

What Made America Go to the Right, Sweden to the Left? On the Importance of Labor Law

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***Abstract:** The article argues that collective labor law is a fundamental element of American exceptionalism and also a basic factor in the Swedish model. The two systems of labor law could hardly be more different: regulation of the unions in the early period of industrialism became minimal in Sweden and massive in America, where the courts were strongly antiunion. In both countries the way unions were treated by the public authorities had far-reaching effects not only on labor relations but also on political structure and on public policies. In Sweden, a near-absence of labor legislation and key decisions in the Supreme Court facilitated a rapid growth of the unions and, indirectly, of the Social Democratic Labor Party, which became dominant in Swedish politics. In America, legal restraints were particularly effective against attempts to organize unskilled workers. Labor organizations became smaller, more middle-class oriented and less influential than they had a potential to become. Low levels of union membership effected workers' participation in politics and elections and influenced America in a conservative direction. There is not much evidence that American workers, to begin with, were less inclined to organize than workers in Europe.*

***Key words:** American exceptionalism – the Swedish model – labor history - industrial action – criminal conspiracy – labor injunction – collective laissez-faire – class consciousness – cumulative patterns*

In June 1938, President Franklin D. Roosevelt requested an impartial account of the labor-employer relations in Sweden. An official commission representing both sides in industry visited Sweden. The Swedish Employers' Confederation (SAF) and the Swedish Trade Union Confederation (LO) supplied a joint account of industrial relations, and the commission met several spokesmen from both sides, who were said to be "outspoken in their respect for each other." Leading representatives of the SAF and the LO received the commission at a joint meeting. Both employers and workers preferred voluntary negotiations to any kind of government compulsion. The closed shop "[is] not a significant issue in Sweden, because of the very large proportion of workers who are union members and because the employers no longer try to break down union organization, preferring to deal with their workers through strong trade unions." On the other hand, the employers were not asked by the unions to exercise pressure upon their employees to make them join the unions. The commission reported that discrimination against workers due to union activity was not a significant problem. The settlement of differences by methods of persuasion rather than by force had become the order of the day. Problems that caused endless quarrels in America were not even significant issues in Sweden. The commission emphasized the absence of legislation restricting concerted action of trade unions and employers and the fact that union activity was substantially free from regulations so long as it did not "violate the ordinary police regulations that apply to all citizens."¹

Politically, Sweden is markedly different from America. The Social Democratic Labor Party has been dominant since the 1930s, social equality is considered a paramount value, the public sector is large, and taxes are high. In America the prevailing philosophy is opposed to the welfare state, and public policies are mostly conservative. There are, however, some striking historical similarities that facilitate a comparative study of labor law and labor relations in America and Sweden. The formative period of industrialization was from the 1860s to the 1930s, the economic philosophy in those years was liberal or even laissez-faire; the role of government in the economic sphere and the size of the public sector were rather limited. Both countries were devoted to the freedom of

¹ *Report of the Commission on Industrial Relations in Sweden, with Appendices* (1938).

expression and the rule of law. Since de Tocqueville America was known as the harbor of numerous associations. Even to this day, Americans are more active than Europeans in voluntary associations, with the exception of labor unions.² In Sweden popular organizations such as cooperatives, free churches, educational and temperance associations were plentiful and important. Sweden, too, was rather unaffected by feudalism, farmers were never subjected to serfdom, the economic dominance of the nobility had been broken by the king in the seventeenth century, no social revolution had produced a lasting hostility between social groups, and there was always some local autonomy.

In the middle of the nineteenth century Sweden was, however, more conservative and less democratic than America. Anyone trying to look into the future of labor relations would have guessed that Americans, not Swedes, would in time build a great and powerful labor movement. The Workingmen's Party in Philadelphia, founded in the 1820s, is believed to be the first labor party in the world.

Labor law is an element of both American and Swedish exceptionalism. We can hardly find two other western countries more different with regard to the relations between the state on the one hand and employers/workers on the other. Three propositions will be made here. 1) Intervention by public authorities in labor relations was massive and overwhelmingly antiunion in America in the formative period of industrialization, while it was minimal in Sweden. 2) Legal restrictions on the unions in America undermined a potentially strong labor movement, reducing its size and pushing its policies in a conservative direction. The near-absence of regulation helped Swedish workers to build perhaps the strongest labor unions in the world. 3) The organizational strength of the workers in a modern society is a major factor in the shaping of public policy. In the following these claims will be examined more closely with a view to clarifying the political significance of intervention by public authorities in labor relations.

² Seymour Martin Lipset, *American Exceptionalism: A Double-Edged Sword* (New York and London: W.W. Norton & Co., 1997) 278-79. The United States leads in the proportion of people who do unpaid work for voluntary associations, according to World Values Survey 1990.

Two Extreme Models

1. Labor Law and Public Intervention in the United States

The Constitution of the United States was based on the idea of popular government, and its founders wrestled with the complications of majority rule. In *The Federalist* letter 10, James Madison emphasized the necessity to “break and control the violence of faction.” To him the unequal distribution of property was the most common and durable source of faction. “Those who hold and those who are without property have ever formed distinct interests in society.” The regulation of such interests was “the principal task of modern legislation.” Alexander Hamilton believed that the judiciary, having no power over the sword or the purse, would be of little danger to the rights of the citizens: “It may truly be said to have neither FORCE nor WILL but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgment.” The general liberty of the people could “never be endangered from that quarter.” The courts of justice should “declare all acts contrary to the manifest tenor of the Constitution void” (letter 78).

The courts became a powerful and highly conservative element. William Blackstone’s law commentaries in the 1760s were probably more important in America than in England, where their influence was challenged by the Benthamites.³ Legal traditionalism ruled, in spite of the radical and egalitarian principles of the American Revolution.

In 1806 eight men were found guilty of a combination to raise their wages in the so-called Philadelphia Cordwainers (shoemakers) case. They were sentenced to fines of about a week’s pay, based on the common law doctrine of criminal conspiracy. Conspiracy trials were tests of the validity of English common law. The outcome of the Philadelphia trial has been described as a climax in the debate between the Hamiltonian federalists, advocating common law as a means to maintain the unity of the legal system, and Jeffersonian anti-federalists, who saw common law as a part of the *ancien régime*.⁴ The common law doctrine of

³ Louis Hartz, *The Liberal Tradition in America* (New York: Harcourt, Brace, 1955) 45.

