

**Shifting Axis of Labor Market Regulation and Social Mobilization in  
the United States: Reinterpreting the American experience at the turn  
of the 21<sup>st</sup> century**

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It is commonplace among industrial relations scholars and practitioners that over the last 25 years the world of industrial relations and workplace governance has been fundamentally, probably irrevocably, altered. The system of collective bargaining that grew out of the New Deal reforms has collapsed. That collapse has been produced by the increasing encroachment of the competitive market and the growing hegemony of neo-liberal ideology, which championed market-oriented reforms not only in labor relations but also in public policy more broadly. These changes have led to increasing disparities in the distribution of income and social welfare in American society, and a fundamental imbalance in political power. This view is widely shared in Europe on both the right and the left, and it has been used to support an argument that competitive pressures emanating from the U.S. are forcing other countries (or, should force other countries) to dismantle the welfare state.

This paper challenges this characterization of the changes that have occurred in industrial relations and offers an alternative which suggests both that the United States has pursued a much more progressive social policy than it is generally given credit for and that the regulatory role of the state over the course of the last twenty years has been underestimated. A companion paper suggests, however, that this alternative interpretation poses a number of problems for the conceptual tools we have used to understand the issues of work and to frame the public policy debate; and that without new tools it is difficult to explore the implications of the changes that have taken place. It does not actually provide an alternative conceptual framework, but it draws upon recent developments in economic sociology and organizational studies to suggest directions in which we might move.

### The Challenge

The one piece of the conventional view which we do not challenge is that we are witnessing the collapse of a coherent system of workplace governance, one which grew out of the New Deal and centered around collective bargaining between unions and management. What we question, however, are the factors ultimately responsible for that collapse and the nature of the system that has taken its place. In particular, we question

the central role of market-oriented reforms. The collapse unquestionably occurred in the period of ascendancy of the market ideology, and this obviously did nothing to help the old system survive. But the system of governance that has taken its place is not a market system at all but rather a system we would characterize as one of *employment rights*. It is built around substantive regulation generated by statute, administrative rulings, and court decisions, and given coherence by the human resource practices of large corporations and their personnel handbooks and procedures. The main impetus behind the new regulatory framework has been equal employment opportunity legislation. Such regulation has a long history in the United States, but the effort to achieve equal opportunity was reinvigorated, and for the first time became serious and effective, when Title VII of the Civil Rights Act of 1964 was passed under pressure from the black civil rights movement. Through this and subsequent legislation, similar protections were extended to a number of other socially stigmatized and disadvantaged groups, including women, other racial and ethnic minorities, the physically disabled, the aged, and, on local levels, to gays, lesbians and transsexuals (Skrentny, 2002). In the 1980's, legislation mandating family leave and advance notice of layoffs was also passed. State courts in this period began to impose limits on the doctrine of employment-at-will which has historically governed individual contracts of employment in the United States (Morriss, 1995; Autor, Donohue and Schwab, 2002; Edelman, Abraham and Erlanger, 1992). In the 1990's, there has been a proliferation of employment legislation at the state and local level, most notably mandating so-called living wages for contractors of local government activities and, very recently, in California, paid family leave (Fine, 2003).

In the attempt to negotiate the complex environment these regulations generated, American businesses developed a system of employment relations which has come to be called Human Resource Management (Dobbin and Kelly, 2002; Dobbin and Sutton, 1998; Kelly and Dobbin, 1998). The implications of HRM are far-reaching, but one of its important characteristics has been to generate a set of standard personnel policies and practices that apply to all workers, even those not directly covered by the legislation. Since the purpose of these policies is to protect the company against charges of arbitrary and unequal treatment of workers, they are not easily adjusted in response to changes in the business environment, and hence have some of the rigidities found in the old system

of collective bargaining. Employers have also attempted, with some success, to circumvent the judicial and administrative processes through which these regulations are reviewed and enforced by creating a system of private arbitration, and this too tends to parallel features of the old collective bargaining system (Stone, 1996; Supreme Court, 2001).

