

# Class vs. Special Interest: Labor, Power, and Politics in the United States and Canada in the Twentieth Century

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## **Abstract**

Why are US labor unions so weak? Union decline has had important consequences for politics, inequality, and social policy. Common explanations cite employment shifts, public opinion, labor laws, and differences in working class culture and organization. But comparing the United States with Canada challenges those explanations. After following US unionization rates for decades, Canadian rates diverged in the 1960s, and are now nearly three times higher. This divergence was due to different processes of working class political incorporation. In the United States, labor was incorporated as an interest group into a labor regime governed by a pluralist idea. In Canada, labor was incorporated as a class representative into a labor regime governed by a class idea. This led to a relatively stronger Canadian labor regime that better held employers in check and protected workers' collective bargaining rights. As a result, union density stabilized in Canada while plummeting in the United States.

## **Keywords**

class conflict, trade unions, politics, social movements, labor, organizations

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Why are labor unions so weak in the United States? Union density, the percentage of non-agricultural workers who are covered by union contracts, currently stands at 12.3 percent, and 7.4 percent in the private sector. This is down from a peak of 33.3 percent in 1954, and is among the lowest rates in the Organisation for Economic Co-operation and Development (OECD).<sup>1</sup>

Union density decline has had important consequences for politics, inequality, and social policy. It has contributed to a dramatic rise in income inequality in recent decades, and has weakened the ability of working class Americans to shape their lives at work and to engage politically as citizens.<sup>2</sup>

Scholars have offered a variety of explanations for US unions' weakness and decline. These include structural employment shifts, flagging public opinion of unions, weak labor laws, hostile employers, individualist national values, the lack of a labor party, internal union characteristics, Cold War politics, and legacies of racial divisions.<sup>3</sup>

While many of these explanations are plausible, a comparative focus can help to adjudicate among them. In this article, I do so by comparing what has happened to unions in the United States with what has happened to them in Canada. Canada makes for a good comparison with the United States because of their strong similarities. Both are "liberal" welfare states. They are each other's largest trading partner, they share the world's largest border, many of the same companies operate in both countries, and they are one of the few places on earth where many of the same unions operate on both sides of the border.<sup>4</sup>

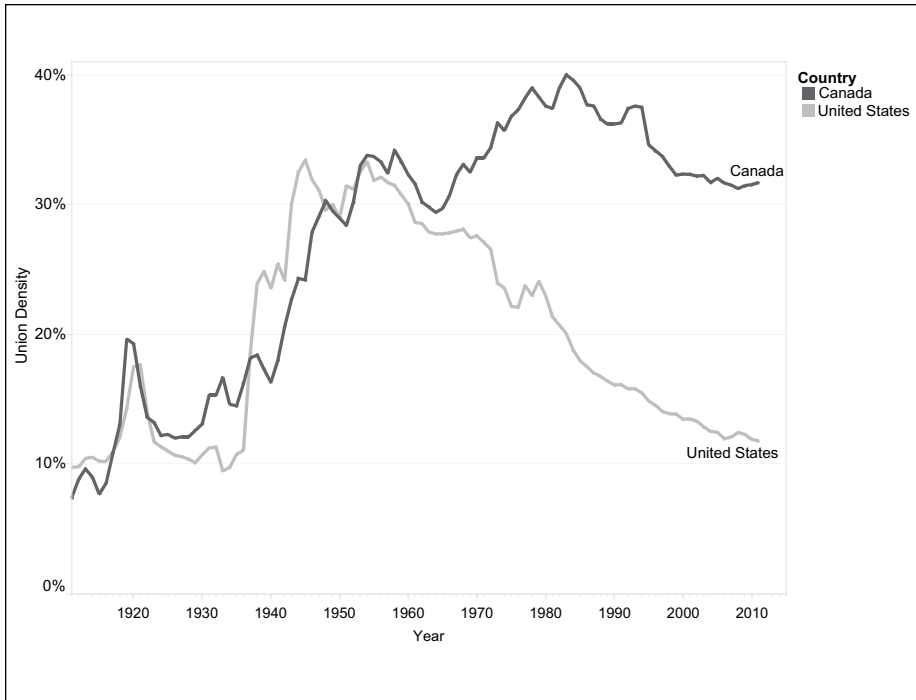
But the two countries differ when it comes to unions. While US union density is currently 12.3 percent, it is 31.2 percent in Canada—nearly three times higher.<sup>5</sup> Such a major difference between two such similar countries is already striking, but it becomes even more interesting when placed in historical perspective.

As Figure 1 below shows, union density followed a similar trajectory in both countries for much of the twentieth century: low and unstable for the first three decades, expanding dramatically from the 1930s through 1950s, then declining through the mid-1960s. At that point, we see a stark divergence; union density continued to decline in the United States, but rebounded in Canada. Although Canadian union density resumed its decline in the 1980s, it remained far higher than in the United States, and the decline was less steep. Canada is among the few OECD countries where union density remains at similar levels to those of the early 1970s.<sup>6</sup>

Why then, after tracking each other for several decades, did union density diverge in the United States and Canada starting in the mid-1960s?

Existing explanations cannot fully explain the divergence. Some, like structural employment shifts and public opinion towards unions, were similar in both countries. Others, like differences in national values and the structure of ethno-racial divisions, were constant throughout the period, making it difficult to account for the divergence. Still others, like the presence/absence of a labor party, different effects of the Cold War, and differences in labor laws, were important, but what remains unexplained is how and why these crucial differences emerged.

In this article, I develop an account of US-Canada union density divergence that addresses these unexplained issues. It focuses on the effects of different processes of



**Figure 1.** Union Density in the United States vs. Canada, 1911–2011.

Sources: See appendix.

working class political incorporation, and how they shaped the complex interaction between labor militancy, labor policy, and union density. By “political incorporation,” I refer to the process that moved organized labor into the political sphere. From the perspective of the state, it marked a shift from viewing labor as a problem to be policed, to being a constituency to address and administer. From the perspective of labor, it marked a re-shaping of collective political identities from precarious voluntary group to legitimate political actor.

In both countries, labor was politically incorporated as a result of struggles in the 1930s and 40s, in response to the crises of the Great Depression and World War II. As a result of these struggles, US labor was incorporated as an *interest group*, whereas Canadian labor was incorporated as a *class representative*. These different identities reflected different organizing logics that enabled or constrained labor’s scope of action in each country. Canadian labor’s role as a class representative fit into a *class idea* that broadened and legitimated its scope of action, while US labor’s role as an interest group fit into a *pluralist idea* that narrowed and delegitimized its scope of action. Table 1 summarizes these different organizing logics.

At an organizational level, US labor became more dependent on finding sympathetic political allies with whom to strike bargains, while Canadian labor learned the

**Table 1.** Differences in Organizing Logics.

Organizing Logic	Class Idea	Pluralist Idea
<b>Group Role—Labor</b>	Class representative	Interest Group
<b>Group Role—Capital</b>	Class representative	Interest Group/Individual Employers
<b>Group Role—State</b>	Mediator	Adjudicator
<b>Rights</b>	Collective	Individual
<b>Bargaining</b>	Group-based	Contract-based
<b>Interests</b>	Class/General	Special/Particular
<b>Institutionalization</b>	High	Low
<b>Politicization</b>	Low	High

value of independent mobilization for class-wide demands. At a policy level, US labor's interest group identity made labor issues appear as particular demands for a favored Democratic Party constituency, leaving labor policy politically contentious and subject to erosion over time. Conversely, Canadian labor's class representative identity made addressing labor issues part of a bargaining process to enforce industrial peace, leaving the labor regime more legitimate and stable over time.

The combination of a more protective and institutionalized labor regime and a labor movement more accustomed to winning gains through mass mobilization left Canadian labor better positioned to defend itself than its US counterpart when employers began a counter-offensive in the late 1960s. While US labor spiraled into decline, Canadian labor proved more resilient, leading to the divergence in union density rates. Although union density has declined across the OECD countries since the 1980s, the institutionalized legacy of past struggles has preserved working class organizational strength more in Canada than in the United States.