⁴ Victoria C. Hattam, *Labor Visions and State Power: The Origin of Business Unionism in the United States* (Princeton University Press, 1993) 47-56.

master and servant was upheld by the judiciary and provided legal sanction for employers' authority.⁵

Courts in several states followed the precedent in Philadelphia; workers were convicted of conspiracy, strikes were broken up, associations disbanded. In 1842, however, the Supreme Court of Massachusetts ruled that labor organizations and workers' concerted action, even strikes, could be legitimate, depending on their aim. That was a turning point, and it was only after the Civil War that the conspiracy doctrine was again used by the courts to contain workers' combinations. Businessmen and manufacturers were also sometimes found guilty of conspiracy. Workers embraced the conspiracy doctrine as a restriction on banks and monopolies. With broad consent the courts took it upon themselves to regulate workers' collective struggles.⁶

Still, before the Civil War workers were freer to act collectively in America than anywhere in Europe. Popular associations were subjected to far less police supervision. "For working people the most important part of the Jeffersonian legacy was the shelter it provided for free association, diversity of beliefs and behavior," writes David Montgomery.⁷

After the war, economic change and social turmoil made the workplace a central battleground between capital and labor. There were numerous conspiracy verdicts in labor disputes, with frequent references to the property rights of private owners rather than, as before 1842, to the public good. The atmosphere was now heated, and penalties were up to three years and eight months in prison and bail terms as high as one thousand dollars.⁸

Some labor unions, socialist groups and progressive movements called for legislation to protect the workers against biased, repressive courts. The legislators in New York and Pennsylvania enacted laws several times to limit the conspiracy doctrine to cases of force, threats, and intimidation. Peaceful collective action was to be exempt. Legal disputes often focused on intimidation,

⁵ David Montgomery, *Citizen Worker: The Experience of Workers in the United States with Democracy and the Free Market during the Nineteenth Century* (Cambridge University Press, 1995) 5.

⁶ Hattam 60-69, 105-07.

⁷ Montgomery 4, 6.

⁸ Hattam 69-72.

and the courts were now strict; almost all sorts of collective action were construed as intimidation. An impressive picket line or the circulation of leaflets could be unlawful if it brought the power of the organization to bear on fellow workers. Judge George Barrett in New York wrote in a verdict 1886: "The men who walk up and down in front of a man's shop may be guilty of intimidation, though they never raise a finger or utter a word. Their attitude may, nevertheless, be that of menace." In almost every conspiracy trial in New York the workers were found guilty, in spite of the anti-conspiracy acts. In Pennsylvania, too, the courts extended the definition of intimidation in a way that rendered the legislative protection of the right to collective action meaningless.⁹

Legislative provisions were almost the same in Great Britain as in New York and Pennsylvania. However, in interpreting "intimidation" the British courts deferred to Parliament and recognized the collective rights of the workers. The profound difference between America and Britain was not in the legal principles but in the relationship between the legislators and the courts.¹⁰

From the mid-1880s the conspiracy doctrine was gradually replaced by the instrument of labor injunctions. Judges could prohibit strikes and boycotts considered illegal and all measures in support of such actions, for instance demonstrations. No jury trial was required, and injunctions could be issued on the basis of affidavits without an opportunity for the defendants to respond. Contempt of court was a formidable sanction. Many injunctions prohibited interfering with the plaintiff's business in any manner whatsoever. To forestall intimidation a judge could limit the number of pickets at a particular place, or even prohibit picketing or demonstrations as potentially unlawful. The courts "deemed picketing inherently intimidating," writes William E. Forbath. Injunctions transformed peaceful demonstrations into scenes of arrests and street violence, encouraging employers and the press to portray strikers and unions as lawless.¹¹ Though industrial action was in principle legal, thousands of

⁹ Hattam 72, 140-52.

¹⁰ Hattam 193-94.

¹¹ Melvyn Dubofsky, *The State & Labor in Modern America* (Chapel Hill: The University of North Carolina Press, 1994) 33; William E. Forbath, *Law and the Shaping of the American Labor Movement* (Cambridge, MA: Harvard University Press, 1991) 109.

strikes were met with restrictive measures. Federal injunctions were sought by the employers in the major strikes and tended to guide the rulings in the state courts.¹² Many labor leaders, among them Samuel Gompers, the president of the AFL, and Eugene Debs, a future leader of the Socialist Party, openly defied labor injunctions. They were charged with contempt and sentenced to jail.¹³

The AFL called for legislation against the use of labor injunctions. In 1898, with the Erdman Act, Congress recognized the legitimacy of unions and banned the “yellow-dog contract” (prohibiting a worker to join a union) on interstate railways. The Industrial Commission in 1902 recommended that the power of federal courts to issue labor injunctions should be restricted. The Clayton Antitrust Act in 1914 exempted the unions from the antitrust legislation and prohibited restraining orders or injunctions in disputes concerning terms or conditions of employment. But again the courts undermined the rights of labor. In 1908, the Supreme Court found that the anti-yellow-dog clause of the Erdman Act violated the freedom of contract. In the same year the court found strikers guilty of violating the Sherman Act. In 1921, the Supreme Court (with William Howard Taft as chief justice) ruled that provisions in the Clayton Act concerning disputes between employer and employees applied only to disagreements between a named company and its workers, not to disputes concerning all workers in a trade or an industry. The court suggested that the law did not protect class warfare. In case after case, judges declared attempts by unions to organize an entire industry conspiracies to monopolize interstate commerce. It was considered illegal to organize workers who were bound to yellow-dog-contracts.¹⁴

Spontaneous local strikes were in most cases considered lawful, but judges found many arguments to prohibit industrial action: intimidation of strikebreakers, attempts to establish a closed shop, violation of property rights and the freedom of contract, threats to federal property, obstruction of interstate

¹² Forbath estimates that federal and state courts issued at least 4 300 labor injunctions between 1880 and 1930 (61). Hattam has other figures: 524 reported labor injunctions 1880-1932 in state and federal courts and 500 to 1 000 unreported cases (163).