In all of this, the emergent regime of employment rights contrasts sharply with the regime of collective bargaining. The role of government regulations in the old regime was substantial but of a fundamentally different kind. The substantive legislation set the minimum labor standards for jobs at the bottom of the wage hierarchy (although there still remained a substantial “uncovered sector”) but above that floor the government regulations focused on procedural standards. These standards effectively created the rights of workers to form and join trade unions, and of those unions, once formed, to engage in collective bargaining. The substantive terms and conditions of employment were set through that bargaining process. Union coverage in the United States was far from universal, but at its height, nearly a third of the private sector labor force were union members, and this plus the threat of organization in the non-unionized sector was such that union gains effectively spread throughout the economy.

The demise of the old regime is signaled by the decline in union membership, from its height of 35% of the private sector labor force in 1955 to 9% in the year 2002. But even in 1975, membership remained at 28%; by 1990, it had fallen to 13%. The demise of the old system is reflected even more dramatically in measures of labor unrest and strike activity. Between 1971 and 1991, the number of man-days lost in work stoppages fell from 36 million to 5 million. The way in which collective bargaining was replaced by an employment rights regime is suggest by the rise in employment litigation in the same period: From 1971 to 1991, lawsuits filed in federal district court on employment law rose from 4,331 cases to 22,968 cases, or from 6% of all civil cases filed to 16%, (Weil, 2003, fn. 2).

Whatever the role of the market in the decline of collective bargaining, the emergence of the new employment rights regime has been driven, not by the market at all, but by a shift in the locus of social and political mobilization. The collective bargaining regime emerged under political pressures generated by mobilization around

economic class (in the Marxian sense of the term), and unions were organized around identities rooted in class, craft, profession, industry and enterprise. The employment laws were generated by political mobilization around not only social identities associated with race and ethnicity, but also various biological traits associated with social stigma and/or the focus of labor market discrimination, most notably, sex, but also age, physical disability, and sexual orientation. The fountainhead of the new regime was legislation in response to the pressures of the black civil rights movement, much of which involved extra-electoral politics, demonstrations and riots, the most dramatic manifestation of which was the 1963 March on Washington for jobs and justice, where Martin Luther King delivered his “I Have a Dream” speech. This march led directly to the passage of the Civil Rights Act of 1964, whose Title VII formed the fulcrum around which the new employment law has been built. Not all of the laws and regulations of the new regime were generated by pressure from groups of this kind, but many are the product of a similar process (for example, the Family Leave Act) (Dobbin and Kelly, 1999). The mobilization at the state and local level which produced the new living wage laws also developed around these social identities. And identity groups of this kind have emerged within many enterprises and most professional associations pressing for rights and benefits at this level in much the same way as unions pressed for employment benefits historically (Scully and Segal, 1999). Domestic partner benefits, for example, spread from one enterprise to another through grassroots organizations of gay and lesbian employees. The social security system, which is the one income support program that has managed to survive the period of neo-liberal social welfare retrenchment, has in fact been protected by the AARP (the American Association of Retired People), organized around the identity of older people, lines very different from the trade union lobbies which created these programs in the first place and sustained them in the immediate postwar decades. It is notable that despite fierce attacks upon the old age pension system in the United States by the right wing, the system remains intact; there have been less changes in the United States in social security for the aged than in many European countries.

The different structures of social and political mobilization offer dramatically different perspectives on American social policy in the course of the last 25 years.

Viewed from the perspective of economic identity, and measured in terms of the distribution of income by income class, there has been a dramatic deterioration of relative welfare, as the conventional view suggests. In the course of the 1980's, the median income in the lower deciles of the income distribution declined, and the upper deciles rose, relative to the median of the income distribution as a whole, to levels comparable to the years preceding the Great Depression and the passage of the New Deal welfare legislation. But if one asks the question of how the various social identity groups which drove the employment rights regime have fared relative to the previous generation of the same group, there is substantial social progress. Women of the current generation have gained relative to their mothers, both in terms of actual income and job opportunities. And the same is true in varying degrees for the aged, the disabled, immigrant ethnic groups, and gays and lesbians. Ironically -- given that their organizations drove the new regime -- only among blacks is the impact of the new regime problematic and, even in this group, the gains are bimodal: The upper tail of the black distribution has gained relative to most white benchmarks, although the lower tail of the distribution remains trapped in the center city ghettos.

