

Unionization and Labour Regimes:
A Comparison between Canada and the
United States since 1945*

by

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Trade union membership statistics have a unique significance in North America, because they are reasonably reliable indicators of trade union power. They measure the extent to which collective bargaining is normalized as a central institution in labour markets as well as providing the best starting point for gauging the incidence and economic saliency of such relationships. Because of the distinctive links that the institutions common to all North American collective labour law forge between union membership and binding collective agreements, union density correlates very highly with the proportion of the non-agricultural labour force that is covered by collective agreements. It is also reasonable to surmise that these union density data are good indicators of the institutional importance of trade unions -- i.e., their capacities for effective "political exchanges" (Regini 1984). Such figures would not necessarily have the same meanings in many European countries, where different measures of union strength might well be more revealing (Kettler and Meja 1989).

While such generalizations about North American indicators and labour law are unobjectionable, differences in patterns of union growth in Canada and the United States raise questions about the common tendency to consider industrial relations in the two countries as essentially similar (Cella and Treu 1982), as well as about various approaches that have sought to analyze developments in the legal-political organization of labour markets in terms of historically over-general abstractions. We shall argue that differences in the character and pattern of unionization in the two countries can best be understood by reference to the operations of two distinct historical formations that are organizational in character, broadly speaking, combining legal and political dimensions. The principal objective of the exercise is to illustrate a conceptual approach and analytical method, and then to defend a comparatively low level of theoretical elegance against a number of attractive, seemingly more powerful alternatives. In our view, the Free Trade Agreement and related political developments in Canada add great urgency to the analytical problems we are addressing, as do a number of recent proposals for changes in labour law and union strategies (Beatty 1987; Royal Commission 1985).

The union growth phenomena to be understood have been frequently studied during the past few years. Starting in the late 1950s, the relative extent of unionization in the United States first stagnated and then started to decline, while all measures of union involvement in labour relations in Canada began a steady increase, which has recently slackened but not substantially reversed itself. This protracted divergence is surprising. Except for the latter years of the Great Depression and the period of the Second World War, the two sets of union density figures -- i.e., the proportion of the non-agricultural labor force belonging to unions -- for Canada and the United States rarely differ by more than a few percentage points since early in the century, and in the ten years prior to 1965, both union movements stabilized at around 30%. During the following twenty years, however, Canadian union density steadily grew towards 40%, with only a slight dip during the past four years, while the American, so far as can be ascertained from defective data, sharply plunged well below the 20% mark (Weiler 1983; Chaison 1982; Rose and Chaison 1985; Baine and Price 1981; Labour Canada 1984; Troy and Sheflin 1985; Troy 1986; cp. Huxley, Kettler and Struthers 1986, pp. 116-121). The present authors' review of these developments concluded, in agreement with most of the specialist literature, that neither economic nor cultural-ideological developments suffice to explain the

divergences, although they are doubtless important. The critical differentiating factor is generally considered to be the contrasting ways in which the respective collective labour law regimes condition the responses to structural changes in both the economic and the ideological fields (Freeman 1985; Kumar 1986; Meltz 1985; Rose and Chaison 1985; P. Weiler 1983; J. Weiler 1986; but cp. Lipset 1986).

Although there is no single dramatic contrast between American and Canadian legal policy with regard to collective labor law, it is nevertheless possible to identify a complex of distinguishing features. Most Canadian jurisdictions, for example, will certify a union as exclusive bargaining agent upon evidence that 55-60% of the employees in an administratively accepted bargaining unit have signed membership applications, while American procedure not only requires a secret referendum as well -- which some Canadian jurisdictions have introduced -- but also interprets the employees' choice as an "election" in which the employers have "free speech" rights to campaign against the union during the sometimes extended time allowed to elapse between application and referendum, with well-documented extensive pressure upon employees being the rule rather than the exception (P. Weiler 1983). Many Canadian jurisdictions, moreover, impose by law a requirement, achievable in the United

States jurisdictions where it is not altogether prohibited only by collective bargaining at some cost, that all members of a certified bargaining unit pay an equivalent to union dues if they are not members of the union (Carter 1982a). Canadian regulatory labour boards have been strengthened by legislative and judicial moves towards greater judicial deference to their findings, as well as by substantially strengthened remedies (Adams, 1982). A number of prominent jurisdictions have also moved towards imposing settlements by binding arbitration where unions in newly certified units are unable to conclude first agreements (Carter 1982a). Although Canadian provinces exercise full power over most labor relations and a few have experimented with providing inducements for investment at the cost of unions, none has yet enacted anything like the "right-to-work" laws of numerous American states. All these distinctive Canadian legal-administrative patterns refer to features that have been shown to inhibit unionization in the United States. On this record, differences in law and administrative policy appear central to any explanation.

But analytical isolation of legal or policy variables cannot capture the cumulative impact of different configurations of such factors or the context-dependence of their effects. Laws and policies which sustain unionization in Canada, for example,

may well undermine it in Britain. Such analytical isolation, moreover, implies an implausible measure of regulatory control in the hands of an implausibly coherent sovereign author of law and policy. In our view, the legal and policy differences that properly figure in the explanations commonly offered are best understood as aspects and indicators of contrasting LABOUR REGIMES.