¹³ Samuel Gompers, *Seventy Years of Life and Labour: An Autobiography II* (London: Hurst & Blackett, 1925) 215; Dubofsky 30.

¹⁴ Dubofsky 34, 47, 87, 101; Forbath 115, 156-57.

commerce or traffic, and violation of antitrust legislation. Boycotts and sympathetic action affecting third parties were in many cases held illegal and condemned by some judges as “socialistic crime” or “the end of government.” In the 1920s almost every other sympathetic strike met with an anti-strike decree.

Injunctions were intimately associated with employers’ use of armed guards. Employers’ guards and even strikebreakers could be made deputy marshals by the courts or deputy sheriffs by police chiefs. Melwyn Dubofsky remarks that the Supreme Court, faced with contradictory lower court rulings, invariably decided against labor. He concludes: “[F]ederal judges viewed strikes as disorderly by definition and as threats to the social order.”¹⁵

The antilabor bearing of the courts was evident also in the judicial review. The courts struck down legislation about the freedom of association, working hours, safety and health in the workplace, and payment of wages in legal currency. At the turn of the century the courts had eliminated about 60 state and federal labor laws, in 1920, around 300.¹⁶

Until the 1870s labor disputes were of direct concern only to the states, but as conflicts grew in size and bitterness the federal authorities felt compelled to intervene. Violence was widespread. In the railroad strikes in 1877 President Rutherford B. Hayes dispatched the federal army to six states to restore order, to protect federal property, and to enforce court orders. The military, after having restored order, remained on duty to break even peaceful strikes. In the Pullman strike in 1894, the executive branch again took the initiative. President Grover Cleveland obtained court orders prohibiting the workers to interfere with interstate commerce and mail, as a precondition for using armed forces to break the strike.¹⁷

From 1877 to 1903 federal or state troops were deployed in more than 500 labor disputes. A comparison with French strike statistics in the 1890s reveals how extreme the antagonism could be. Of 100, 000 strikers in France three were injured, while in America two were killed and 140 injured. In France 70 strikers of 100, 000 were arrested, in Illinois at least 700 and in New York at least 400.

¹⁵ Forbath 62, 65, 69, 71, 82-89, 112-14; Dubofsky 15-16, 21, 45.

¹⁶ Forbath 38.

¹⁷ Dubofsky 8-13, 24-32.

From 1902 to 1904 at least 198 people were killed in labor conflicts.¹⁸ Many lives were lost in the Pittsburgh railway strike in 1877, the Homestead strike in 1892, the Pullman strike in 1894, in Little Creek in 1903, and in Ludlow in 1913. Some periods were rather peaceful, for instance the years of prosperity in the 1920s, but much blood was shed again in the mid-1930s. Violence was frequent on both sides, and even conservative union leaders within the AFL were guilty of sabotage and other criminal acts. Responsible for the dynamiting of *Los Angeles Times* in 1910, where twenty people were killed, were officials in the Bridge and Structural Iron Workers.¹⁹

The legal nature of the employment relationship took on a new character when the courts, starting in the 1880s, ruled that contracts of employment could be terminated by either party at any time for any reason. Though the at-will doctrine had a liberating effect on both sides, in a legal setting that was biased against the unions it meant greater insecurity for the workers. Workers' individual freedom was limited by vagrancy and tramp acts that made unemployment an offence.²⁰

The downturn of the economy after 1929 was a drastic change. In 1932 a Republican-dominated Congress eliminated labor injunctions as legal instruments and excluded the unions from the Sherman Act through the near-unanimous adoption of the Norris-LaGuardia Act, which marked the end of the Old Order in the labor market.²¹

2. Swedish Labor Law: Collective Laissez-faire

An old Swedish system of strict labor regulation was undermined by economic change and the influence of liberal ideas. In 1846, the guild system was abolished, and from 1864 laissez-faire was the basis of economic policy. The predominant legal doctrine concerning labor was the free employment contract. Employment was, as a rule, based on an informal agreement that could be ended

¹⁸ Forbath 106, 118.

¹⁹ James Weinstein, *The Corporate Ideal in the Liberal State 1900-1918* (Boston: Beacon Press, 1968) 173-78.

²⁰ Montgomery 158.

²¹ Dubofsky 104.

without a fixed notice. Pre-modern regulations, technically still valid, about master and servant were soon disregarded. The guilds had left a vacuum, a part of which was for some time filled by workers' organizations of a self-help character. There were occasional spontaneous strikes. The trade union movement took off in the 1880s, mostly among skilled workers, and the first strike organized by a union occurred in 1883 in Stockholm.

Liberal and socialist unionists agreed on union strategies but were bitterly divided on socialism. From the early 1890s the socialists led most of the unions, which were to some extent coordinated by the Social Democratic Party, founded in 1889. The unions acted within a sphere that legislation left almost completely unregulated, and relatively few disputes between employers and workers were brought to the courts. A strike was not generally regarded as a breach of the employment contract. There was no general regulation of non-commercial associations.²²

Coercion through violence or threats was an offense, and in 1892 such coercion in connection with industrial conflicts was made a matter for public prosecution. In 1894, sheet-metal workers in a small company in Stockholm went on strike. Four of them were indicted for having resorted to "coercion by threats" vis-à-vis other workers, but the Supreme Court found them innocent in 1898. The attorney for the defense was Karl Staaff, a young lawyer who later became the leader of the Liberal party and twice prime minister.²³

The crucial legal question concerned the meaning of "threat" in the penal code. Must it be a threat of a criminal or illegal act, or could it be some other kind of intimidation? This was a matter of dispute within the judiciary as late as the 1930s. The statute gave no answer. In some cases union militants were convicted of having threatened workers that they would be "treated as strikebreakers" or that their names would be published in labor newspapers. When such cases were brought to the Supreme Court, the majority of the judges

²² Tage Lindbom, *Den svenska fackföreningsrörelsens uppkomst och tidigare historia 1872-1900* (Stockholm: Landsorganisationen, 1938) 34, 54-56, 73, 119-24; Jörgen Westerståhl, *Svensk fackföreningsrörelse: Organisationsplan. Verksamhetsformer. Förhållande till staten* (Stockholm: Tiden, 1945) 9-15; Axel Adlercreutz, *Kollektivavtalet: Studier över dess tillkomsthistoria* (Lund: CWK Gleerup, 1954) 227-51.