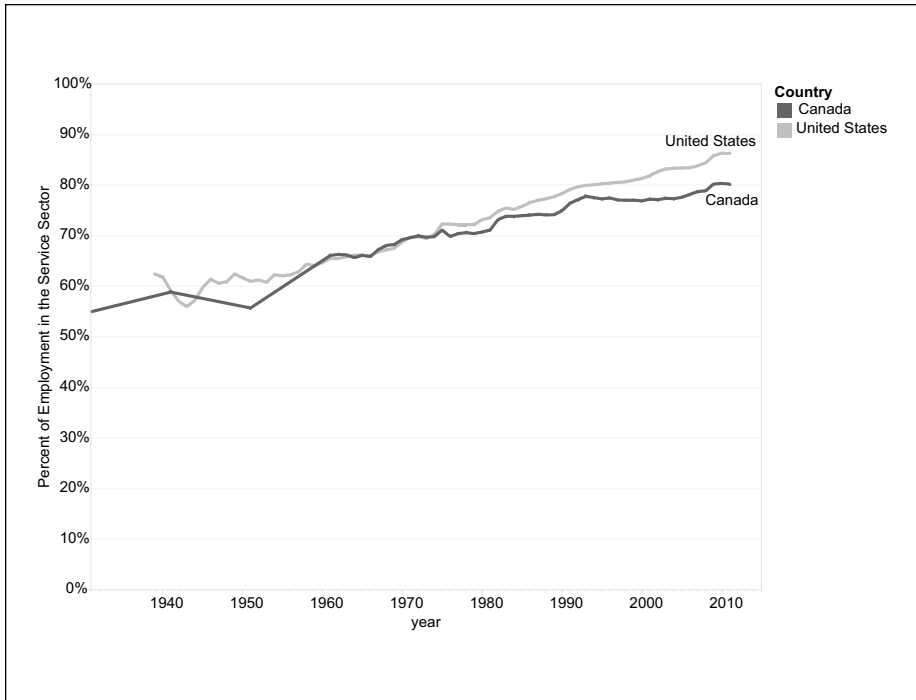
To develop this argument, the article proceeds as follows: I first briefly review and evaluate existing explanations for US-Canada union density divergence. Next, I offer my account of how different processes of political incorporation affected the formation and development of labor law regimes in both countries. The concluding section summarizes the findings and extends them to larger questions of political representation and policy change.

## Evaluating Existing Explanations<sup>7</sup>

Common explanations for US-Canada union density divergence point to structural, individual, and policy differences, as well as differences in working class culture and organization.

### *Structural Differences*

Structural explanations explain US union decline by pointing to shifts from higher-density manufacturing to lower-density service sector employment,<sup>8</sup> and geographic



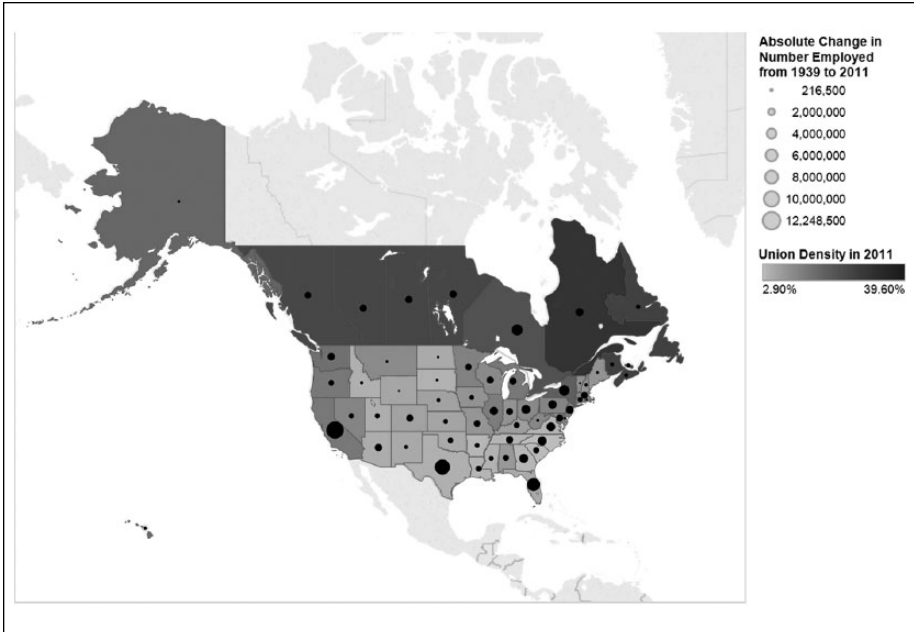
**Figure 2.** Percent of Employment in the Service Sector in the United States vs. Canada, 1931–2011.

Sources: See appendix.

employment shifts from the higher-density North to the lower-density South.<sup>9</sup> Comparing the United States with Canada casts doubt on these explanations. While employment has shifted from manufacturing to services over the past several decades, Figure 2 shows that the same is true for Canada.

As for geographic shifts, Map 1 overlays 2011 union density and changes in employment between 1939 and 2011 by state/province. It shows that inter-state union density is currently more dispersed than inter-provincial density. However, it does not show a pattern of stronger employment growth in lower-density states. Many low-density states in the US South experienced high employment growth, but so too did some high-density states, particularly in the West. Also, a closer look at the state-level data shows that lower density states did have strong employment growth, but the *lowest* density states did not.<sup>10</sup> Finally, the geographic shift argument takes as given the wide inter-state dispersion of union density rates, when this dispersion is part of what must be explained. Why is union density so uneven across the country, and why is it geographically clustered?

Additionally, some argue that the divergence in aggregate US-Canada union density is an artifact of Canada's larger and more heavily unionized public sector, which



**Map I.** Union Density in 2011 and Absolute Change in Number Employed from 1939 to 2011 in the United States vs. Canada.

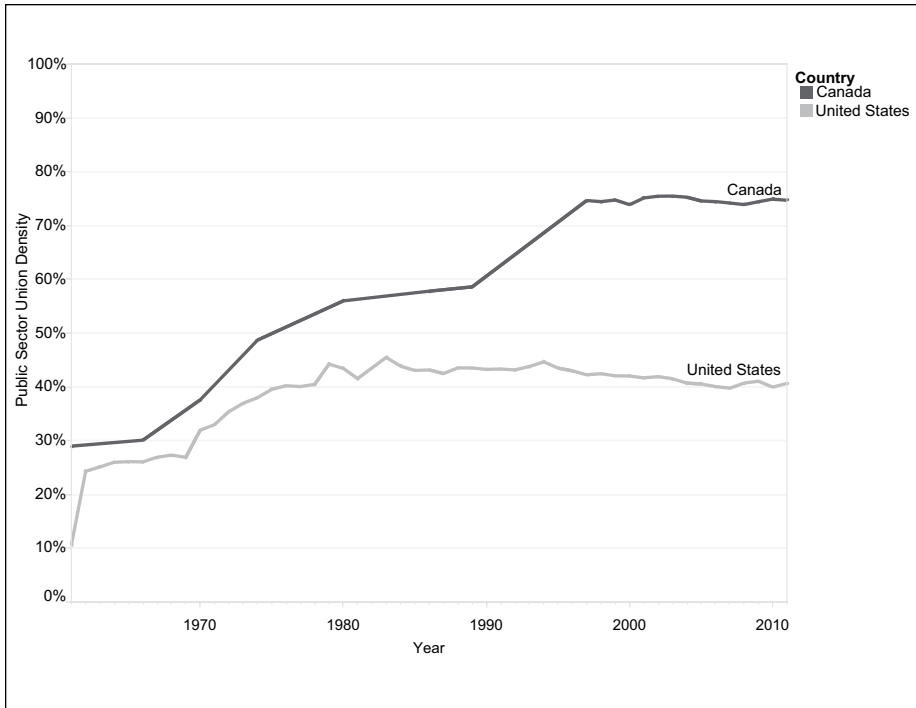
Sources: *United States 1939–1963*: Troy, Leo, and Neil Sheflin, *U.S. Union Sourcebook: Membership, Finances, Structure, Directory*. (West Orange, NJ: Industrial Relations Data and Information Services, 1985), Table 7.2: 7–4. *United States 1964–2011*: Barry T. Hirsch, David A. Macpherson, and Wayne G. Vroman, “Estimates of Union Density by State,” *Monthly Labor Review* 124, no. 7 (July 2001): 51–55.