As employed here, the term "regime" draws on two distinct usages. While lawyers often use it to refer to the complex of juridified regulations governing some issue domain, recent international relations theory has broadened and deepened the concept. The distinctive feature of "regime" in the latter context, and the feature that makes this conceptualization of interest to us, is that it comprehends not only the quasi-legalistic "principles, norms, rules and decision-makers" (Krasner 1982, p. 185) around which the expectations of the relevant political actors converge in a given issue area over an identifiable period of time but also the power constellations that condition the effectiveness of the institutionalized order in question. The institution is not reduced to the power factors and the power factors are not idealistically denied. Among students of international relations, the point of the concept has been to qualify the monistic "realism" that has dominated their

study during the past generation, to facilitate inquiry into the causal importance of quasi-legalized institutions where and when they can be discerned, without denying the general force of power-oriented systemic theory (Keohane 1986).

In adapting the concept to the constitution and development of institutions in certain intranational issue-areas, the point is rather to help conceptualize institutions that have an irreducible legal component but that are shaped in important measure by the non-legal power resources that participants bring into play. There are similarities between this conceptualization and Max Weber's treatment of constitutional law. More immediately to the point, in the application that we are making here, is the parallel between such "regimes" and the collective agreement that forms so characteristic a feature of the employment domain during the period when awareness of industrial relations as a distinctive issue-domain and object of analysis grew in importance (Kettler 1987). In our work, then, the lawyer's "regime" provides the starting point for analysis, but the complex of norms and regulations is understood "realistically", in conjunction with the competing political designs and clashing power resources at work in the field.

As a constituted pattern, a regime embodies a measure of

resistance to disruptive change; it places constraints upon the forms and exercises of power deployed; but both of these identity-forming characteristics differ significantly in degree from regime to regime and from time to time in the life of a regime. A regime may be said to intend a preferred type of outcome, but this teleological design will be manifested in a structural tendency, subject to even quite important exceptions, and not in a purely instrumental machinery. To function as a regime, it must be accorded a measure of legitimacy by all participant actors, and this is rarely consistent with transparently one-sided utilities. Regimes differ as to complexity, flexibility, and tolerance for inner inconsistency or conflict. But they all display that visible blend of legal manner and power factors that mark international law, which was the paradigm for the international relations theorists' version of the concept, and which has, in fact, been earlier used as a model for the analysis of labour law, realistically understood in its social effectiveness (Korsch 1972).

In the study of labour, then, regime refers to the institutionalized political organization of labour markets (Offe 1984), comprising the patterned interactions among state (and possibly other legal and administrative) agencies, employment-dependent labour, and employers. The degrees and

forms of organization of the latter two types of actors will obviously make a decisive difference for the shape of the regime concerned. When applied to the current scene in Canada and the United States, the concept recombines the elements that are conventionally distinguished as the industrial relations system and its public policy environment. Without denying the possibility of a regime in which an autonomous collective-bargaining system is governed by a state maintained "settlement", which has been the paradigmatic model for both the most common prevalent approach and for its principal adversaries, our proposed conceptual shift is designed to facilitate inquiry into the political dynamics of any such regime as well as into its historical sources and competitors.

In locating legal and administrative designs within regimes, in short, we mean to emphasize their direct relationships with the patterns of practice by the principal parties in the industrial relations interaction, to show that these are integral to the patterns, as well as their relationship with the political constellations constituted by the direct involvement of these parties in political life (see, for example, the treatment of the "organizational practice" of the German labour movement in Loesche 1983). The differences in governmental policies and practices must be seen in conjunction

with differences in the outlooks and activities of unions and employers, for example, serving as factors in the political makeup of the regimes. Kochin and his associates have recently developed valuable materials especially for the study of "strategic choices" by employers (Kochin 1986). Our analysis will concentrate rather on the regime-constitutive politics of unions.

During and immediately after World War II, the familiar structure of Canadian and American labour regimes constituting relations among organized labour, important segments of business, and state agencies for the next three decades took shape. Within both nations, these regimes were supported by similar legal frameworks, deriving from the design of the American National Labor Relations (Wagner) Act of 1935 (Brody, 1971; Brody, 1980; Jamieson, 1968; MacDowell, 1978). In return for state recognition of workers' rights to collective bargaining, trade unions in both countries agreed to institutionalize labor conflict within a comparatively narrow terrain of issues bounded by legally conditioned terms of entry, legally constituted collective agreements, and legally approved tactics. The corresponding agreement by business groups was more reluctant, qualified, and by no means universally accepted; and the history of the regimes has been marked by persistent efforts by some

parts of the business community -- and intermittent efforts by most of them -- to undo it. The labour regimes, accordingly, are constituted by continuing political conflicts, notwithstanding their appearance in the form of settled systems.