²³ Svante Nycander, "Vad anser liberaler om fackföreningar?" *Arbetshistoria* 4 (2003): 12-13.

voted in favor of acquittal.²⁴ The rulings helped the unions to organize workers and to exert pressure in disputes. Around the turn of the century “the field was open to the free play of the forces: the two sides in the labor market had to shape the forms of their relationships and to take responsibility for the order they wanted to establish.” The unions found that they had to rely on their own resources, and so did the employers.²⁵

From 1905 the Liberal party, led by Karl Staaff, was in a key position in all legislative matters. It was the largest party in the elections until 1914 and held the balance in the Swedish Parliament until 1933. In the liberal view, legislation on trade unions should wait until the workers had full political rights. Conservative governments and members of Parliament introduced several antiunion proposals, all of which were defeated in the lower house. After a general strike and lock-out in 1909 the conservative government assumed that there would be a majority for legislation. Far-reaching proposals introduced in 1910 and 1911 were, however, defeated in Parliament. The Supreme Court ruled in 1915 that collective agreements were legally binding.²⁶

Only in 1928, after many decades of numerous industrial conflicts, did the Swedish Parliament legislate concerning collective agreements and the establishment of a Labor Court. Collective action was prohibited in disputes about the interpretation of an existing agreement. Both unions and individual workers could be held responsible for illegal action. Maximum damages for a worker was about a week’s pay. The unions and the social democrats fought bitterly against the law but soon learned to appreciate the increased stability of the system of collective agreements. The Labor Court protected management rights but put the burden of proof on employers in disputes about the right to organize, which was protected in the collective agreements (not in the law). The legislation reflected principles that the SAF and the LO had already agreed upon.²⁷

LO historian Ragnar Casparsson wrote in the 1940s that a sawmill strike in 1879 was the only significant exception to the rule that the state had remained

²⁴ *Statens offentliga utredningar*, SOU 1933:36 (84-90).

²⁵ Adlercreutz 230.

²⁶ Westerståhl 283-333; Adlercreutz 480-81.

²⁷ Westerståhl 366-81.

neutral in labor conflicts.²⁸ Sweden was the best example of what Otto Kahn Freund called collective laissez-faire. Employers and unions shaped the rules of the game.

How Labor Law Affected Employers and Unions

1. Effects of American Government Intervention

Until the 1930s, American employers could resist the unions confident that they were defending important principles of law. Had government remained neutral, the employers would have been more inclined to accommodate organized labor and more inclined to unite for a collective defense against workers' industrial action.

The unions were shaped by the resistance they met. Business unionism became a logical choice after years of fruitless political struggle. Craft unions with social cohesion and well-paid members, who could not easily be replaced with strikebreakers, could survive and even prosper, but only few attempts to organize unskilled workers in mass production industries succeeded. The unions stayed more moderate in size, less powerful, more vulnerable to attacks and more suspicious toward potentially disloyal workers than they would have been in a tolerant legal environment. Union density was smaller (about 11 percent of nonagricultural labor force) in 1930 than in 1904.²⁹ The unions did not become a natural basis of a proletarian party. From the late 1890s the AFL opposed reforms sponsored by labor in Europe: old-age pensions, regulation of working hours, and unemployment insurance.³⁰ Some union constitutions prohibited political action. "[V]oluntarists saw government interference in the economy as necessarily anti-union," according to David Greenstone.³¹ The conservative

²⁸ Ragnar Casparsson, *LO under två årtionden: 1924-1947* (Stockholm: Landsorganisationen, 1948) 479.

²⁹ Daniel Nelson, *Shifting Fortunes: The Rise and Decline of American Labor, from the 1820s to the Present* (Chicago: Ivan R. Dee, 1997) 4, 10-11, 13, 67; Montgomery 153-55.

³⁰ Hattam 4-6; Forbath 16-18.

³¹ Weinstein 8, 22.

tendency was particularly strong in the 1920s, when labor was on the defensive.³²

Samuel Gompers said in 1883 that the strong arm of the government was on the side of the employers. "The police and the military are used against labor and even the good will of order-loving citizens is employed to crush us. [...] Federal and state laws deny us the right to unite." In his memoirs, he stressed the importance of a cautious, non-political union strategy. Radicalism and sensationalism concentrated all the forces of organized society against the labor movement. "I saw the danger of entangling alliances with intellectuals who did not understand that to experiment with the labor movement was to experiment with human life."³³ The craft unions in the AFL found that attempts to organize unskilled workers in the mass production industries could be both difficult and dangerous, and they often resisted such attempts.³⁴

The unending struggle in the courts forced union officials to speak the language of the prevailing legal philosophy. Collective interests had to be converted into individual rights. The whole gospel of the movement, Gompers said, is summed up in one phrase, freedom of contract. The AFL often cited the freedom of speech and prohibition of slavery clauses in the Constitution. When strikes were said to be a violation of property rights, the AFL argued that property rights in human labor means involuntary servitude. The AFL demanded that the principles of the market economy should be applied impartially.³⁵

Around the turn of the century many federal officials and business leaders wanted to promote a conservative unionism without substantially changing the power relations. The founders of the National Civic Federation saw themselves as crusaders for better relations between capital and labor. Craft unions such as the railway Brotherhoods and cautious AFL leaders were to be recruited to protect America against the dangers of socialist militants and industrial unionism. Samuel Gompers and John Mitchell of the United Mine Workers

³² David Greenstone, *Labor in American Politics* (Chicago: The University of Chicago Press, 1969) 25, 28.

³³ Gompers I 83, 97, 191, 203, 235.

³⁴ Greenstone 24.