*Canada 1941–1967*: J. K. Eaton and Kebebew Ashagrie. 1970. Union growth in Canada, 1921–1967 (Ottawa: Information Canada, 1976), 80. *Canada 1976–1995*: CALURA. *Canada 1997–2011*: LFS.

conceals an underlying tendency towards union decline and convergence with the United States in the private sector.<sup>11</sup> But as Figures 3 and 4 show, US-Canada union density diverged in *both* the public and private sectors starting in the late 1960s. Moreover, they show that the Canada/US unionization ratios are proportional across the public and private sectors. Canadian union density is roughly double that of the United States in both the public and private sectors. These ratios have remained relatively constant since the mid-1990s, making it difficult to argue that public sector union density is masking decline in the private sector.

### *Individual Differences*

Individual difference arguments contend that US-Canada union density divergence is a function of either (1) cross-border differences in individual workers’ preference for union representation; or (2) greater employer hostility towards unionization in the United States.<sup>12</sup> But as Figure 5 shows, union approval rates have been relatively



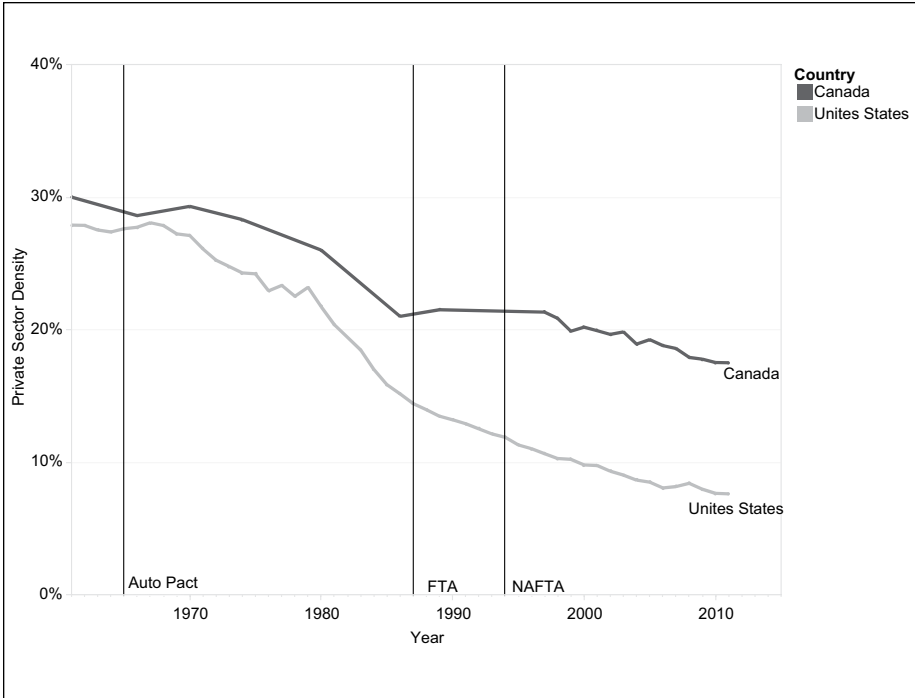
**Figure 3.** Union Density within the Public Sector in the United States vs. Canada, 1961–2011.

Sources: See appendix

similar in both countries over time, with Canadian rates actually somewhat *lower* than in the United States. Other surveys offering more direct measures of workers' willingness to join unions show little cross-border difference, with roughly half of respondents saying they would vote in favor of union representation if given the opportunity.<sup>13</sup>

As for employer hostility, surveys comparing individual employer attitudes towards unions in the United States and Canada show no measurable differences.<sup>14</sup> And, without diminishing the aggressiveness of US employers, historical accounts suggest that Canadian employers were quite similar. Surveying the evidence, Stuart Jamieson concluded that “[e]mployers in Canada are and have been no less hostile to unions than were their U.S. counterparts. Indeed, the record seems to indicate that they were even more hostile in some respects.”<sup>15</sup>

To the extent that cross-border variation exists, it results from policy differences that enable or constrain US and Canadian employers' ability to act on their mutual anti-union animus. As a survey respondent identified as “a manager at a US-owned firm, which is nonunion in the United States but partially organized in Canada” explained, “we play by the rules where we operate. In the United States, there are no rules. Here rules exist, and we follow them.”<sup>16</sup>



**Figure 4.** Union Density within the Private Sector in the United States vs. Canada, 1961–2011.

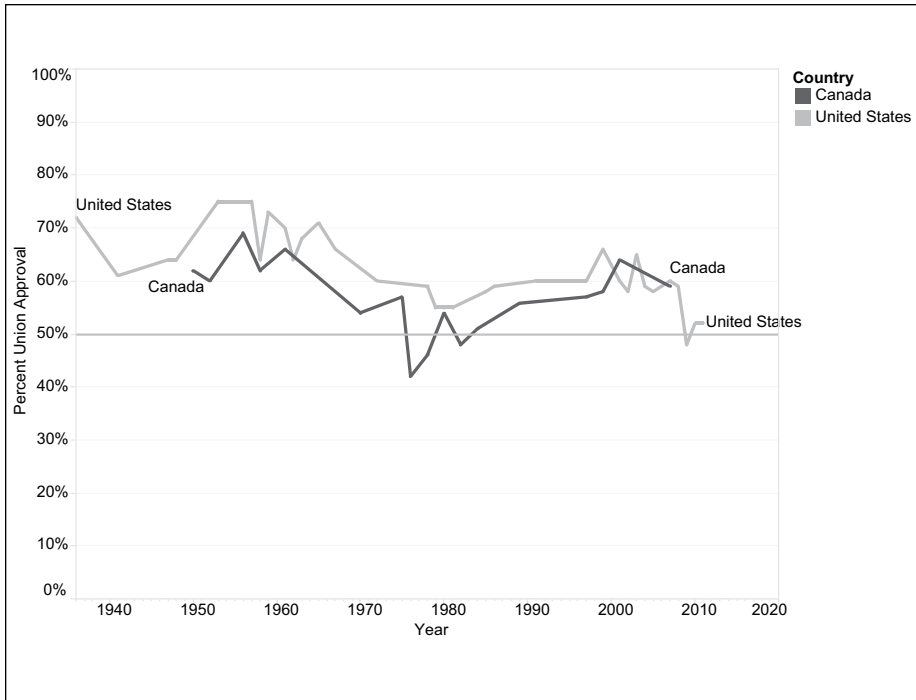
Sources: See appendix

### Policy Differences

Two types of policy can shape union density: macro-economic policy, which can affect the supply of unionized jobs; and labor policy, which can make it easier or harder for workers to join unions.

1. *Macro-Economic Policy:* Some argue that Canadian macro-economic policies, such as the cheaper dollar and the 1965 United States-Canada Auto Pact, protected highly-unionized manufacturing jobs in Canada.<sup>17</sup> But these policies cannot explain union density divergence. The data show no clear relation between union density and exchange rates at least since the mid-1980s.<sup>18</sup> As for trade policy, Figure 4 above includes lines marking the implementation of the 1965 Auto Pact, which should have shored up Canadian union density, as well as the 1987 Free Trade Agreement (FTA) and 1994 North American Free Trade Agreement (NAFTA), which should have eroded it. It shows a weak relation between the Auto Pact and union density divergence, as private sector density declined in both countries. Additionally, neither the FTA nor NAFTA





**Figure 5.** Percent Union Approval in the United States vs. Canada, 1936–2011.

Sources: United States: Gallup poll, various years, [http://www.gallup.com/file/poll/149282/Labor\\_Union\\_Approval\\_110831.pdf](http://www.gallup.com/file/poll/149282/Labor_Union_Approval_110831.pdf).