The developments internal to the two parallel North American labour regimes have yielded different outcomes. Whether the two sets of cumulative changes in degree should now be treated as a reconstitutive change in either or both cases is uncertain, especially in view of the volatility of the Canadian situation, not least because of its political-economic dependence on the United States. The new "Free Trade" agreement, taken as a political development quite apart from its legal effects, may well work for Canadian adaptation to the American developments. Yet the contrasts remain marked at present, and the period of contrast is the subject of our study. The Canadian labor regime still establishes an adversarial pattern of collective bargaining within legal constraints which limit but also legitimate and otherwise normalize the pattern. In the United States, in contrast, the adversarial relationship between the principal collective social actors within the labour regime has now been moved back a step, in the direction of a patterned struggle over the legitimacy and normality of the collective bargaining pattern itself. This contrast is not to be understood as

suggesting the existence of a consistently more "pro-labor policy" in Canada. Like the labor regimes of other modern states, that of Canada is importantly conditioned by the larger designs of the state's public economic policies, and especially by its attempts to manage the labor market in the interests of business-generated economic growth (Simitis, 1984; Offe, 1985). Compared to the United States, however, this management has proceeded more frequently through attempts at multipartite negotiations at the highest level or through ad hoc interventions which regulate or supercede the outcomes of collective bargaining in designated classes of cases, especially in the public sector, than through a systematic weakening of the competitive position of organized labor within the adversarial system (Giles, 1982; Panitch and Swartz, 1985; Morin and Leclerc, 1985).

The existence of an American labour regime has sometimes been obscured because the ordering of labour relations is said to have a contractual rather than regulative core, in contrast to the regimes in most of western Europe, and to depend on voluntarism rather than intervention (Lenhoff, 1951; Aaron, 1982). This is essentially correct, except that it is also necessary to recognize that the way in which contractual voluntarism is structured is itself a mode of control and also subject to considerable interventionist manipulation. The

interplay between state agencies and social actors gives reality to the effective design and constitutes a labour regime. Because Canadian public policy has been less inhibited about direct interventions than that of the United States, it has correspondingly been less inclined to rely on affecting outcomes indirectly through the manipulation of the parties' bargaining strengths or the legal structure of contract itself (Dahl and Lindblom, 1953; Kennedy, 1976; Risk, 1981; Pentland, 1968; Craven, 1980). Closely related to this difference is the higher level of welfare-oriented employment law in Canada, covering standards, conditions, and terms of employment. Contrary to common-sense expectations, historically shared by important segments of the American trade union movement, such legislation has generally served to strengthen unions rather than to render them redundant (Langille, 1981; Clarke, 1982; Swinton, 1982; Harrison, 1984; Lewis, 1982).

As the competitive position of American industry has worsened, American legal policy has given increasing scope to employer resistance to unionization and collective agreement, as well as restricting the scope of legal bargaining (and thus the incentives to unionization), thereby opening the way for employer-controlled patterns of adaptation to change (Block and McLennan, 1985). In contrast, most Canadian jurisdictions have

reinforced collective bargaining as the norm in most branches of non-agricultural employment. State labor market policy in Canada has relied upon a combination of neo-corporatist mechanisms and ad hoc "exceptional" interventions to steer adaptations to changing conditions, building in both types of cases upon the normalization of collective bargaining relations and collective agreement (Adams, 1985; Panitch and Swartz, 1985).

In locating these legal and administrative designs within "regimes," we mean to emphasize their direct relationships with the patterns of practice by the principal parties in the industrial relations interaction, which also form part of the regime, and with the political constellations constituted by the direct involvement of these parties in political life. The differences in governmental policies and practices must be seen in conjunction with differences in the outlook and activities of unions, as vital factors in the political makeup of the two regimes. Employers in America are more apt in general to pursue the goal of "union-free organizations", especially in new and growing sectors, and unions are more ready to accept limitations imposed by employer resistance. Similar market conditions, it seems, have had marginally but still significantly different effects on the structure and outcomes of collective bargaining, by virtue of the regime intervening variables. Canadian

employers and unions are also both more willing to accept one another as principal counterparts in their direct interventions in the public policy process, at least in several policy-domains, and both commit themselves more directly and bindingly to political parties. Although the New Democratic Party has never threatened the preponderant electoral position of the other two parties in federal parliamentary elections, it has occupied a strategic position during several periods of minority government, and it has been the governing or official opposition party in several of the more important provinces, whose governments control the bulk of labour policy. Unlike the American trade union movement, which has been divided from an important segment of its historical political support since the conflicts of the 'sixties, the alliances constituting the NDP have remained intact.

On this level of analysis, the differences between the Canadian and American situations depend on differences between the political characteristics of the two trade union movements. The Canadian movement has been more aggressive in recent decades, more consistently committed to lasting political associations, including a labour party occupying an influential position in the most important political units, and analogous developments in Quebec. To characterize this difference, we draw on a recent

attempt by Cella and Treu (1982) to develop a comprehensive comparative typology of national trade union movements.