³⁵ Weinstein 6-12; Dubofsky 101, 235; Forbath 130-33.

joined the businessmen in the Federation in campaigns against the spread of socialism.³⁶

2. Disagreement among American Scholars

Historians in the Marxist and Beard traditions tend to believe that political institutions and legal systems mirror class divisions. As Anthony Woodiwiss has observed, there is often a tacit assumption that, in a capitalist society, “the law necessarily and uniformly reflects capital’s dominance.”³⁷ A glance at America and Sweden 1864-1930 makes the inaccuracy of this assumption obvious.

There is a remarkable absence of consensus among American labor historians. A myriad of books and articles during a hundred years about American exceptionalism has not established a generally accepted view of the significance of the antiunion stance of the government. There is, for instance, a great difference between historians William Forbath, Victoria Hattam, and Melvyn Dubofsky and, on the other hand, political scientists Seymour Martin Lipset and Gary Marks.

Forbath: “[J]udge-made law and legal violence limited, demeaned, and demoralized workers’ capacities for class-based social and political action.” Dubofsky: “[T]he policies and actions of the state substantially shaped the history of working people and movements that they built.” Hattam: “[A] strong judiciary created a politically weak labor movement in the United States.”³⁸ These and other scholars have described labor law traditions as a part of America’s social and political history, and together they cannot fail to convince the reader that the government severely repressed the unions and undermined workers’ influence both in the factories and in the political sphere. The conspiracy doctrine and the labor injunctions, as applied by the courts, in

³⁶ Gompers was the vice-president of the Federation from its start in 1900 until his death in 1924; Mitchell was an active member 1904-1908.

³⁷ Anthony Woodiwiss, “Colonialism and the Development in Hong Kong,” in M. van der Linden and R. Price eds., *The Rise and Development of Collective Labour Law* (Amsterdam: International Institute of Social History, 2000) 382.

³⁸ Forbath 168; Dubofsky xii; Hattam ix.

addition to judicial review and police and military intervention in labor disputes made America the opposite of Sweden among western countries.

Dubofsky has observed that the unions in America have grown in periods when workers and unions have had a relatively amicable relationship with the government, as during the two world wars and the New Deal years. These were eras when the political system “operated to promote stability by furthering the interests of workers and their organizations.” The importance of the government is equally obvious in the periods of union decline, as in the 1920s and the 1980s.³⁹

Seymour Martin Lipset in *American Exceptionalism*, and Lipset and Gary Marks in *It Didn't Happen Here*, touch very lightly upon labor law and its possible effects.⁴⁰ Their main focus is on the absence of a large socialist party. The failure of socialism and the failure of unionism are seen as two parallel phenomena. Lipset writes:

The fact that the American national tradition is egalitarian, anti-elitist, individualistic, and classically liberal, has weakened efforts to mobilize workers and others on behalf of socialist and collectivist objectives, including unions. [...] The American social structure and values foster the free market and competitive individualism, an orientation which is not congruent with class consciousness, support for socialist or social democratic parties or a strong trade union movement.

In Lipset's view, American workers are less class conscious than workers in Europe because of the absence of a feudal past, a relatively egalitarian-status structure, an achievement-oriented value system, comparative affluence, and a history of political democracy.⁴¹ Lipset has many forerunners. Friedrich Engels, Werner Sombart, Antonio Gramsci, and Max Weber were among those who believed, with David Greenstone, that the greatest obstacle of the labor

³⁹ Dubofsky xvii.

⁴⁰ Seymour Martin Lipset and Gary Marks, *It Didn't Happen Here: Why Socialism Failed in the United State* (New York and London: W.W. Norton & Co., 2000). The introductory overview of the literature on American exceptionalism does not mention government repression of labor unions as a possible explanation of the weakness of socialism. The authors' evaluation of the importance of repression refers only to repression of communists and other left-wing groups (237-60). The history of labor law is not included in the story they tell.

⁴¹ Lipset 95, 108-09.

movement was “the absence of a European class consciousness or solidarity as nineteenth-century American society lacked inherited feudal institutions and class distinctions.”⁴²

In the traditional interpretation of American exceptionalism, repression of the unions is deemphasized. This is partly because the main focus is on socialism rather than on workers’ organizations, partly because the belief that workers’ attitudes were shaped by inherited, common American values does not go well together with the fact that workers were brutally repressed when they made use of one of the American liberties.

Ethnic and cultural divisions, a relative affluence, and social mobility may have reduced the propensity of the workers to organize. The spirit of the Declaration of Independence may have made socialism seem less attractive, though this argument hardly applies to immigrant workers. Federalism and the electoral system made it difficult to establish a socialist party. But arguments about socialism and socialist parties do not automatically apply to unionism. Professional groups, farmers, house owners, and others are often highly organized without being class conscious or guided by political militants.

Were American workers, in the formative period, less class conscious than workers in Europe? Military intervention in 500 labor disputes proves the reality of a class conflict. Kim Voss writes that labor historians have published “study after study demonstrating instances of class-conscious activity in nineteenth-century America that rivaled that of working-class movements in Europe.” In the middle of the 1830s, between one-fifth and one-third of all urban workers were organized. The labor movements in America, England and France seem to have been close to one another in the way they envisaged an alternative economic system. Voss writes: “In the mid-1880s it did not look as if the American labor movement would turn out to be the weakest and the most conservative.” His study of the Knights of Labor in New Jersey revealed that alliances and solidarity played a prominent role in the mobilization of the workers. Skilled workers were both craft and class conscious.⁴³

⁴² Lipset and Marks 21-24, 263-29; Greenstone 18.

⁴³ K. Voss, *American Exceptionalism: The Knights of Labor and Class Formation in the Nineteenth Century* (Ithaca: Cornell University Press, 1993) xi, 30, 42, 236.

We may still accept the argument that the liberal and democratic character of American society made socialist ideas less attractive. But labor unions are not in themselves political. They are reactions to a sense of insecurity in a competitive market economy subjected to business cycles and to the inequality of the employment relationship; to be employed is to be obliged to obey. Once unions are established they try to influence public policy, like other organizations, and they tend to be reformist and egalitarian.