Canada: Canadian Institute of Public Opinion, *The Gallup Report*, various years, finding aid at <http://data2.archives.ca/pdf/pdf0011p000000715.pdf>. For 2007, Canadian data is from Angus Reid Strategies poll.

had much effect on private sector density. It declined only 4 percentage points (from 21 to 17 percent) since the adoption of NAFTA, as compared to 10 percentage points during the protectionist Auto Pact era.

2. *Labor Policy*: Labor policy differences are one of the most-cited explanations for United States-Canada union density divergence. The basic legal framework governing labor relations is similar in both countries. The Canadian framework is based on the US model established by the 1935 National Labor Relations Act (NLRA), or Wagner Act. The Canadian labor regime was established by a 1944 wartime decree, Order-in-Council PC 1003, later codified into law as the Industrial Relations and Disputes Investigation Act (IRDIA) of 1948.<sup>19</sup>

Although the frameworks are broadly similar, many researchers argue that key differences in Canadian labor law have better protected workers' collective bargaining rights than in the United States, leading to union density divergence. Labor economist Craig Riddell summarizes this view when he states that "much of the Canada-U.S.

unionization gap can be attributed to intercountry differences in the legal regime pertaining to unions and collective bargaining."<sup>20</sup>

Cross-border legal differences convincingly explain *current* union density differences.<sup>21</sup> However, those differences cannot fully explain US-Canada union density *divergence*. First is the problem of timing. Certain Canadian laws already existed when union density was similar in both countries, while others were only adopted starting in the 1970s and 1980s, a decade or more after density divergence began.<sup>22</sup> There is no clear pattern of policy changes that matches up with the timing of union density divergence.

Second, general perceptions of labor regime strength have not been consistent over time. Just as the current consensus holds that Canadian labor law better promotes collective bargaining than US law, the consensus was exactly *opposite* prior to the 1970s. For example, H. D. Woods, one of the most prominent Canadian industrial relations scholars of his day, stated in 1962 that:

In general terms it can be said the Canadian policy is not as favorable [as US policy] to the promotion of collective bargaining relationships... There has been a more positive attitude toward collective bargaining in the United States than in Canada.<sup>23</sup>

In sum, United States and Canadian labor regimes have diverged, both substantively and perceptually. But why did the US labor regime erode over time while the Canadian regime strengthened?

### *Working Class Culture and Organization*

Many scholars have pointed to differences in working class culture and organization to explain US-Canada union density divergence. Specifically, they identify four sets of differences: political institutions,<sup>24</sup> national characteristics,<sup>25</sup> internal union characteristics,<sup>26</sup> and the different roles of racial divisions.<sup>27</sup>

Based on more detailed analysis published elsewhere,<sup>28</sup> I conclude that many of these factors do help to explain US-Canada union density divergence. However, as with differences in labor policy, they also leave important questions unanswered. From that analysis, I distill three key questions that must be answered to explain US-Canada union density divergence:

1. Existing research shows that the presence of a labor party in Canada strengthened Canadian unions. Meanwhile, the lack of a labor party ultimately weakened US unions, particularly by tying US labor to a political coalition that included reactionary, anti-union, white supremacists. But why did a labor party take root in Canada, and not the United States?
2. Existing research shows that the social movements of the 1960s had a more galvanizing effect on Canadian labor than US labor. This translated into greater organizing effort and union revitalization. But why did the social movements of the 1960s have a more transformative effect on the Canadian labor movement than the US labor movement?

- Existing research shows that differences in labor laws affected union density. But why did Canadian labor law remain more stable over time, while US labor law eroded?

The remainder of this article will focus on answering the third question, showing how different processes of working class political incorporation in the United States and Canada shaped the development of labor law in both countries.<sup>29</sup>

## Political Incorporation and Labor Regime Divergence

In order to explain the divergence of US and Canadian labor law, we cannot examine labor laws in isolation. We must analyze them as they are embedded within broader social and political power relations. More specifically, we must examine the interaction between labor policy, labor militancy, and union density.

This is a complex and non-linear relationship. Sometimes increased labor militancy leads to violent state crackdowns, repression of labor rights, and union collapse, as was standard in the United States prior to the Wagner Act, and has remained a common occurrence in the years since. Other times, though, labor militancy leads to labor policy reforms, as was arguably the case with the Wagner Act, and was definitely the case with P.C. 1003 in Canada. The first problem therefore involves determining the conditions under which labor militancy leads to repression or reform.

Once labor reforms are in place, there is the question of how the resulting labor law regimes shape state and labor actions. For state actors, the question is how the state interprets and responds to subsequent labor militancy. For labor, the question is how the legal regime enables or constrains its scope of action. This does not simply refer to how laws directly govern union activities, although that is certainly part of it. It also refers to how legal regimes encourage different collective identities for labor, different senses of its social role, and who its allies and opponents are.

In the case at hand, explaining why Canadian labor law strengthened over time while US labor law weakened requires a two-step analysis. First, we must examine the critical initial moment in both countries when labor militancy led to labor policy reform, in the 1930s and 1940s. This is the moment in both cases where labor was politically incorporated, and where the current labor law regimes took shape. Second, we must examine how these regimes developed over time, and how they were tested by another upsurge in labor militancy, this time in the late 1960s and early 1970s.

I argue that as a result of the upsurges of the 1930s and 1940s, US labor was incorporated as an *interest group*, whereas Canadian labor was incorporated as a *class representative*. Each of these roles was in turn embedded in a different organizing logic, what I refer to as a “pluralist idea” and a “class idea.” These organizing logics shaped the two countries’ labor law regimes, and enabled or constrained labor’s scope of action differently in both countries. As a result, those labor regimes and labor movements responded differently to the upsurge of the 1960s and 1970s. In Canada, a class representative labor movement allied with a labor party, less deradicalized by postwar Red scares, and more closely aligned with New Left social movements, spearheaded a wave of

militancy that created a crisis to which the state had to respond. The Canadian state interpreted the crisis as a crisis of industrial relations. The result was a template for labor law reforms that were then implemented in the ensuing decades, which strengthened the labor regime.

In the United States, an interest group labor movement that had decisively rejected a labor party in favor of an alliance with the Democratic Party, had been deradicalized by Left purges, and was often distant if not outright hostile to New Left social movements, sought to tamp down labor militancy, which did not escalate to the levels seen in Canada. While militancy did attract attention from the state, the crisis was not interpreted as a crisis of industrial relations. Rather, the US state interpreted the crisis as a crisis of individual worker alienation, the solution for which was not labor law reform, but “quality of work life” programs. Attempts at labor law reform later in the 1970s failed, viewed as political payoffs to a narrow “special interest.” As a result, US labor law continued to erode.

To show how this worked, I will first examine the process of labor regime formation in both countries, comparing both the conditions of regime formation and the actual regimes that resulted. Then I will sketch out labor regime development in both countries, focusing on ways that class conflict was processed in the political and economic realms.