Most relevant for our purposes are the distinctions they make between "business" and "competitive" unionism. The former they define in the usual way, by "its mainly economic objectives, pursued strictly through collective bargaining, outside stable political initiatives, and by relying mostly on direct organization at the workplace." (p. 186) The latter, in contrast, competes at many social and political points on behalf of a distinctive social vision. "Its objectives are broader; they include basic socio-economic reforms and are pursued by initiatives both on the economic and political fronts, often highly conflictual, with close but not necessarily institutionalized relationship with the political system." (p. 186) In contrast to Cella and Treu themselves, who identify all North American unionism simply with the former model, we suggest that it is worth thinking of a continuum between the two types and to locate the Canadian movement significantly closer to the "competitive" end of that continuum than the American.

The three "most decisive variables" isolated by Cella and Treu in distinguishing between models of unionism suggest the need for such a distinction. In nations characterized by

"competitive" unionism, density rates range between 30% to 50%; there is some degree of "interdependence" between unions and political parties; and a more interventionist political system typically prevails. "Business" unionism, in contrast, is associated with density rates below 30%, only "occasional" union linkages with political parties; and it is located within political systems less inclined to intervene directly in the sphere of industrial relations. These variables, applied by Cella and Treu to a wide range of nations, coincide quite closely with the three patterns of divergence which have struck most recent commentators comparing unionism on both sides of the forty-ninth parallel. Since the mid-1960's Canadian union density rates have sharply deviated from the American trend; the ties between the Canadian trade union movement and the New Democratic Party in the jurisdictions where most unionists live (and the comparable ties, for a time, between the major Francophone federations and the Parti Quebecois in Quebec) are more binding and mutually influential than the corresponding links between American labor organizations and the political parties they support; and throughout this century Canada has developed, in the words of Joseph Weiler, "a highly managed system of collective bargaining ... that appears to have more rules and regulations for peacetime than most other western industrialized democracies", including the United States. The

clearly greater strength of two of these variables in Canada makes it less surprising that the third should also tend to be greater, although this level of analysis cannot account for the tendencies themselves, their degree or timing. While an ideal type of this sort cannot itself explain the correlations it comprises, it heightens the intelligibility of complex phenomena and gives clearer shape to comparisons and more detailed analyses (Poggi, 1978, p. xii). To the extent that the constituent factors have been found to cohere regularly in the real world, then, we do have some reason for thinking that the type stands for a complex of comparatively stable causal interrelationships, even if we have not yet managed to work them out in detail.

In search of such explanation, we turn, at least for the present, to the historical record. To account for the comparatively greater approximation to "competitive" unionism in Canada, we start with the pattern of state interventionism in the field of public labour policy. On the one hand, it predates by more than a half a century both the formation of permanent and effective linkages between organized labour and a party of the left, as well as the beginnings of significant divergence in Canadian and American union density rates. On the other, as noted earlier, most commentators agree that it is in the field of labour policy that the most convincing explanations for the

recent divergence in union density rates are to be found. Consequently, the origins of Canada's "highly managed system of collective bargaining" are of some contemporary interest. Indeed, it can be argued that if the current American labour relations policy represents a drift back towards a pre-1935 pattern of voluntarism, then in Canada the historical precedents for such a retreat are less evident. In one form or another, governments in Canada, as in its sister Dominions of Australia and New Zealand, have been actively involved in labour relations since the turn of the century.

The dominant aim of the Canadian state in this endeavour, most commentators also agree, has not been to foster union growth so much as "to secure industrial peace". "Each of the incremental steps along the road to the Canadian collective bargaining system," Joseph Weiler writes, "was in response to some sort of industrial crisis, usually a strike" (J. Weiler, 1985). "Compulsion" has been the state's characteristic response to such conflicts, in the form of the compulsory conciliation and "cooling off periods" of the Industrial Disputes Investigation Act at the turn of the century, the compulsory union recognition and collective bargaining under P.C.1003 in World War II, or, more recently, compulsory back-to-work legislation in the 1970's and 80's. But the actual constitution of a labour regime

is not a matter of unilateral state design or control and its character cannot be authoritatively inferred from evidence about the intentions of any of the actors whose combined actions gives it shape or from the claims about its design which form part of the contests internal to any regime. The regime concept is meant to guard against such mistaken analytical shortcuts, to provide an analytical frame for the complexity and inconsistency which the historical record reveals.

Although the uniqueness of Canada's highly interventionist style of labour relations has been widely noted (Pentland, Williams, Jamieson, Riddell, Weiler), there is no agreement on its sources of inspiration. The most detailed and convincing study of these origins by Craven (1980) suggests that, at bottom, the initial propensity for the Canadian state to become directly involved in collective bargaining was rooted in the vulnerability of a staples economy, in particular "the historical impetus it gave to the willingness of both organized business and organized labour to look to the state for solutions to their difficulties in dealing with their problems, particularly their problems in dealing with each other." (360.) The volatility of Canada's open, export-oriented economy not only enhanced the likelihood of industrial conflict (and hence the often futile search for mechanisms of conflict avoidance), a

