. (Rogers 2004)

There are currently a few labor-supported political initiatives seeking to advance this agenda through state and local activism. These include the Progressive States Network (PSN) and the Center for Policy Alternatives.

“Progressive States”

The Progressive States Network is a newly established alliance of US state legislators and activists who focus on the potential for progressive policy on the state and local level. Their labor agenda consists of such initiatives as these: raises in state minimum wages, a
higher “living wage” for work under public contracts or subsidies, enhanced safety and health enforcement on the state level, employer mandates for health care, and disbarment of labor-law breakers. The PSN also favors increased public investment in infrastructure, energy efficiency, and renewal energy programs (the so-called "Apollo Project"), as well as the use of public pension funds and state venture capital funds to promote labor-intensive growth. The targeted public projects are likely to be hospitable to union organizing. Thus the PSN has identified a path that would reshape local economies in labor-friendly directions. (Progressive States 2007)

Progressive States cites the following victories. “Card check,” or mandatory employer recognition of unions with majority support demonstrated by signed cards, has been won for public employees in New York, California, Massachusetts, and New Mexico. Fair Share statutes in California, Delaware, Illinois, Pennsylvania, and Wisconsin establish the agency shop in the public sector. Project Labor agreements for public work projects provide a negotiated framework for labor standards prior to hiring in California and other states. California prohibits contractors from using public funds in union-busting. (Progressive States 2007)

PSN also supports state efforts to facilitate worker organizing through broad worker protections. For example, a ban on unfair discharge as Montana has enacted would apply also to victims of anti-union retaliation. A general prohibition of employers’ “captive audience” speeches, whether about unions, favored religious doctrines, or politics, would limit employers’ advantages. Laws along these lines are percolating in the legislatures.
For example, one house of the Colorado legislature has approved the ban on captive audience speeches. (Newman 2007)

During the 1970s, the Conference for Alternative State and Local Public Policies was organized as a vehicle for New Left activists many of whom were disillusioned about the prospects for national progressive politics. The Conference is now called the Center for Policy Alternatives (CPA) and has lost its New Left trappings. It is active on a agenda that closely coincides with Progressive States. CPA reports that twenty-eight states and the District of Columbia have a minimum wage greater than the federal minimum as of January 2007; the highest is $7.93 in Washington. Like PSN, CPA favors living wage laws that stipulate a higher minimum in enterprises that do business with local government or in sectors like tourism. (Maryland has just enacted the country’s first state- wide living wage.) This wage strategy seeks to reshape the state economy through sector-specific regulation. (Center for Policy Alternatives 2007).

Corporate interests are opposed to almost every element of the PSN/CPA agenda. Conservative legal scholar Michael Greve (2000) represents much of the corporate constituency in his advocacy of “competitive federalism,” which would deny states any active economic role and submit them to a competitive discipline in the pursuit of mobile capital. The American Legislative Exchange Council is the corporate-funded equivalent of Progressive States, although it predates the latter by decades.
The Feedback Loop in Federal-State Relations

While progressives have won substantial victories on the state level, the US federal system reinforces the advantages of conservatives. Conservatives representing Southern states have wielded substantial power in the Senate. Each state elects two senators, regardless of population, and the South generally adds a significant group to the ranks of the conservatives in the Senate. The filibuster and other Senate rules give individual senators the power to defeat Senate majorities. Historically many Southern senators have accumulated seniority in the body and have earned powerful committee chairmanships. While Senate rules and structure have led to a variety of ideological outcomes, they have certainly added to the power of Southern conservatives. This limited the reach of the New Deal, delayed the enactment of civil rights legislation, eroded worker gains in the Wagner Act, helped undermine pro-union labor law reform in 1978, and derailed Clinton’s health care initiative in 1994. (See Lee and Oppenheimer [1999].) The limited reach of nationalizing and equalizing forces has preserved employer autonomy or flexibility. Southern states remain less pluralistic and democratic and produce labor policies widely at variance with more progressive states (Lazare 2000).

Journalist Michael Lind has described a:

“Southern” rather than a “Northern” vision of the future of American capitalism and American politics--a vision of the United States as a low-wage, low-tax, low-investment industrial society like the New South of 1875-1965, a kind of early twentieth-century Mississippi or Alabama recreated on a continental scale. (Lind
The issue of states’ rights was central to the Civil War. It remains central to contemporary politics in the US. States' rights do not constitute a benign form of decentralization. While they are in theory consistent with progressive policy making, the sum total of the impact of states' rights is to limit democracy and circumscribe progressive experimentation, as is evident in the Southern states' fatal reforms of the Wagner Act.

Republican Presidents Reagan and both George H. and George W. Bush appointed states rights advocates as Justices to the Supreme Court and Federal Courts of Appeal. The “Federalist Society” (Federalist Society 2000) movement in law schools and the judiciary provides the intellectual foundations of the efforts to limit federal activism and strengthen states’ rights as well as the actual candidates for appointment. The recent controversy about the firings of federal prosecutors reveals the continued influence of the Federalist Society. The federal prosecutors favored by the Bush Administration are in many cases members of the Society, and preliminary evidence suggests that they have been instructed to investigate instances of high minority participation as possible voter fraud. In this manner, Republicans and Federalist judges hope to sustain the constraints on progressive policy-making that have historically characterized the US. (Gordon and Goldstein 2007)