### *Labor Regime Formation*

The timing and conditions of labor regime formation were different in both countries, which had important consequences for subsequent labor regime development. In the United States, the Wagner Act was passed in July 1935, relatively early in the worker upsurge of the period. State actors, particularly President Roosevelt and the New Deal Democrats, pursued a *co-optive* strategy towards labor. They passed labor reform both as a way to control the worker unrest of the Great Depression, as well as to incorporate labor as a new constituency within the Democratic Party coalition.<sup>30</sup>

In Canada, Order-In-Council P.C. 1003 was passed in February 1944, in the midst of a massive wartime strike wave, and months after the ruling Liberal Party suffered a series of unexpected electoral defeats and near-misses at the hands of an insurgent farmer-labor party, the Cooperative Commonwealth Federation (CCF). State actors, in this case both the Liberal and Conservative parties, pursued a *coercive* strategy towards labor. They only acquiesced to labor reform under extreme duress, after nearly a decade of trying to impose industrial peace through state repression. Also, due to that coercive strategy, labor was *not* incorporated into the ruling party coalition. Instead, it forged an independent, class-based alliance with the CCF.<sup>31</sup>

The substance of the resulting labor regimes was quite similar. As previously mentioned, P.C. 1003 was modeled on the Wagner Act. But there were two key differences. First, the US labor regime adopted a *quasi-judicial* structure. This clearly separated adjudicative and conciliatory functions, emphasized legalistic procedure over settling disputes, and integrated the regime more tightly into the regular court system. By contrast, the Canadian labor regime adopted a *conciliatory* structure. This blended

adjudicative and conciliatory functions, emphasized enforcing industrial peace over adhering to legal procedure, and established a degree of independence from the regular court system.<sup>32</sup>

Second, the US labor regime adopted a *non-partisan* structure, with National Labor Relations Board (NLRB) members appointed by the President to serve as ostensibly impartial arbiters. By contrast, the Canadian labor regime generally adopted a *tripartite* structure, with designated representation on federal and provincial labor boards for labor, management, and the state.<sup>33</sup>

These organizational forms were not pre-determined. There was considerable experimentation and debate among government officials before settling on them. In fact, in the initial stages of regime formation, the United States and Canada were reversed, with Canada having a more quasi-judicial, non-partisan structure, and the United States having a more conciliatory, tripartite structure.<sup>34</sup>

The structures that policymakers settled on emerged due to the different organizing logics that lay at the heart of the two labor regimes. In the United States, the central goal was establishing and enforcing collective bargaining rights. Within a rights framework, a legalistic, quasi-judicial structure made more sense. In discussing the design of the Board, Labor Department officials noted that:

Only by thus limiting its activities [to adjudication] can [the NLRB] be of the most effectiveness...because the Board is supposed to exercise quasi-judicial authority, and *should refrain from weakening its own position by urging employers and employees to take steps which might bring about temporary peace but which are not based squarely on justice and legal rights.*<sup>35</sup>

In the same vein, designers settled on a non-partisan structure for the NLRB to mimic the autonomy of the judiciary in the regular courts and to keep partisanship out. Secretary of Labor Frances Perkins noted that:

It seems preferable to me to retain the present status of the Board as one completely representative of the public rather than to make it openly tripartite in character. The latter arrangement would inject partisanship into a situation in which it is extremely important to maintain as much impartiality as possible.<sup>36</sup>

In Canada, the central goal was enforcing industrial peace. As such, maintaining judicial impartiality was less important than controlling labor militancy and preventing strikes. Given how union recognition and strike suppression were intimately intertwined in the creation of the Canadian labor regime, it made sense to establish a more fluid relationship between adjudicative and conciliatory functions at both the federal and provincial levels.

Again, the conciliatory model was not a foregone conclusion. Several Canadian provinces experimented with quasi-judicial structures, but found they were poorly designed for intervening in labor disputes and enforcing industrial peace. Instead, policymakers opted for a “paradigmatically Canadian model of compulsory collective bargaining” that blended adjudicative and conciliatory duties, and used tripartite representative structures

for settling disputes. The idea was that the blended, tripartite structure would facilitate reaching agreements and avoiding strikes by mandating conciliation, while ensuring that class representatives familiar with the dynamics of industrial relations would be the ones to adjudicate cases. Additionally, board members' representative status would ease both parties' acceptance of board rulings.<sup>37</sup>

In sum, US policymakers focused on establishing and enforcing collective bargaining rights, leading them to develop a legalistic, quasi-judicial labor regime structure. Meanwhile, Canadian policymakers privileged reaching agreement, avoiding strikes, and ensuring compliance with board decisions over strict adherence to legal procedure. They settled on a conciliatory labor regime structure.

### *Labor Regime Development*

Given the different conditions surrounding labor regime formation in the United States and Canada, the political alliances for labor that resulted, and the different labor regime structures that emerged out of that process, what were the consequences for labor policy development and union strength?

Here we must focus on how both countries' labor regimes shaped the way that class conflict appeared in the political realm. In Canada, a labor regime focused on enforcing industrial peace understood working class issues as such. Worker unrest translated into policy reforms, which strengthened the Canadian labor regime over time. In the United States, that translation process was blocked. Working class issues were "mis-translated" as either questions of legal rights that had to be "balanced" against competing employer rights, the narrow "special interests" of a key Democratic Party constituency, or as personal problems unrelated to politics. In each case, this mistranslation diffused the political effect of worker unrest, and weakened the US labor regime.

1. *Class Issues as Legal Rights*: Looking first at the United States, the logic of establishing the NLRB as a quasi-judicial body, tightly connected to the regular court system, was that it would enhance workers' ability to enforce their rights.<sup>38</sup> But there were three problems with a focus on rights enforcement.

First, the rights framework privileged legal knowledge and expertise over knowledge of labor-management relations. This created greater incentives for employers to "lawyer up" and exploit technical loopholes, instead of focusing on reaching agreement.<sup>39</sup> It also led unions to focus more on sharpening legal arguments and less on member education and mobilization.<sup>40</sup>

Second, the focus on legal proceduralism transferred a template based on individual rights into an area of law fundamentally based on collective rights. This obscured the power imbalance inherent in the employment relationship, instead emphasizing the strict formal equivalence of the opposing parties before the law.<sup>41</sup> The concern with legal formalism led to certain structural reforms that hampered labor's ability to defend its rights.

One example of these reforms was a provision in the 1947 Taft-Hartley Act that created the NLRB's Office of the General Counsel. The idea was to make the Board

look more like a regular court, with “separation of powers” between the prosecutorial and judicial functions. In practice, this created a barrier of access to the Board for unions, which are almost always the plaintiff in Board hearings. While employer-defendants could represent themselves directly to the Board, unions’ case had to be mediated through the General Counsel. The General Counsel also retained the unappealable right to take or refuse charges, further limiting unions’ access to the Board.<sup>42</sup>

Third, the rights framework of the US labor regime created concern for “balancing” workers’ collective bargaining rights with employers’ property rights.<sup>43</sup> Part of this was rhetorical, as employers consistently complained that the Board and labor policy in general was too “unbalanced” in favor of unions.<sup>44</sup> But it also had a substantive, institutional component.

This came through in two ways. First, tighter integration with regular courts exposed Board decisions to substantive judicial review. This created a dynamic where judges would end up balancing workers’ more novel collective rights, established by the NLRA statute, against more deeply entrenched employer property rights.<sup>45</sup> Second, concern with “balancing” worker and employer rights led to the establishment of what was known as the “employer free speech” doctrine.

Again, this was an effort to transpose the trappings of formal democracy into the labor relations field, without taking into account the inherent power imbalance between labor and management. “Employer free speech” was based on “equal time” provisions that are common in electoral campaigns. In theory, it allowed employers to make their views known to workers with regard to the pros and cons of unionization, so that workers could get both the union side and the employer side. In practice, it legalized a series of practices that allowed employers to engage in systematic campaigns of threats and intimidation to prevent workers from unionizing.<sup>46</sup>

The situation was different in Canada. While there was also a tendency towards legal proceduralism, as in the United States, the Canadian labor regime’s overarching focus on containing industrial conflict meant that legal proceduralism did not take precedence over substantive outcomes. This led to a Canadian labor regime that was by design more interventionist than its US neighbor.<sup>47</sup>

While this placed serious constraints on labor, there were some benefits. First, the more interventionist labor regime also constrained employers’ ability to disregard workers’ collective bargaining rights. Even though several provinces enacted laws to protect employer free speech, as in the United States, those rights were considerably more circumscribed.<sup>48</sup>

Second, the threat of state intervention prevented labor leaders from developing the idea (common in the United States) that the state served to protect labor rights. Instead, by making class conflict more of a political issue, state intervention created a broader, more unified target for labor’s ire, one that larger groups of workers could see might directly affect them. Canadian labor’s closer ties to the political Left reinforced this perspective. The combination fostered a relatively more independent, oppositional labor movement in Canada.<sup>49</sup>

Third, the state’s focus on industrial peace and its demonstrated willingness to restrain labor gave far less bite to Canadian employers’ charges that the labor regime

was “unbalanced” in labor’s favor. Canadian state officials prided themselves on their “balanced” labor regime. As Deputy Minister of Labour W. Elliott Wilson noted in 1948 in response to employer calls for a Canadian Taft-Hartley Act, “Canada has been fortunate in that it has not gone to extremes. The pendulum has not swung too far in either direction.”<sup>50</sup>

Fourth, the Canadian focus on industrial peace also involved a greater recognition of the inherent power imbalance between labor and management, and the distinctive nature of conflict resolution in industrial relations. Substantively, this meant that the Canadian labor regime was granted more autonomy from the regular court system than in the United States. Whereas US courts could routinely rule on the merits of substantive aspects of labor board rulings, Canadian judicial review was largely limited to questions of procedure. This meant that industrial relations practitioners and specialists, those most familiar with the dynamics of industrial conflict, were most often those who had the final say in labor board decisions, and the US-style conflict between collective bargaining and property rights was less of an issue.<sup>51</sup>

In sum, the Canadian labor regime’s focus on containing industrial conflict led to a more interventionist regime that constrained labor, but also constrained employers and created mechanisms to ensure the regime’s institutional stability over time.