point noted by a number of recent studies (Weiler, Riddell, Lacroix), but it also encouraged both business and labour to turn towards an activist state for protection across a wide range of industrial fronts. The result, according to Craven, was to establish a different pattern of state, business and labour interactions than existed south of the border. Whereas American business and union leaders before the 1930's opposed legislative intervention into the field of collective bargaining, their Canadian counterparts supported it, as early as 1907, even when directly affiliated to larger organizations south of the border (Weinstein, 1969; Taft, 1970). In Canada the need for business-labour co-operation over the tariff, combined with both parties' mutual dependence on the state for economic assistance in other areas, facilitated the entry of the state into the regulation of industrial conflict. As Craven points out, when the importation of scientific management techniques and business unionism produced a strike epidemic during the first decade of this century, "[b]oth employer and worker organizations turned to the state for aid ... in a response typical of class relations in the Canadian political economy. Equally typically, the state complied. Exacerbated class conflict was understood to be a tripartite concern in the Canadian context." (362)

Once established, this pattern of interventionism

remained an enduring feature of the Canadian labour regime. Although markedly unsuccessful in its ostensible aim of reducing industrial conflict, the development of compulsory conciliation in "public utilities" and frequent mediation elsewhere did serve to institutionalize and to a certain extent legitimize collective bargaining within Canada more than within the United States before the New Deal.

However, the Canadian state's quest for industrial peace before World War II stopped short of enforcing compulsory union recognition. Only a 1943 wartime strike wave unequalled since 1919, and an unprecedented surge in popular support for the socialist CCF, combined with the peculiar market conditions of war, pushed a reluctant Canadian government into further interventionism. Through P.C. 1003, American Wagner Act principles of compulsory union recognition and collective bargaining were grafted, in crisis, onto a labour relations regime in which compulsion and extensive state administrative intervention had become accepted features (MacDowell, 1979; Webber, 1986). In contrast to the American Wagner Act experience, the Canadian move towards compulsory union recognition remained devoid of any stated intention to promote union growth as either a desirable democratic objective or an economic recovery strategy (Weiler, 1985, pp. 14-15). As in the

past, the prime motivation remained the containment of industrial unrest. The result, nonetheless, as Weiler and others have pointed out, was a "two-sided public policy that continued the dominant strategy of ... controlling work stoppages but added mechanisms which would nurture the spread of collective bargaining." (14)

In short, Canada's wartime labour "settlement", although derived extensively from the American model, took shape within a different political and economic context. War, not depression, shaped its origins; third-party politics conditioned its timing; and an already well-established pattern of governmental interventionism into collective bargaining eased the shock of the state's more active reach into the sphere of employer-employee relationships after the war. For these reasons, perhaps, Canada's adoption of compulsory collective bargaining, although more recent than that of the United States, did not encounter the immediate post-war legislative backlash represented by the Taft-Hartley Act in the United States and has retained a more lasting legitimacy. Indeed, while numerous American states quickly took advantage of the opportunity to enact "right to work" laws, in Canada all provinces outside of Quebec quietly incorporated the Wagner Act features of compulsory collective bargaining, as well as the agency shop, into their own labour

codes in the early post-war years (Brody, 1971; J. Weiler, 1986), in important measure simply recognizing achievements which had been embodied in key collective agreements during the immediate post-war years.

Although the main theme in the Canadian state's interventionist approach to labour relations has been the reduction of industrial conflict and not the promotion of union growth, the cumulative effect of these policies has been to create a more favorable climate for union development north of the 49th parallel. The vulnerability which initially prompted interventionism still remains an enduring feature of the Canadian economy, with the result that conflict and tripartite mechanisms for its resolution remain an important and growing part of the Canadian industrial relations scene (Adams, 1985; Riddell, 1986) enhancing the potential political leverage of unions within the power constellation underpinning the labour regime. The greater degree of institutionalization within collective bargaining provides a wider scope for administrative discretion which perhaps has served to insulate unions from the worst excesses of the employer offensive against unionization south of the border during and since the recent recession. Finally, the complementary development of labour's political resources, through the NDP in the post-1961 era has provided an additional

and crucial source of protection for labour's position within the Canadian polity.

Lipset thinks that the distinctive character of the Canadian ideological field, a greater receptivity of Canada's political culture to collectivist designs, stands behind these political departures from the American pattern and that it also largely accounts for the divergent outcomes in labour's fortunes in Canada and the United States in recent decades (Lipset, 1984; Lipset, 1986). Without simply dismissing his reasoning, we find it too indeterminate for the problem at hand. Many different outcomes other than a divergence in the character of the trade union movements, which are of interest here, would be compatible with the cultural contrast made, especially since it continues to aggregate conservative and socialist indications into a composite "collectivism" given form largely by the contrast model of a presumed American "individualism". We are inclined rather to focus on the differing ways in which the various organizations in the two settings -- labour organizations, above all -- utilize their resources to manage quite similar structural problems. The political analysis of labour regimes requires a political theory of labour organizations (Streek, 1981).

In sum, we see competitive unionism in Canada and the

labour regime its activities help to shape as the complex result of union activism, industrial militancy and the response of the state, business and labour to the problems of economic vulnerability posed by an export-oriented, staple economy.