A focus on the contrast between the new and the old regime, and the axes of mobilization which seem to be responsible for their initial development and around which they have been organized, suggests a rather different understanding of the shift than the conventional emphasis upon market forces and a market oriented ideology of public policy. The economic identities around which the collective bargaining system was built were rooted in a model of industrial society, a model which actually had very little to do with the market. That model collapsed in the course of the postwar decades, and it is in terms of that collapse that both the demise of the old system and the emergence of the new seem most readily understood. At the heart of that model is the way in which industrial society was built by imposing a set of sharp boundaries between different realms of human activity. The most fundamental boundary as noted by Max Weber was the separation of the economy from other realms of social activity. Production and exchange were moved out of the home and into the factory or office, and the household was rendered as a separate space reserved for consumption and for private familial activity. The separation of the two realms involved a distinction between the standards

and forms of judgments which governed within them. The standards of the economic realm in particular were “scientific” and “rational”; the standards governing in the household were affective and personal (Weber, 1958; Weber, 1978).

The “New Deal” welfare reforms reflected an even stronger version of this model. The underlying model was one in which the economic and social realms were not only sharply separated, but each was structured, and the two connected, in a particular way. The characteristic institution of the social realm was the family; in the economic realm, it was the corporate enterprise. Each was taken to be, moreover, stable, enduring and well-defined.

The position of the family in this construction also reflected the emergence, in the course of the 19<sup>th</sup> and the early 20<sup>th</sup> centuries, of the bourgeois family model. That model became a normative standard (Dell Brady, 1991; Coontz, 1992; Dobbin, 2004) toward which Americans increasingly aspired and against which they judged themselves as individuals. Public policy was increasingly designed around this model at one and the same time, nudging people toward it and helping them to achieve it. The model prescribed distinct roles for women who managed the household realm and preserved the personal and affective values which prevailed within it, and for men who supported the household through outside work and cultivated the strength and competitive spirit required to effectively do so. A major function of the household was to raise children and develop their character through guidance and discipline. But while managed by the household, the developmental process itself crossed the threshold; formal educational institutions played a central role. Work, at least of certain kinds, and the discipline which it imposed was also viewed as part of that process.

The family was represented in the economy by a single dominant, male agent, the family breadwinner, whose earnings were the family’s main support. Conflicts between the social and the economic realms could thus be resolved by adjustments in the breadwinner’s wage and, since the workplace was also a social setting, the other terms and conditions of his employment. Finally, these breadwinners were organized into, and represented by, trade unions, which thereby came to mediate between the economic and the social structures through collective bargaining with corporate enterprises.

The whole of industrial society never, of course, conformed to this model, but the model was thought to represent the direction in which the society was evolving, and legislation was structured both to be consistent with the movement in that direction and to facilitate it. But the movement came to a halt in the 1970's, and the model, in so far as it was embedded in its key institutions, disintegrated. Many of the cleavages in American politics in the last twenty years are about whether or not that breakdown was a good thing.

One of the reasons why the model seems unlikely to be reinstated, even as an ideal, is that each of the factions contending in these conflicts seems to be attracted by one or another of its elements, but none are prepared to endorse the structure as a whole.

In the United States, the collapse of the trade union movement in the early 1980's was the most dramatic break in the structure. The other institutions did not dissolve in so sudden and decisive a manner, but in the course of the last several decades both the family and the enterprise have gradually lost the characteristics which were central to the old model of the relationship between the economic and social realms.

In the case of the family, the critical factor has been the progressive rise in female labor force participation, especially of women with small children. An additional influence has been the growth of income supports associated with the welfare state itself. Together, these diversified the sources of family income, weakening dependence upon the male head as breadwinner, and complicating the connection of the economic and social realms. The increasing commitment of women to paid labor and the growth in other sources of income also led ancillary family members -- the aged, youth, the disabled -- to move out and form their own households (Costa, 1999; D'Emilio, 1998). The increase in the divorce rate, the rise of children born to single mothers, the growth of separate households headed by the aged, the emergence of gay and lesbian households, all reflected and reinforced these trends. Virtually all of the groups which have displaced trade unions as the locus of social and political mobilization and are not defined by race and ethnicity (i.e., women, the aged, the disabled, gays and lesbians) are connected with these developments.