2. *Class Conflict as “Special Interests”*: US labor’s incorporation as an interest group also meant that class issues often appeared as the narrow “special interests” of a Democratic Party constituency. To understand why, we must examine how the ostensibly “non-partisan” structure of the NLRB actually led to its becoming incredibly partisan. This weakened the Board’s legitimacy over time.

In designing the NLRB, the authors of the Wagner Act were concerned about partisanship along *class* lines. They did not want direct labor and management representation on the labor board.<sup>52</sup> What they got instead was a Board that factionalized along *party* lines, Democrat vs. Republican.

This trend first emerged under President Eisenhower, who shifted from Roosevelt and Truman’s custom of appointing academics and long-time civil servants to the NLRB. Instead, he appointed management-side labor lawyers. Board appointees were no longer seen as representing a disinterested idea of “the public,” but rather as representing the political agenda of the president who appointed them. President Kennedy proceeded to appoint more pro-labor Board members who overturned several of the Eisenhower Board’s most pro-management decisions, and this back-and-forth continued under subsequent administrations, although it sharpened considerably starting with President Reagan.<sup>53</sup>

However, the back-and-forth bent in a pro-management direction. This is because the back and forth itself eroded the long-term legitimacy of Board rulings, while the courts that ruled on Board decisions tended to favor narrow, legalistic readings of the law that favored employers’ property rights, as discussed above.

The polarization of the NLRB also ensured that labor policy more broadly remained politicized along party lines. In this context, calls for labor law reform appeared not as



a solution to mitigate class conflict, but rather as a payoff to a narrow Democratic Party “special interest.” That blocked the possibility for improving labor law via legislation.

Again, the system worked differently in Canada. The tripartite structure of Canada’s labor regime reinforced its legitimacy and stability over time. Having labor and management representatives on the boards ensured that both parties felt that their views were fairly represented, and that both had a stake in the maintenance of the boards as institutions. Thus, it limited management’s ability to question the very legitimacy of the boards, as happened in the United States. It also facilitated the protection of workers’ collective bargaining rights over competing employer property rights. At a more symbolic level, the tripartite structure also promoted labor’s identification as a class representative, while undermining employers’ ability to portray business interests as the general or “public” interest.<sup>54</sup>

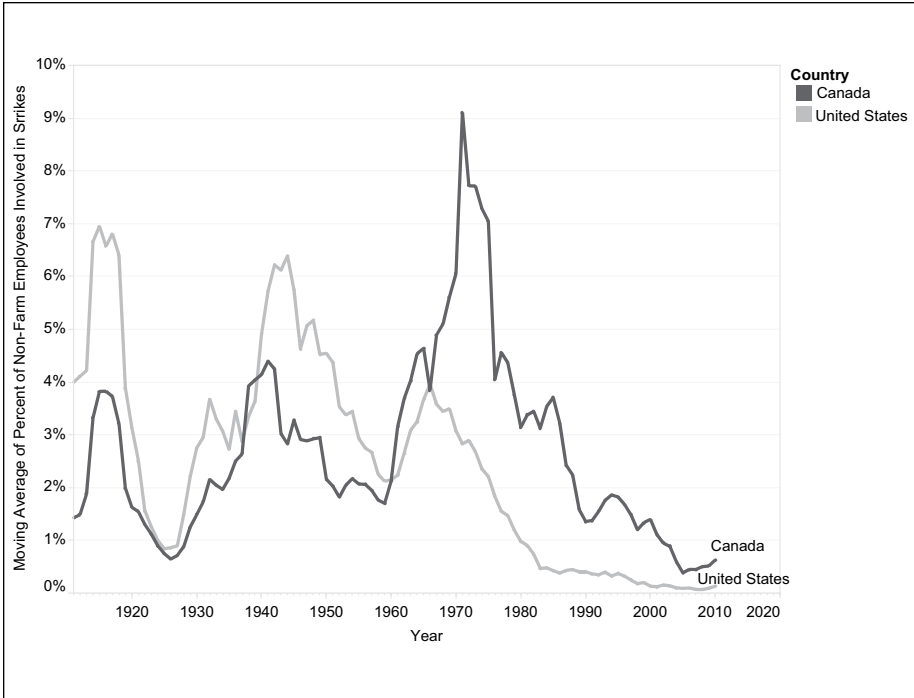
A generally legitimate labor regime, along with an overarching state concern for industrial peace helped to mediate the postwar tug-of-war between labor and capital in Canada: labor unrest would lead to state intervention, which would then culminate in legislative amendment of labor laws. The dynamic reinforced for labor the importance of mobilizing to win demands, while reinforcing for capital and the state the importance of a strong labor regime to discipline labor.

In sum, the key difference that emerged between the US and Canadian labor regimes is that in Canada, class conflict was addressed by the state both politically and administratively as class conflict. Meanwhile, in the United States, that process was disrupted. Class conflict still occurred, but would get sidetracked in legal procedures, “balanced” against competing employer property rights, or refracted through the lens of political partisanship.

*3. Class Issues as Personal Issues:* As both labor regimes came under stress starting in the late 1960s, a third difference became apparent. Management’s efforts to reassert its “right to manage” in response to inflationary pressures caused strike rates to spike in both countries, as shown in Figure 6. But while the initial uptick in industrial unrest was similar in both countries, the effects were different for both labor movements and labor regimes.<sup>55</sup>

For Canadian labor, increased worker militancy had a galvanizing effect. Its greater political independence through its alliance with the New Democratic Party (NDP),<sup>56</sup> combined with closer organizational ties to broader social movements, encouraged it to think of itself and act as more of a class representative. As such, it retained a degree of independent organizational capacity that was lacking in the United States. Labor continued to fight for broader social reforms while also mobilizing political pressure outside the halls of Parliament. As a result, Canadian labor was better equipped to withstand the increased employer and government attacks on labor beginning in the 1970s and 1980s.<sup>57</sup>

Meanwhile, in the United States, worker militancy deepened divisions between a restive rank and file and an increasingly conservative union leadership. The labor leadership’s abandonment of political independence in favor of an alliance with the Democratic Party, combined with the Cold War isolation from the left and social



**Figure 6.** Five-Year Moving Average of Percent of Non-Farm Employees Involved in Strikes in the United States vs. Canada, 1911–2011.

Sources: United States: *Historical Statistics of the U.S. Millennial Edition*, Table Ba4954–4964, Bureau of Labor Statistics, <http://www.bls.gov/news.release/wkstp.t01.htm>.