No analysis of contrasting developments in the organization of two labour markets can ignore differences in economic structures and circumstances, of course. But we do not find that we can deal with our analytical problem without an historical approach, which understands economic factors mostly in their capacity as limits and opportunities for actors in dynamic and internally contested political formations. In pleading the necessities of the specific analytical problem before us, we are admitting our modesty -- or uncertainty -- about making the kinds of macrotheoretical judgments which others consider governing for major analytical problems relating to the labour movement. To clarify our position we would nevertheless like to relate it to three major alternative tendencies in the literature.

We shall start out from the familiar trifurcation of the

literature on industrial relations into unitary, pluralist, and marxist approaches (Fox, 1974; England, 1982), with each approach being linked to a characteristic set of political commitments and/or social interests. But we are much less interested here in an expose# of ideological bias than we are in sorting out some challenging themes in each of the categories and in explaining our reluctance to follow any of them in their more systematic claims. Accordingly, we shall comment on one sophisticated and powerful theoretical model for each of the three kinds of political interpretations intended by the classification scheme, taking them as interesting and reasonable arguments for the respective positions. This does not mean that we can disregard the place of these arguments within a political discourse integral to the periodic internal contests about the practical meanings which the ambiguous institutions and other relationships are to bear, as they are periodically renegotiated or shifted about. We think that it is fair to ask proponents for one or another position to consider what they are doing when they reason as they do. But we are not content to denounce them when we don't like it, especially in a forum where such posturing would do nothing except to inhibit critical thinking and learning. Ways of knowing in these matters are doubtless a part of politics; but they may also genuinely be ways of knowing (Kettler Meja, and Stehr, 1984).

Such respectful consideration is not easy to muster when we look at "unitary" arguments which simply reject any autonomous role for organized labour in the economy on the grounds of supposedly absolute proprietors' rights or on the grounds of a sweeping assertion of the community of interests between employers and employees, satisfiable only under untrammelled managerial control. Nor can we gain much in the present context from arguing with anti-union analyses patterned on the reasonings of Friedrich Hayek, which would ascribe a hundred and fifty years of social development to an inexplicable blunder, when the rational merits of the "spontaneous social order" were somehow lost from view (von Mises, 1949; Hayek, 1973, 1976, 1979). But we do find both stimulation and instruction in a different theoretical approach which can reasonably lead to "unitary" conclusions when applied to the study of the developments here under review.

If the decline of American union density is traced to the transformation of the American labour regime, as we have proposed, and if this transformation is linked to massive employer disregard of the law and systematic under-enforcement by public agencies, as is evident from the historical record, an analysis might plausibly link this development to the more

general contemporary problem of hyper-legalization and the consequent presumed crisis of legality. In a recent study of this problem, Gunther Teubner (1984) has combined some elements of Luhmann's neo-functionalism with elements of Habermas' critique of legalization to offer a general explanation for failures of law. He maintains that the effectiveness of law must be understood in terms of a three-way relationship between three differentiated subsystems of society: politics, the law, and the social domain to be regulated. The course of social development, he argues, has seen these subsystems increasingly take on the character of autopoietic systems -- systems which are self-reproducing and self-referential, controllable only by their own essential mechanisms of reproduction and wholly subject to their own cognitive modes. Politics can get from the law only what the law can understand politics to want and the law can impose on social actors only what the requirements of their social activities permit them to comprehend and to grant. When there is a massive failure of effect -- when courts appear to ignore legislation, for example, or illegality becomes the practical norm within some social domain such as the labour market -- the first question to consider, on this analysis, is whether there is such a breakdown of communications between systems.

Utilizing the central concepts of this functionalist social theory of differentiated autopoietic subsystems (Luhmann, 1981; Teubner, 1986; Willke, 1983; Go#~rlitz and Voigt, 1985), a plausible way of reading the contrast between American and Canadian developments in the political organization of the labor market would be to suggest that American developments represent a classical case of an autopoietic system successfully rejecting a disruptive external intrusion in order to cope with the need to reproduce itself under conditions of extreme environmental stress. It was, after all, employers' resistance, often defying weak regulatory restraints, which practically immobilized the Wagner Act's regulatory supports for labor organization and collective bargaining; and it has been employers' initiatives which have generated alternative mechanisms for the regulation of both external and internal labor markets. According to this interpretation, shifts in the government's role within the labor regime then simply appear as signs that the relevant mechanisms within both the political and legal subsystems have recognized and acknowledged these limits of the former regulative law. It would follow that unions are now obsolete and that collective bargaining has become (tendentially, at least) a dysfunctional mechanism.

From this standpoint, the divergent Canadian pattern

might well appear as a classical instance of the damage inflictable by transgressing the limitations of law's capacities, with costs measured by the lowest productivity growth rates in the OECD and ever more evident structural flaws in the economy as a whole. This appears to be the view of the provincial government of British Columbia, which has recently adjusted its collective labor law so as to bring it closer to the American (McMurray, 1985; J. Weiler, 1986). And it may even be a more or less conscious rationale underlying recent government policy aiming at freer trade with the United States, as well as efforts by influential groups to persuade the courts to interpret the guarantees of equality provided in the recently-adopted Charter of Rights so as to undermine the privileged position of the collective bargaining regime within the Canadian labor market.