Lipset quotes the conclusion by Freeman and Medoff that “opposition, broadly defined, is a major cause of the slow strangulation of private sector unionism” in America. He agrees with them that the legal environment in Canada, where union density is much higher, is more union friendly than in America, but he believes that workers in Canada have a greater propensity for joining unions to begin with. In any case, the difference in government policies between the two countries “only raises the conundrum one step further.” In Lipset’s view, varying labor laws reflect the prevailing norms and mores of the wider society.⁴⁴ What causes the weakness of socialist parties, unionism and class consciousness, also causes antilabor public policy and labor law. This theory is true almost by definition. Who would deny that the law is shaped by prevailing norms? But the specific character and effects of government restrictions on the unions should not be seen as matters of only secondary importance.

Sanford M. Jacoby has argued that the concept of exceptionalism can as easily be applied to American employers as to the workers. An ingrained hostility among employers against the unions goes a long way toward explaining low union density and lack of labor radicalism. Jacoby believes that the antiunion attitude has deep roots in American history. The weakness and lack of cohesion of the American government made the large corporations exceptionally powerful and independent. Employers did not have to make alliances with other groups to achieve their goals. Jacoby admits that this is a speculative argument, and he maintains that the antiunion attitude of the employers can be explained also by the American unions’ highly decentralized approach to collective bargaining. The fact that the unions concern themselves with a variety of

⁴⁴ Lipset 105.

detailed aspects of working conditions at the plant level provide American employers with a stronger incentive to resist unions than employers usually have in countries where industry-wide bargaining is the norm.

This incentive cannot, however, explain the difference between American and European employers in the formative period. Early unionism almost everywhere takes a decentralized approach. Whether industry-wide bargaining takes place or not depends on complicated economic and institutional circumstances and cannot be explained simply in terms of labor strategies. In many countries workers have been denied important instruments of industry-wide solidarity, in particular the right to secondary action.

Jacoby maintains that American employers have had greater economic resources to carry out antiunion campaigns than employers elsewhere. On average, American firms and plants have been larger and more dispersed than their counterparts owing to the early development of mass production and the great size of the American market. Again, this is an unconvincing argument with regard to the early period, when the great countries in Europe could still be compared with America in population and production. And if American employers had more money for campaigns, so had the workers.

Employers in America did not, as Jacoby notes, depend only on their own resources. Not only did the government allow the private use of force by employers, it also regularly provided direct assistance during labor disputes. State militias were reactivated after the Civil War “primarily to police labor disputes,” and federal troops “participated in the suppression of several critical strikes.” Local employers “had an easier time swaying state and local units to act on their behalf than did European employers.” Jacoby does not emphasize the role of the courts, but he believes that government intervention “weakened and fragmented the labor movement.” However, “what underlay these factors [i.e. government intervention] was the unusually high degree of political power enjoyed by the American employers.” So in the end labor law is a matter of only secondary interest, to Jacoby as to Lipset.⁴⁵

⁴⁵ Sanford M. Jacoby, “American Exceptionalism Revisited: The Importance of Management,” in S. M. Jacoby, ed., *Masters to Managers: Historical and Comparative Perspectives on American Employers* (New York: Columbia University Press, 1991) 183-200.

Did the employers really sway the courts, even the Supreme Court? The independence of the judiciary distinguishes America as much as the power of the employers. Consider the Supreme Court verdict in 1894 after federal troops had suppressed the Pullman strike:

The strong arm of the national government may be put forth to brush away all obstructions to interstate commerce or to the transportation of the mails. If the emergency arises, the army of the nation, and all its militia, are at the service of the nation to compel obedience to its laws.⁴⁶

These words of the highest legal authority cannot be dismissed as just an example of the unusual influence of the employers. The courts had the power to shape labor law. Why the courts acted in a way that weakened and fragmented workers' organizations is beyond the scope of the present discussion. What matters is that it happened. David Montgomery comes close to the truth when he writes about the "decisive confrontation between the working class and the state in the years 1919-22."⁴⁷ The government itself was the most formidable opponent of organized labor.

3. Sweden – Cumulative Growth of Organizations

Already in 1930, about 80 percent of all workers in the manufacturing industry in Sweden were covered by collective agreements. In the middle of the 1930s union density was higher than in any other country. The unions had become powerful before the Social Democratic Party had been able to introduce labor market policies or unemployment insurance favorable to the unions. How much did the absence of state intervention contribute?

Around the turn of the century conflicts about the right to organize were numerous. The largest battle was in the sawmill industry in 1899. The unions were weak and the strike was broken, but the workers had a powerful ally in the

⁴⁶ *In Re Debs*, quoted in Montgomery 97.

⁴⁷ David Montgomery, *The Fall of the House of Labor: The Workplace, the State and American Labor Activism, 1865-1925* (Cambridge University Press, 1987) 370.

public opinion. Most of the newspapers and many outspoken members of the intelligentsia supported the workers.⁴⁸

The employers found that struggles about the right to organize were unrewarding and developed another strategy. The SAF was founded in 1902 as a reaction to a nation-wide strike for the right to vote. The breakthrough of employer–labor relations was an agreement in the metal industry in 1905, after a lock-out of nearly five months. General elections were held at the time of the conflict, resulting in a majority of liberals and social democrats in the lower chamber. In most countries conflicts of this magnitude and economic importance were broken off by the state, but the Swedish employers could not count on any support from the state and accepted a compromise. The right to organize was established as a mutually binding principle, and a minimum wage for all adult workers was established. In 1906 the SAF and the LO agreed, under the threat of a broad lock-out, on basic principles of labor relations. The employers recognized the right of workers to organize in exchange for the unions' acceptance of management rights, including the right freely to employ and dismiss workers. The SAF later established, against the will of the LO, the right to sympathetic action as an exception to the obligation to keep the industrial peace during the contract period. The sympathetic lock-out was the preferred weapon of the employers. The national organizations took upon themselves to create a *modus vivendi*, a set of rules about industrial action, bargaining, and agreements, with the role of the state limited to voluntary mediation. This chain of events was influenced by the example of Denmark but very different from what happened elsewhere.