Canada: *Historical Statistics of Canada*, Table E190–197 (1901–1975); *Strategic Policy, Analysis, and Workplace Information Directorate, Labour Program, HRSDC (1976–2011)*, “Chronological Perspective on Work Stoppages,” <http://srv131.services.gc.ca/dimt-wid/pcat-cpws/recherche-search.aspx?lang=eng>

movements, encouraged it to think of itself and act as an interest group. As such, it limited itself to making economic improvements at the bargaining table, while looking for political reforms using inside influence and lobbying. The labor leadership saw the wave of rank and file protest as a threat to be quelled, not a movement to mobilize. But as labor’s influence within the Democratic Party weakened, and employer and government attacks intensified in the 1970s, labor’s underlying organizational weakness was exposed, allowing employers to engage in what UAW President Douglas Fraser despairingly called a “one-sided class war.”<sup>58</sup>

As for state labor regimes, the differences illustrate how the two countries processed class conflict in the political realm differently. As in the past, the Canadian labor regime interpreted this uptick in class conflict as such, and took steps to address the problem through legislative reforms that shored up the labor regime. By contrast, the US labor regime interpreted the crisis not as the result of class conflict, but as the result of individual worker alienation in postindustrial society. Proposed reforms involved improving human resources practices, not labor law. The US labor regime continued to erode.

Comparing two government reports, each issued within a few years of the other, crisply illustrates the cross-national difference. The Canadian report, entitled *Canadian Industrial Relations* and published in 1968, was known as the “Woods Report,” after its lead author, noted industrial relations scholar H.D. Woods of McGill University. The US report, entitled *Work in America* and published in 1972, was written by a special task force to the Secretary of Health, Education, and Welfare—tellingly not the Secretary of Labor.<sup>59</sup>

The Canadian report recognized class conflict *as* class conflict. It spoke in dire tones of “a crisis of confidence in the present industrial relations system” (p. 3), seeing in the unrest “a sense of frustration that the social, economic and political institutions of society are not pressing effectively for the removal of the disparities [in availability of human rights]” (p. 39). At the same time, the Woods Report noted with dismay that “militant behaviour has paid off frequently in recent years, even where union membership militancy has taken illegal forms,” and that “once having tasted the fruits of their militancy, union members may find it irresistible to display that militancy again” (p. 103). This possibly irresistible push towards militancy risked undermining union leaders’ ability to serve as “responsible” class representatives.

The solution, according to the Woods Task Force, was to shore up collective bargaining as an institution, “not only because of its virtues... but also because we see no alternative that is compatible with the heritage of Western values and institutions” (p. 137). To that end, the Task Force proposed a series of reforms to the structure and functioning of Canadian collective bargaining. These proposals, while not all adopted, set a new pattern for the Canadian labor regime. The Woods Report served as a template for many of the federal and provincial labor reforms that occurred over the course the 1970s and 1980s. Even though the strike wave quickly subsided in Canada, it left a legacy in those policy reforms, which mitigated the trend of union density decline that has characterized most of the industrialized world in recent decades.

Although it was responding to what was in many ways a very similar crisis, the US report was very different from the Woods Report. Whereas the Woods Report recognized class conflict for what it was, *Work in America* saw the problem as related to “the alienation and disenchantment of the blue-collar worker” (p. xv). Rather than seeking to examine the possible structural causes behind the rash of wildcat strikes, the authors chose to plumb the depths of workers’ psychology to understand the problem.

Out of 284 pages, exactly *two* pages in the entire report mentioned unions (pp. 112–13), and even then only to note that unions were also contributing to the problem of worker alienation. This omission is indicative of the erasure of the class idea in the United States by this time. The idea that social classes or unions could play a role in shaping broad social issues was virtually unthinkable. Instead, both economic and social problems were framed at the level of the individual.

The difference between the two reports is especially startling when we consider that US and Canadian union density was still fairly similar at this point. The yawning gap did not exist yet. But the gap that did exist was between class conflict and the political realm. Since the worker upsurge of the 1960s was interpreted not as a class issue, but rather a problem of individual alienation, the policy solutions in *Work in America* addressed “quality of work life” issues, not labor-management power dynamics. Workplace protest in the United States did not translate into policy reform, as it did in Canada.

This is not to say that labor policy was not in need of reform. To the contrary, labor regime erosion and union decline was already evident by the 1970s. But with the labor regime incapable of translating worker pressure into policy reform, labor had to continue its inside game of seeking influence as an interest group within the Democratic Party. But by the 1970s, the Democratic Party was distancing itself from labor and becoming an increasingly less reliable ally. As such, despite having a Democratic President and Democratic control of both houses of Congress, a major effort at legislative labor law reform died when the bill failed to withstand a Senate filibuster in 1978. Key to the bill's defeat was the charge that it was political payback designed to benefit a narrow "special interest" allied with the Democrats.<sup>60</sup>

After the 1978 labor law failure came events more commonly identified with US union decline: deregulation, the Reagan revolution, and the PATCO strike. But these landmark events only exposed the weakness of a labor regime that had been eroding for decades.

## Conclusion

While unions have declined across the industrialized world since the 1970s, nowhere has the decline been more pronounced than in the United States. Union decline has contributed to growing economic inequality, while also impeding workers' ability to influence politics and social policy. Meanwhile, despite sharing many socio-economic similarities, Canada has not experienced similar rates of union decline. Instead, after tracking each other for much of the twentieth century, US and Canadian union density diverged in the 1960s, to the point where Canadian union density is now nearly three times higher than in the United States.

In this article I have sought to explain union density divergence in the United States and Canada. I showed that common explanations for union density divergence in the United States and Canada—including structural employment shifts, individual differences, policy differences, and differences in working class culture and organization—are insufficient. Instead, I showed that union density divergence resulted from different processes of working class political incorporation. These processes led to the formation of different labor regimes, governed by two different organizing logics. In the United States, labor was incorporated as an *interest group* into a labor regime governed by a pluralist idea. In Canada, labor was incorporated as a *class representative* into a labor regime governed by a class idea.

Labor regime differences led to differences in how those labor regimes perceived and processed working class issues. In Canada, working class issues were understood as such. Worker unrest translated into policy reforms, which strengthened the Canadian labor regime over time. In the United States, that translation process was blocked. Working class issues were "mistranslated" as either questions of legal rights, the narrow "special interests" of a key Democratic Party constituency, or as personal problems unrelated to politics. In each case, this mistranslation diffused the political effect of worker unrest, and weakened the US labor regime.

The differences in political incorporation and regime development led to a Canadian labor regime that legitimized class issues and facilitated addressing them, and a US

labor regime that delegitimized class issues and prevented addressing them. As employer aggression flared in both countries in the 1970s, the Canadian regime held employers in check and better protected workers' collective bargaining rights. Meanwhile, the US labor regime proved incapable of reining in employers and protecting workers' rights. As a result, union density stabilized in Canada through the ensuing decades, while collapsing in the United States.

Politically, these findings raise important questions for the future of labor revitalization. While current efforts have focused on labor law reform and innovative types of corporate campaigns, these findings suggest that such efforts will have limited effects if they are not combined with a focus on potentially disruptive workplace organizing.

Empirically, the article extends efforts to develop a political sociology of the New Deal that integrates "state-centered" and "society-centered" approaches.<sup>61</sup> It highlights the central role of political identities for understanding policy formation and development. The different identities that labor developed in both countries as a result of their political incorporation—class representative or interest group—shaped how labor interacted with the state, and how state actors perceived and processed labor's issues. This affected the two countries' policy regimes, and how they enabled and constrained labor's scope of action.

While this article focused on how political incorporation processes shaped policy regimes, further research should examine in greater detail how political incorporation shapes organizations themselves. In the same way that policy regimes enabled or constrained labor's scope of action in different ways, so too could labor's self-conception as a class representative or interest group have fostered different repertoires of action.<sup>62</sup>

Theoretically, the article also raises important questions for understanding the complex inter-relation between state repression, social mobilization, and institutional development. Scholars have focused on understanding the conditions under which states will resort to political repression, as well as the effects of state violence on political protest or social movement "success." Other lines of research have traced the longer-term effects of social movements on policies and social change.<sup>63</sup> The foregoing analysis integrates these differing perspectives, showing how state repression shapes movement goals and strategies, while also having long-term, often unanticipated consequences for the development of states and social movements. Further research should explore in greater detail the conditions under which state repression leads to movement collapse or movement galvanization.