This is a paradoxical outcome for Teubner's analytical approach, since his own objectives are far from hostile to collective bargaining or to other modes of redirecting the presumed logic of market processes towards ends of social equity and other ends associated with the welfare state. His aim, in fact, is to make a case for "reflexive law" as a regulatory device, a mode of legal regulation through the legal constitution of self-regulation which has the North American collective bargaining regime as its paradigm (Teubner, 1982; Nonet and

Selznick 1978; Kettler, 1987). Such law is supposed to be able to get through the boundaries of the self-referential systems and to induce adjustments in self-regulation which will move in the direction of the public purposes intended -- as when collective bargaining under the labor regime is said to introduce considerations of equity into decisions on mass layoffs without blatant economic irrationality (Gunderson, 1986). But Teubner's hopes cannot control the logic of the approach he has adopted (Luhmann, 1985), and the paradox can only be overcome either by abandoning the collective bargaining regime under present conditions, accepting the "unitary" conclusions (which follow under North American conditions, whatever may be the case where co-determination regimes are established: cp. Teubner 1984, Teubner 1985, Teubner 1986a), or by reconsidering the functionalist and systems-theoretical formulation of his insights (Kettler, 1986).

Our preference is obviously for the latter. Without presuming to offer a counter-sociology here, it is enough to say that we consider the autopoietic systems model at once too closed and too indefinite. It is too closed because it neglects the conflicts, ambiguities and indeterminacies in the complex interactions it comprehends, and consequently the role of power in its various modes in the constitution of those interactions.

And it is too indefinite because it seems to apply equally well or equally poorly to every conceivable kind of social formation -- from a theoretically constituted entity like the market or industry or the labour relations system to a specific organization like an enterprise or a union or a collective bargaining relationship. The latter feature can of course be deployed to evade the consequences of the former, by breaking down the subsystems of functionalist common-sense into a myriad of others, each autopoietic and all interrelated by imperfect congruences of unimaginable complexity. But then no applications or conclusions can be given general form: we are in a fascinating Goethean world, to be admired rather than explained (Meinecke, 1936).

At a more mundane and less literal level, we find this approach suggestive because it calls attention to the limits of direct state regulation and thus, in our view, to the dangers of dismissing the collective labour regime as no longer pertinent in an era of expanding protective employment law. It is true that collective bargaining is not a promising mechanism for achieving a number of socially urgent objectives, quite apart from questions of fundamental social democratization. In the increasingly dual labour market, unions often sacrifice the weaker for the sake of protecting the relatively established

(Simitis, 1984; Offe, 1984). But these are shortcomings which can be counteracted in some measure through the internal politics of unions, as well as through some public constraints on the processes of collective bargaining, as with the mandated internalization of human rights standards within the terms and administration of collective agreements (Swan and Swinton, 1982). The alternatives to these imperfect approaches seem to be self-evidently worse or wildly unpredictable. Teubner's kind of functionalist analysis is very instructive on these matters. But where it leads to inferences about system needs from politically determined outcomes of intra-constitutional conflicts, as in the development of the American labour regime during the past two decades, the approach must be rejected. There is no destiny which countermands a recovery of collective bargaining and unionism in the United States, although there are massive inner and outer obstacles in the way; and there is no fate that decrees a dismantling of the social constitution of collective labour in Canada, although there are serious and mounting threats.

Such obstacles and such threats have been the preoccupations of recent writings generally classed as "pluralist". Interpreting the collective labour regime in the light of a conception of the "industrial relations system" centered on the contractual resolution of conflicting collective

preferences in the employment relationship, as well as the institutionalization and control of conflict measures, this approach diagnoses the weakness of American unions with therapeutic intent, even as it offers prophylaxis to Canada. To judge by the well-researched and articulate compilations of this literature in the pertinent volumes of recent studies for the Canadian Macdonald Commission, many "pluralists" are more impressed by the precipitous American decline in unionization than they are by the comparative resiliency of Canadian unions. They tend to see the problems as due to a drastic loss of public trust in unions, on the one hand, and, on the other, to a reasonable basis for this loss in obstacles which collective bargaining is seen to put in the way of adaptation to dramatic economic change (Riddell, 1986; Kumar, 1986; J. Weiler, 1985). For the sake of union recovery and expansion into the newer growth areas in the economy, they urge new attention to cooperative techniques of labour-management relations and a dismantling of adversarial habits of thought and action among unionists. It is important not to fall into political distortion in characterizing this position. There is substantial regard for the autonomy of workers' organization among these writers and little disposition to impose new regulations or sanctions on them, even in regard to strikes and other conflict techniques. The adaptations they seek are to be fostered by persuasion and

inducements.