Immigrant Labor, Worker Centers, and New Possibilities

On the other hand, immigrant labor movements threaten to upset the status quo. The 2000 Presidential election provided an important test of the democratic capacities and deficits
of the US federal system. The Republican hierarchy hoped to guarantee Florida’s electoral votes for candidate Bush but found this more difficult than expected given high minority and immigrant participation. It required a coordinated effort by Republican state legislators and Supreme Court jurists to limit the vote count. If immigrant labor groups continue their recent waves of activism, some historically conservative states may move in more democratic and pro-labor directions, providing an opportunity for change in national politics as well. (Belcher and Brazile 2007)

The “Worker Center” movement may play a critical role. Worker centers are broad associations of low wage, often immigrant labor. They assist workers with housing, legal representation, naturalization and citizenship, political action, family concerns, as well as pressuring employers for wage and benefit gains. (Fine 2005). Ian Robinson (2007) writes:

Workers' centers that organize low-wage ... workers in sectors of the economy where it is difficult or impossible to form unions -- notably, heavily contracted-out components of private services and the "informal" sector -- are an important new component of the U.S. labor movement.... there were less then 10 such centers only a decade ago; today there are at least 140.

Immigrant activism is inherently an international movement. It is a byproduct of globalization and it is a product of and path to global solidarities. The concept of human rights undergirds this movement.
Immigrant activism and worker centers may alter the political landscape in electorally critical states like Florida and Texas. With a pro-labor Democrat in the White House and a filibuster-proof pro-labor majority in the Senate, the passage of the Employee Free Choice Act (EFCA), which would mandate "card check" in the private sector, becomes a distinct possibility. EFCA would also bolster labor's rights in Canada by closing off a path of union avoidance.

**Canadian Dilemmas**

Canadian provinces have considerably more autonomy to devise their own labor policies than the US. Labor codes are primarily a function of the provinces. Federal legislation only covers ten per cent of the working population. Card check is the law in six provinces and expedited elections (five to ten days after union filing) is the rule in most of the remaining jurisdictions. Employer speech rights are substantially restricted during organizing campaigns. Seven provinces provide for first contract arbitration. Permanent replacements are prohibited in all provinces. British Columbia and Quebec prohibit temporary replacements. There is no equivalent to US right to work laws. (Godard 2003)

John Logan (2002) notes that despite labor's historic misgivings about limitations on the right to strike and supermajority requirements for union recognition in some provinces, the provinces have not empowered employers anti-unionism to the degree that has occurred in the US. Quebec may be the closest to a laboristic capitalism today, with its practice of contract extension to non-union enterprises and labor-sponsored “Solidarity”
investment fund. These policies have preserved a strong labor movement and helped sustain the provincial economy, although critics have noted that the majority of firms helped by the Solidarity fund are non-union. (Stanford 1999)

On the other hand, union density has fallen in Canada, from about forty to twenty-eight per cent. Critics like Roy Adams (2005) find that provincial law falls short of international human rights standards as promulgated by the International Labor Organization. Neoliberal pressures have led to weakening amendments to labor law in Ontario and other provinces. Adams' call for collective bargaining as a human right invokes nationalizing and even internationalizing forces. While the Canadian Center for Policy Alternatives, the Canadian analog to PSN and CPA, continues to push a largely province-centered approach to labor's grievances, there are new initiatives to enhance the federal role in guaranteeing worker rights, most notably the Arthurs' report.

Arthurs' charge was the renovation of the Federal Labor Code. The process was very unlike any effort at federal labor policy-making in the US. Arthurs was apparently able to lead a collaborative process among employers and unions of the sort that the US Dunlop Commission could not, given business lobby intransigence. Rather than embrace neoliberalism, the Arthurs report cites the authority of the ILO Conventions and recommends the extension of "industrial citizenship" to previously unprotected groups of workers.

While U.S. industrial relations are decentralized as a consequence of states’ rights
(among other causes), it must be said that decentralization may take many forms. A decentralized regime of industrial relations does not necessarily reproduce the problematic features of US industrial relations. Decentralization need not mean that worker rights are honored differentially. All regions and individuals may share in fundamental social protections. This is, of course, a guiding principle of European Social Democrats as they attempt to improve the European Community. Grahl and Teague (1997, pp. 424-425) make this case for “organized decentralization:”

Here the downward shift of decision-making power is conceived as delegation: whenever possible individual enterprises, local political administrative units and civil associations must take responsibility for social integration and the active requalification of those who lose from economic and industrial change.

That is, the attenuation of workers’ rights that occurs within the peculiar institutions of US federalism is not inherent in decentralization, whether in Europe or Canada. Labor rights can be codified at the national or international level but implemented in a decentralized regime.

US Economist Jeff Faux (2006) has proposed a North American Social Contract to supersede NAFTA. Writes Faux:

if we think of establishing a global social contract as a step-by-step process, in which political solidarity is built first among neighboring societies, region by
region, it becomes easier to imagine. The ongoing struggle for a "Social Europe" to match the expanded European capitalist market offers the best real-world example of the promise of a regional social contract....

A critical element of this social contract would be a Continental extension of laborist capitalism:

A New Continental Deal, in which Canada and the United States commit substantial long-term aid to Mexico in order to nurture higher and sustainable economic growth while Mexico commits to policies (independent trade unions, minimum wages, equitable taxes) that assure a wider distribution of the benefits of growth.

Curiously, a first step toward this internationalist venture would be intensified activism on both sides of the US-Mexico border sustaining local movements to redeem the promise of democracy, denied by both Southern US and Mexican business elites.

REFERENCES


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