In the years following the breakthrough, union density increased rapidly, but tensions were severe, and much against the cautious strategy of the LO leadership a number of local conflicts escalated into a general strike in 1909. The unions were defeated and union membership declined. Gradually, however, bargaining and collective agreements were extended in a cumulative process where the two sides helped to consolidate each other. As the SAF organized more employers, the coverage of the collective agreements reached at the branch level increased steadily. The employers wanted central control and industry-wide

⁴⁸ Svante Nycander, *Makten över arbetsmarknaden: Ett perspektiv på Sveriges 1900-tal* (Stockholm: SNS Förlag, 2002) 19-20, 91.

agreements, which favored uniform working conditions in each industry and gave central union leadership a role as coordinator of union policies. To a large extent, employer solidarity and labor solidarity worked in the same direction. This was the logic behind the harmonious situation described in the American report in 1938. Employers and unions had a common interest in industrial peace, a rational wage structure, increase in productivity and a high level of employment, and, above all, an autonomous system of labor relations.

The course of events would have been very different if the state had followed the advice of angry employers and worried conservatives to intervene decisively against militant and abusive practices of the early socialist unions. The cumulative process starting in 1905 might never have been triggered. Leading employers were for a long time resolved not to recognize the unions. Productivity in industry was low, and the companies were exposed to international competition both as exporters and as employers; Swedish workers were emigrating in substantial numbers to America, where wages were higher. The rise of a rather militant unionism was a serious threat, and the strategy adopted in 1905 and 1906 was not an easy choice. The neutral and passive attitude of the state made it imperative for employers to organize. James Fulcher has observed that in Britain “the employers did not need to organize because the state took on the task of containing the unions”.⁴⁹ Strong employer organizations were essential for the development of an autonomous and stable system of collective bargaining in Sweden.

4. Scholars Deemphasize the Effects of Swedish Collective Laissez-faire

The fact that state intervention in labor relations has been very limited in Sweden has been recognized by many scholars, among them Fulcher.⁵⁰ Nils Elvander, a former professor of labor relations, has confirmed that “the old bourgeois Sweden was a welcoming environment for the incipient labor movement, compared to the conditions in most other countries where the social

⁴⁹ J. Fulcher, *Labour Movements, Employers, and the State: Conflict and Co-operation in Britain and Sweden* (Oxford: Clarendon Press, 1991) 129.

⁵⁰ J. Fulcher, “Sweden,” in S. Berger and D. Broughton eds., *The Force of Labor* (Oxford: Berg, 1995) 13-14. Westerståhl 417.

consequences of industrialization were met with antiunion legislation or direct repression.”⁵¹ The effects on union density and labor relations have, however, seldom been emphasized. Misconceptions concerning the Swedish Model are frequent. They touch upon the early history of the unions, the role of the state and the law, and the process through which the employers and the unions eventually could meet in mutual respect. Research on Swedish labor relations in the twentieth century has been much influenced by the self-image of the labor movement, where the resistance of the “bourgeois society” is emphasized rather than the level of tolerance on the part of the state. The Supreme Court’s union-friendly ruling in the *Lothigius case* in 1998, and the labor law alliance between the liberals and the social democrats have not been included in Swedish labor history.⁵²

In *Politics against Markets* Gösta Esping-Andersen argues that “the Swedish society did not give rise to a large and liberal-minded class of farmers and urban bourgeoisie.” He believes that confrontations in the Swedish labor market have been sharper than in Denmark “because of the absence of a powerful liberal influence” and that the social democrats “had no natural coalition partners” in matters important to the unions. He regards classes as the primary actors in political life and tends to see the policies of the liberals as a reflection of the interests of farmers, who “[have seen] organized labor as a threat.” He further holds that “existing legislation as well as government practice placed restrictions on the trade unions’ freedom of action.”⁵³ These statements are misleading. The liberal protection of the unions in legislative matters has been decisive, as has been recognized by James Fulcher and Nils Elvander. State restrictions on the unions in Sweden during the twentieth century were minimal, by any comparison.⁵⁴

Sociologists Walter Korpi, Anders Kjellberg, and Göran Therborn have analyzed why the Swedish labor movement became so successful. They rightly emphasize the absence of ethnic and religious divisions among the workers, and

⁵¹ Nils Elvander, Review of S. Nycander (2002), *Ekonomisk Debatt* 5 (2002): 465.

⁵² Nycander (2002) 91-95.

⁵³ Gösta Esping-Andersen, *Politics against Markets: The Social Democratic Road to Power* (Princeton University Press, 1985) xv, 37, 82-87, 314, 315.

⁵⁴ Fulcher (1991) 316; Elvander 465; Westerståhl 310, 338-43; Nycander (2002) 51-54.

the importance of a relatively high degree of political unity among the workers; a long period of competition between liberals and socialists in the unions, as in England, might have been a handicap.⁵⁵ In particular, the absence of a large immigration and of problems related to race made Sweden different from America in the labor market. The suggestion here is not that *only* labor law mattered, but the fact that the state did very little to restrain worker's collective action clearly facilitated both union growth and an autonomous system of bargaining. Sweden was exceptional also in a European setting.

5. Cross-class Alliances in Sweden and America

In *Capitalists against Markets*, Peter A. Swenson compares employer strategies in Sweden and America. In both countries he finds important "cross-class alliances" between capital and labor based on common interests. In Sweden key employers after 1905-1906 promoted collective, centralized bargaining and were ready to use massive lock-outs to protect management rights and to control the general wage level. Employers and many unions had a common interest in preventing wages in industries where competition was weak (in particular the building trades) from disrupting the wage structure.⁵⁶ In some American industries established producers sometimes met ruinous price competition based on the exploitation of recent immigrants and black workers. In bituminous coal production, garment industry, building and construction, employers and workers both wanted to regulate competition. The idea was simple: "The industry needed the Union to protect it from the demoralization of cut-throat competition." Leading producers encouraged the workers to organize and to enforce a minimum standard of wages and working conditions in all firms in the industry. Where employers cooperated in this way, the unions did well. Bargaining "was virtually always multiemployer in character" and the union density was around 50 percent in the period before the New Deal.⁵⁷ Capital-intensive industries like

⁵⁵ Nycander (2002) 91-99, 448; Esping-Andersen 315; Anders Kjellberg, *Facklig organisering i tolv länder* (Lund: Arkiv Förlag, 1983) 215-17.

⁵⁶ Peter A. Swenson, *Capitalists against Markets: The Making of Labor Markets and Welfare States in the United States and Sweden* (New York: Oxford University Press, 2002) 76-77, 100.