Yet if our analysis of the differences between Canadian and American unions is correct, this approach is wrong in its diagnosis and harmful in its prescriptions. The more "competitive" type of union movement need not by any means reject coordination and collaborative planning with business or governmental agencies, but it proceeds here by "political exchanges" which presuppose its competitive strength and a measure of ideological mobilization (Regini, 1984). In the North American context, we submit, these presuppositions cannot be met without a forceful adversarial style in collective labour relations. Overpointedly, our position can be summarized as a preference for "the Canadian experience" over any reincarnation of the "American Plan".

The most interesting contemporary versions of a "marxist" approach seriously question whether either one of the North American labour movements can generate the militancy to reinstate a credible justification for unions, and they do so precisely because they conclude that the leaderships' commitment to the existing legal frameworks have put the organizations at the mercy of state policies now inclining towards a new union-free labour regime. The argument has two principal parts. The first, which

has historical antecedents in the debates within many labour movements at the beginning of the century, seeks to establish that the normalization of unions and collective bargaining by means of a legal regime systematically devalues militant organization. In both the United States and Canada, despite differences in the legal means by which the results are achieved, exponents of this approach emphasize the displacement of organizational strikes by certification procedures and the outlawing of strikes during the life of collective agreements, as well as the restrictions on matters for collective bargaining (Panitch and Swartz, 1985; England, 1982; Klare, 1978; Atleson, 1983; Tomlins, 1985; Rogers; cp. Korsch, 1972; Erd, 1977). The effect of the labour regime, it is maintained, has been to "deradicalize" the movements whose mobilization gained this measure of recognition, to "integrate industrial conflict within the control system of society" (England, p. 271), and to turn leaders of unions into "agents of social control over their members rather than their spokespersons and organizers" (Panitch and Swartz, p. 145). The "settlements" which established the "industrial relations system" around the time of the Second World War thus appear as a mode of "capitalist hegemony", a complex of "incorporative" and rationalized coercive devices for state management of the labour market. As developed during the past few years, the second part of the argument then goes on to claim

that economic developments (especially the "fiscal crisis of the state" and key shifts in technology and international markets) now impel the state to move beyond the "free collective bargaining system", tentatively in the direction of "neo-corporatist" cooptation of the labour movement and then in the direction of its effective disorganization, in the name of "trust and belief". While Panitch and Swartz, for example, see some hope that the loss of ideological justifications by reference to "social justice" and the end of the legitimation derived from self-regulation under the old established labour regime may rekindle workers' militancy and radicalize their organizations, the main tendency of the "marxist" analysis is to despair of these long-tamed organizations.

While we have learned from the critical political commentary associated with this approach, we cannot rely on it as a systematic theoretical framework for analysis. The first difficulty comes with our choice of analytical problem. We start from the supposition that the differences between the United States and Canada with respect to labour union density rates do matter, and we cannot make out a clear position on this basic point in the "marxist" literature. The overall approach would suggest that these differences make no difference for future developments, or even that a dismantling of the legalized labour

regime might be welcome and the decline of depoliticized unions taken with a shrug. But many actual applications of the approach seek to amend the legislative or administrative base of the labour regime (England, 1982) or to fortify its constitutional foundations. Panitch and Swartz paradoxically even cite the failure of Canadian unionists to campaign for constitutional guarantees of "free collective bargaining" -- a gateway to more intensive legalization of the collective labour regime through its renewed judicialization -- as an indication of their lack of militancy. We are sensitive to the dilemmas created for these analysts by the shift between levels of analysis and by bonds of solidarity with such labour movement as may exist, but we prefer to respond by backing away from the grand theory which makes it so hard to make necessary discriminations.

An analysis founded on a counterfactual model of a labour movement coming to revolutionary consciousness understates the difficulties and constant costs of workers' organization and overstates the power and discretion of organized labour and its leaders over the century. A characterization of the collective labour regime as a univocal hegemonic expression of capitalist domination, reading ideological assertions by certain participants in that regime as authoritative revelations of a uniform design, underestimates the continuation of conflict about

the meaning of such constituted orders and the range of political possibilities internal to them. Such distortions afflict recent systematic marxist analyses, despite the ingenuity with which correctives are often sought. Our approach must remain open to a wider variety of considerations.

We are, in short, indebted to all three of the principal types of approaches, but we think that the matters we are investigating require a different, more political analysis. We recognize that the concept of labour regime, which we have made central to our analysis, needs more work, just as our comparison should be extended to Britain, and perhaps also to Australia, in order to test the powers of the analytical strategy we are developing and to refine its terms. The present paper aims simply to bring out some of the distinctive features of the approach we applied in our recently published more topical and descriptive paper (Huxley, Kettler and Struthers, 1986). The divergences in union densities between the United States and Canada, we think, are indicative of different developments within the respective labour regimes, brought about, at least in important measure, by the contrasting tendencies towards "competitive" and "business" unionism. The study of such regimes, in our view, resembles the complex, two-tiered approach which has been emerging in recent work on the welfare state by

Skocpol and others, but it pays closer attention to legalized modes of state power and to their substantive modifications in social application. The project hopes ultimately to contribute to the advancement of more fully developed political theory in this field.

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