## **Appendix A: Archival Data Sources**

Archival data for this project was collected over the course of fourteen months between September 2008 and November 2009. Archives visited include:

- George Meany Memorial Archives, Silver Spring, Maryland
- Hagley Library, Wilmington, Delaware
- Kheel Archives, Catherwood Library, Cornell University, Ithaca, New York
- Library and Archives Canada, Ottawa, Ontario
- National Archives, College Park, Maryland

- Walter P. Reuther Library, Wayne State University, Detroit, Michigan
- Robert F. Wagner Papers, Georgetown University Special Collections, Washington, D.C.

## Appendix B: Union Density and Employment Statistics

Figure 1 tracks union density rates in the United States and Canada between 1911 and 2011. This required compiling time series data both for union membership and non-agricultural employment. I chose to switch to using collective bargaining coverage rather than simply union membership as the numerator when such disaggregated data became available, in 1977 for the United States and 1997 in Canada. This was both to provide as complete a picture of the extent of collective bargaining in each country, as well as to ensure comparability across countries, as the post-1997 Canadian data only reports collective bargaining coverage. Given that collective bargaining contract terms are determined at the firm level in both countries, and do not extend to entire sectors, the difference between membership and collective bargaining coverage numbers is quite small, usually between 1 and 2 percent (slightly more in the public sector), and does not substantively change the overall trajectory for union density in either country.

### United States

*Union Membership:* Data for union membership and collective bargaining coverage comes from three sources:

1. For aggregate union membership from 1911 to 1972: The Bureau of Labor Statistics' series reporting "Union Membership, 1880–1999," which can be found in Table Ba4783–4791 of Susan B. Carter et al., *Historical Statistics of the United States Millennial Edition Online* (New York: Cambridge University Press, 2006), available online at <http://hsus.cambridge.org/HSUSWeb/toc/tableToc.do?id=Ba4783-4791>.
2. For aggregate union membership and collective bargaining coverage from 1973 to 2011: Estimates from the Census Bureau's Current Population Survey (CPS), as compiled by Barry T. Hirsch and David A. McPherson and reported at [www.unionstats.com](http://www.unionstats.com). For the years 1973–1976, estimate is for union membership. From 1977–2011, estimate is for collective bargaining coverage. For the years 1973–81, data comes from the May Current Population (CPS). For the years 1983–2011, data comes from the CPS Outgoing Rotation Group (ORG) Earnings Files. There were no union questions in the 1982 CPS, so membership data for that year is interpolated by averaging membership figures for 1981 and 1983.

*Non-Agricultural Employment:* Data for US non-agricultural employment comes from two sources:

1. For aggregate non-agricultural employment from 1911 to 1972: Carter et al., *Historical Statistics of the United States Millennial Edition Online*.

2. For aggregate non-agricultural employment from 1973 to 2011: Estimates from the Census Bureau's Current Population Survey (CPS), as compiled by Barry T. Hirsch and David A. McPherson and reported at [www.unionstats.com](http://www.unionstats.com).

## Canada

*Union Membership:* Data for union membership comes from three sources:

1. For aggregate union membership and collective bargaining coverage from 1911 to 1975: Directory of Labor Organizations in Canada, as reported in F. H. Leacy, M. C. Urquhart, and K. A. H. Buckley, *Historical Statistics of Canada*. (Ottawa: Statistics Canada, 1983), available at [http://www5.statcan.gc.ca/access\\_acces/archive.action?l=eng&loc=E175\\_177-eng.csv](http://www5.statcan.gc.ca/access_acces/archive.action?l=eng&loc=E175_177-eng.csv).
2. For aggregate union membership from 1976 to 1995: Corporations and Labour Unions Reporting Act, Part 2, (CALURA) as reported in Statistics Canada, Table 279-0026: Number of unionized workers, employees and union density, by sex and industry based on the Standard Industrial Classification, 1980 (SIC), annual, available online at <http://www5.statcan.gc.ca/cansim/a34?lang=eng&id=2790026&searchTypeByValue=1&mode=tableSummary&p2=35>.
3. For aggregate collective bargaining coverage from 1997 to 2011: Labour Force Survey, available online at <http://www5.statcan.gc.ca/cansim/a34?lang=eng&id=2820078&searchTypeByValue=1&mode=tableSummary&p2=35>.

*Non-Agricultural Employment:* Data for non-agricultural employment comes from four sources:

1. Employment data for 1921 to 1967: J. K. Eaton and Kebebew Ashagrie, *Union growth in Canada, 1921–1967* (Ottawa: Information Canada, 1976), Table VI-A, p. 78.
2. Employment data for 1968 to 1976: George Sayers Bain, *Union Growth and Public Policy in Canada* (Ottawa: Employment Relations Branch, Canada Department of Labour, 1978), Table 1, p. 3.
3. Employment data for 1976–1995: CALURA, Table 279-0026: Number of unionized workers, employees and union density, by sex and industry based on the Standard Industrial Classification, 1980 (SIC), available online at: <http://www5.statcan.gc.ca/cansim/pick-choisir?lang=eng&p2=33&id=2790026>.
4. Employment data for 1997–2011: Labour Force Survey, Table 282-0078: Employees by union coverage, North American Industry Classification System (NAICS), sex and age group, annual, available online at: <http://www5.statcan.gc.ca/cansim/a34?lang=eng&id=2820078&searchTypeByValue=1&mode=tableSummary&p2=35>.

Special Note on employment from 1911 to 1920: Labour Canada did not start collecting data on non-agricultural employment until 1921. Thus, there is a ten-year period

from 1911 to 1920 where there is annual data on union membership, but not non-agricultural employment. To create union density statistics for this period, I used 1911 census data on “gainfully employed” persons (subtracting agricultural employment) to create a union density data point for 1911. I then generated estimates for the years between 1911 and 1921 by linearly interpolating between the 1911 data point and the first Labour Canada estimate of the paid non-agricultural workforce in 1921. The 1911 census data was obtained from Historical Statistics of Canada, Series D8-85: Work force, by industrial category and sex, census years, 1911 to 1971.

### **Appendix C: Public vs. Private Sector Union Density**

The main definitional problem with public sector employment is that official employment statistics until relatively recently have focused on distinguishing between different types of jobs, rather than on determining whether those jobs were performed in the public or private sector. For the United States, the Bureau of Labor Statistics’ (BLS) Current Population Survey (CPS), a household survey, began including questions intended to determine whether respondents were employed in the public or private sector in 1973. For Canada, Statistics Canada’s Labor Force Survey (LFS), a similar household survey, only began including such questions in 1997.

Prior to this, efforts at disaggregating public and private sector employment involved developing estimates based on certain sets of assumptions. For the United States, the most extensive series of such estimates is that compiled by Troy and Sheflin. Their series includes disaggregated estimates of public and private sector union density from 1929 to 1983, with a break in the series in 1962. For Canada, there are only periodic estimates of public sector unionism prior to 1997, the most complete done by Bergeron.<sup>64</sup>

To create roughly comparable datasets, I have combined the Troy and Sheflin and CPS data for the United States, and the Bergeron and LFS data for Canada. I use CPS data on public sector collective bargaining coverage (which starts in 1977), not membership, as this is the only measure available from the Canadian LFS. The difference between the two was fairly significant in the 1970s and 1980s, between 7 and 9 percentage points, but has since shrunk to under 4 percentage points.

Due to limitations in the Canadian data, I begin the data series in 1961, the first year with data reported for both countries. While a more comprehensive data series would be preferable, beginning the series in 1961 is sufficient for two reasons. First, we know from existing membership numbers that public sector unionism in both countries was not a significant portion of overall union membership prior to the early 1960s. In neither country did it surpass 13 percent of total union membership until the early 1960s, and for the majority of that period, public sector membership was firmly in the single digits. As such, public sector union membership did little to drive overall union density statistics until the 1960s. Second, as we know from the aggregate union density data, the divergence between US and Canadian union density only began in 1964. Thus, beginning the series in 1961 does capture the complete period of density divergence, as well as the period immediately preceding it.



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