The declining integrity of the enterprise as an institution is largely the product of the 1980's and 1990's. The crisis in the economy along with technological and structural



developments and changes in managerial practices combined to undermine the durability of the corporate enterprise. Major corporations were threatened with bankruptcy; some actually went out of business or merged with other enterprises. The traditional boundaries of industries were redrawn as the lines separating different markets shifted, blurred or disappeared entirely. The most spectacular example is the way the separate industries of communications, office technology, information technology, printing, and photographic imaging have merged. Cross-functional and inter-organizational teams, just-in-time delivery, strategic alliances, and the like have all led to the interpenetration of once distinct enterprises. As the integrity of the corporation has been compromised in this way, the institutions of job security and social welfare which were attached to the enterprise have collapsed, and the ability of the enterprise to serve as a locus of economic identity has been progressively compromised.

The organization of work has also shifted in a way that break down traditional occupational and professional distinctions. The shift is associated with the growing importance of “project-teams”. This is a form of work organization that has undoubtedly always been present in the economy, but until recently received little attention in the literature, which has been preoccupied with the distinction between craft and industrial (or professional) labor. Projects in that literature were associated with commercial construction, which draws from a variety of crafts in the production of, for example, a large office building, but each craft works by itself, and the crafts typically follow each other onto the construction site in sequence as the building is first framed by iron works, followed by plumbers and electricians, then by carpenters and finally painters and finishers. In project-teams, in contrast, workers from different backgrounds are on the job simultaneously and work together. This is because the project typically involves the integration of knowledge and experience to create a novel product rather than the division of labor as envisaged by Smith and Marx, who thought in terms of the reproduction of a product already designed and developed, as in manufacturing. Typical and canonical of the project-team form of work is a large software project. But one can also think of the development of new products in general (e.g., the cellular telephone, a medical device or drug, a consumer credit product offered by a credit card company, a large financial deal). The “knowledge” that is brought to bear in each of these cases is of two kinds: 1)

technical knowledge associated with a craft or profession; and, 2) domain knowledge, i.e., knowledge of a particular domain in which the technical knowledge is applied (telephony, radio, clinical medicine, banking, and the like). In addition, of course, a project-teams requires a set of workers who can actually work together and share their knowledge in a cooperative and collegial fashion. This form of work organization appears to be becoming increasingly important as product (or reproduction) is moved off-shore or automated – a tendency in both goods and services – and what remains in the United States (and presumably other industrial countries as well) is associated with the design and development of new products and services.

Project-teams are a challenge to both the employer and the worker. The first challenge is that by their very nature they are time-limited and hence the employer is periodically involved in recruiting a new group of workers, and the workers in finding new jobs. The employer, moreover, is seeking workers with a unique set of competencies who can also work together as a team. The first members of the team may be easy to recruit, but as the team takes shape it becomes increasingly difficult to fill in the missing competencies with people with compatible personalities. Workers, on the other hand, seek to expand through work experience the range of competencies they can bring to the labor market because this is the only way to increase security when they must perpetually seek new employment.

The result is that project-team organizations cannot function solely in terms of standard occupational and professional categories and institutions built around them, and instead places an enormous premium upon labor market intermediaries who understand the particular characteristics of individual jobs and workers and can facilitate the matching process. A variety of different institutions and organizations have emerged to play this role, and both employers and workers typically draw on several of these at the same time when they are in the labor market. These range from temporary help services and professional head-hunters and recruiters to university alumni associations and informal alumni networks, associations and networks of former employers of prominent companies such as Citigroup in banking, IBM in information technology and AT&T in communications. But also among the networks from which employers and workers draw are those organized around sex, race, ethnicity, sexual orientation and the like -- those, in

other words, which have become the new locus of social mobilization. The net result of this development is twofold: First, it further weakens the role of economic identities in the organization of the labor market. Second, it acts to reinforce and give increased salience to the new social identities.

### The Conceptual Tools

If what has occurred to cause the demise of the collective bargaining regime is not the rise of neo-liberal ideology, but rather, fundamental shifts in the axes on which the institutions of industrial society were based, what does it suggest for industrial relations scholarship and practice? To us, it suggests that we need to look at the conceptual tools on which the field has come to rely. Moreover, we feel that—despite its several shortcomings—the place to begin looking for a new, better-suited set of conceptual tools can be found within the “neo-institutionalist” wing of economic sociology. In particular, it is clear that the evolution and contestation of boundaries—between corporations or between groups defined by their ethnic, religious, gender or sexual differences—are now at the core of socio-economic changes that have emerged. We develop this argument more fully in a companion paper. We can nevertheless provide a flavor of how neo-institutional concepts might be incorporated to inform industrial relations.

To do so, it is useful to introduce two brief descriptions of cases from our own work and that of a colleague’s. Gay and lesbians are of particular interest as a group because they are not covered by national equal employment opportunity legislation—indeed attempts to obtain such coverage have repeatedly failed—and at least one influential analyst who attributes the list of groups which are covered to the way in which the bureaucracy initially operated to implement the law, uses gays and lesbians as an example of the limits of the system which grew out of Title VII of the Civil Rights Act. And yet, in point of fact, gays and lesbians have gained coverage, but it seems neither through bureaucratic action nor through the strength or coherence of their grassroots organizations, but the recruiting at Harvard and MIT is a product of the process through which it occurred. In this particular case, what happened was that the President of the Harvard Gay and Lesbian Business Student Organization was enraged by a series of articles in a national gay magazine on the pressures of the closet on Wall Street and he

called the placement office of the Harvard Business School to demand that they do something about this. But rather than provoking resistance or even organizational deliberation, his complaint invoked a whole series of institutional templates which had been created in response to equal employment opportunity legislation and designed to prevent discrimination against other identity groups. Because of the long history of EEOC, there was a person in the Harvard placement office specifically charged with handling complaints of this kind; there was also a set of standard procedures which were used to respond. As a result, the Harvard office began to call the banks in New York City who recruited on campus. These corporations also had personnel specifically assigned to handle this kind of complaint with their own list of standard responses. That list included looking for members of the complaining group within their organization and sending them to host a recruiting dinner at the institution where the complaint originated. One of the New York banks actually had an incipient gay and lesbian organization, which the placement office was aware of, and that organization was enlisted to send members to Cambridge. The mission served to catalyze the new groups and solidify its organization. A second bank did not have a gay and lesbian organization – or at least not an organization known to the recruiting office. The office contacted the Harvard Association to ask if there was any other way in which they could indicate their interest and support, and they ended up contributing to support the annual conference of Gay and Lesbian business students, which focuses on entrepreneurship.

These conferences, and the focus on entrepreneurship, is another template which guides the new social mobilization that emerged in the course of our studies of identity groups within the engineering and managerial professions.

The question is presently made most compellingly by Thomas Kochan and Saul Rubinstein in a study of the GM Saturn plant, started as a kind of experiment with an alternative organization of work, and relations among functional divisions more broadly, through collaboration of the company and its principle collective bargaining partner, the United Auto Workers. The experiment was judged a success by business standards, but the company and the union deliberately decided not to adopt the practices more broadly and to limit the expansion of Saturn itself. Played against the Saturn case, which can in many ways be replicated for other innovations in collective bargaining over the last two

decades, the notion of institutional isomorphism in itself is clearly incomplete. It postulates a mechanism (or a process) but does not suggest its limits, or more precisely when exactly that process will come into play and when it will not do so.

In the case of Wall Street recruitment of gays and lesbians, it is apparent that traditional tools of industrial relations—focused on collective bargaining—are inadequate to capture what is going on here. Gays and lesbians are certainly asserting an interest of some kind, but that interest is not something that can be achieved through a collective agreement; rather it is manifest in the very recognition among employers that such a group exists. Moreover, the way this was achieved was not through traditional forms of worker voice, but rather by applying an existing set of institutionalized practices—developed in this case to address concerns initially raised by African-Americans and women—to those of a group that had not been previously considered.

The Saturn case, similarly, cannot be seen simply in traditional industrial relations terms. While certainly it does touch on familiar territory—dealing with manufacturing and labor unions—the tactics are completely different. Saturn was conceived as what neo-institutionalists might call an act of institutional entrepreneurship; a self-conscious effort to break existing institutionalized patterns of behavior and diffusing a new model. In this case, that model failed to catch on. But, the very effort breaks with the way one would have thought about it a generation ago. Its fundamental assumption was that success would bring diffusion through a process of isomorphism.

Again, we lack the space to develop these ideas more fully. Yet, we hope these very brief examples suggest a flavor of the direction industrial relations should look as we attempt to move forward.

Indeed, although there have been few attempts to explicitly link industrial relations and economic sociology, one finds a number of examples in recent industrial relations scholarship where the tools of economic sociology might be fruitfully applied. Neo-institutionalists within economic sociology, for instance, have begun to consider how socially constructed institutions emerge and change over time and have struck on the notion of institutional entrepreneurship to explain it.

## Conclusion

This interpretation of developments in the United States opens a number of questions, in a variety of different domains. For the most part, we seek to explore these in other papers. We conclude however with a limited number of observations about the implications for Europe, and particularly for Germany.

I know that at this moment of time, you are preoccupied with the debate about your own labor market institutions. That debate has been defined in no small measure by the ability of the American economy to generate high rates of job growth and relatively low rates of unemployment relative, especially, to Germany and France, and the widespread belief that this is attributable to the flexibility of our labor market institutions. From this point of view, you must find this interpretation disappointing and irrelevant. Disappointing because I have said relatively little about the particular kinds of institutions which have developed in the United States and irrelevant because the focus on social identities as opposed to economic identities and class seems particularly American and “un-European”. Thus it seems that three points should be made in conclusion.

First, it suggests that the story about American flexibility which has framed the European debate is at the very least incomplete, if not completely wrong. In that debate, the notion of labor market flexibility has been reduced to the idea of escaping social control. American employers have definitely not escaped social control. The nature of that control has indeed changed, and changed quite dramatically, over the last twenty-five years. Whether or not it is more flexible in the sense that employers are better able to adjust to the business environment (whether the supply of labor is more elastic either to the economy or the firm) is an open question. One can speculate that because they are new, the social controls of the employment rights system are more consistent with economic efficiency than the controls imposed by the collective bargaining system. This speculation rests on the implicit assumption that social controls operate basically as static constraints upon the economy, a proposition that is itself debatable. But if true, it implies that the advantage that the U.S. has achieved in this way is a temporary one which will dissipate with time. In any case, the question of U.S. flexibility clearly requires a good deal of additional research and analysis before policy implications can be drawn for other countries.

Second, this interpretation offers a solution to one of the basic puzzles of the American labor market. How did we manage to so fundamentally change our labor market institutions and the distribution of social welfare without provoking any significant social protest or political reaction? If the new social constellations in the United States are indeed as *sui generis* as I know most of you believe, and you are unlikely to be able to change the axes of social evaluation in the way they have changed in the United States, this should give you pause about the feasibility of adopting U.S.-type labor market institutions, even if you remain convinced that these institutions are indeed critical to the economic performance you wish to achieve. For the U.S., of course, this raises a different question, for it is inconceivable that we could achieve social progress for the next generation in each of these groups comparable to that achieved in the current generation. What does this imply for the political and social stability of a country whose self image depends so heavily on the notion of progressive social progress? Will the locus of political and social mobilization shift again, and if so in what direction? And if it does not shift, will it generate the kind of social unrest that one would have expected to accompany the decline in union organizations and the rights of workers *qua* workers, in their places of employment?

But finally, I think you need to ask if the axes of recent social mobilization in the U.S. are in fact as irrelevant to the European context as they seem. And here I simply point to the question of Muslim identity in Europe which to the American eye looks totally familiar.

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