⁵⁷ Swenson 144-52.

steel and automobile production did not have to face competition from sweatshops, and they were not as dependent on international markets as the Swedish manufacturing industry. They did not want an alliance with organized labor. Swenson concludes that differences in employer interests shared with labor, rather than variations in their power against labor, helps to make sense of the diversity in employer-labor relations.⁵⁸ They also help explain the difference between Swedish and American employer strategies. We should not forget, however, the firm determination of the big Swedish employers not to recognize the unions and the severe conflicts they fought on this matter until 1906.

Swenson suggests that American machine shop and foundry owners “would have sorely envied their Swedish counterparts’ success” in 1905, when the unions accepted managerial control and relinquished the closed shop, while militant American craftsmen “would have regarded the deal with dismay and disgust.”⁵⁹ That may be true. The work practices and moral codes of American craftsmen were not easily overcome by the employers’ regulation of production.⁶⁰ However, managerial control and the open shop were not easily accepted by the metal workers in Sweden either. It happened only after a lock-out of five months.⁶¹ In America, a mutual accommodation must have been extremely difficult to bring about after all the violent conflicts, injunctions, and police and military interventions at the request of employers. In the early twentieth century the unions had already been shaped by the resistance they had met. In a more union friendly legal environment, where routine workers had been able to organize, the craftsmen’s grip on the unions would have been less firm. The closed shop, finally, was a defense against employers who discriminated against union members and was not easily given up, especially in the United States.

The breakthrough of the American unions in 1937 was not an effect of large corporations reconsidering their interests. The employers, beginning with General Motors, were forced to recognize the unions after a wave of major strikes in which the government refused to intervene. The profound change in labor relations is best understood against the background of the Norris-LaGuardia Act

⁵⁸ Swenson 47-49, 145.

⁵⁹ Swenson 79.

⁶⁰ Montgomery (1987) 43.

⁶¹ Nycander (2002) 22.

(1932), the Wagner Act (1935), President Roosevelt's pro-union stance in the 1936 landslide election, and the new liberal majority in the Supreme Court. When government policies changed, the American unions became a countervailing power in industry and a major force in politics. A suppressed alternative was emancipated.

How Union Strength Affects Public Policy

1. Union Membership and Political Participation

In Sweden nobody questions the political importance of strong labor unions. Bo Rothstein maintains in *The Social Democratic State* that "labor's basic power resource is its organization, and the basic organization for labor is the union." The solid position of the Swedish unions is reflected in the unprecedented success of the social democrats.⁶² The party depends on the active support of thousands of union activists in election campaigns and on substantial financial contributions from the national unions. The political participation on the part of the workers is as high as that of other groups. Since the 1930s, public policy has been more egalitarian than in almost all other western countries.⁶³

Lipset and Marks note: "Comparative studies of public policy reveal that the organized strength of a society's lower class is immensely influential for its public policy. The institutions created in a society – perhaps above all, the institutions that reflect the relative power or impotence of those at the bottom of a society and those at the top – shape a society's response to economic change."⁶⁴ In the 1880s, American labor fielded its own candidates in two hundred towns and cities. In none of these, writes Montgomery, "did labor retain its grip on municipal offices after the defeat of union organization in the locality's major enterprises." In most urban areas the organizational base of the Knights of Labor and the unions were destroyed by unsuccessful battles with the employers between 1887 and 1894. Without organizations the "propertyless workers could

⁶² Bo Rothstein, *The Social Democratic State: The Swedish Model and the Bureaucratic Problem of Social Reforms* (Pittsburgh: University of Pittsburgh Press, 1996) 3, 32.

⁶³ Nycander (2002) 434.

⁶⁴ Lipset and Marks 262.

not forge themselves into an effective political force.” In Homestead, Pennsylvania, workers nominated by one party or another had a strong grip on local offices and legislative seats. This “workers’ republic” was brought to an end when Carnegie Steel crushed the unions.⁶⁵

Many observations in America confirm that union strength is highly correlated with the political participation of workers, the outcome of elections, and public policy. In presidential elections in the nineteenth century after 1852, voter turnout was less than 75 percent only once (in 1872). After the turn of the century it gradually decreased to less than 50 percent in 1920 and 1924. Voting reached a peak at 63 percent in the Kennedy election in 1960, which was followed by a negative trend. When President Clinton was reelected in 1996 barely 49 percent participated.⁶⁶ The variation during the twentieth century roughly followed the curve of union density.

Walter Dean Burnham has found that the low turnout during the 1920s mirrored a lack of “incentive for the urban manual-labor workforce to participate in elections” and that the ascendancy of the Republican Party “was based in very large part upon this socially selective voter participation.” In the building of the New Deal coalition a conversion of former abstainers into Democrats was vitally significant.⁶⁷ Greenstone maintains that the emergence of labor as a major nationwide electoral organization represent the most important change in the structure of the American party system since the war. Its impact was particularly strong in the first half of the 1960s.⁶⁸ The unions are, according to a study of the presidential election in 1992, the best example of organizations dedicated to the mobilization of voters. “[A]mong those with a high school education or less, belonging to a union adds nearly 20 percent to turnout levels over those who do not belong.”⁶⁹

⁶⁵ Montgomery (1995) 153-55.

⁶⁶ S.M. Nichols and P.A. Beck, “Reversing the Decline: Voter Turnout in the 1992 Election,” in H.F. Weisberg, ed., *Democracy’s Feast: Elections in America* (Chatham, New Jersey: Chatham House Publishers, 1995) 32; W.D. Burnham, “The Turnout Problem,” in J.A. Reichley, ed., *Elections American Style* (Washington D.C.: The Brookings Institution, 1987) 113-14.

⁶⁷ Burnham 118.

⁶⁸ Greenstone xiv.

⁶⁹ Nichols and Beck 40.

In 1960, 45 percent of the electorate identified themselves as Democrats, 29 percent as Republicans. Since then the proportion of Democrats has decreased while independent voters have become the largest group. The negative trend for the Democrats has an obvious connection with the decline of the unions. "On the Democratic side, the proportion of identifiers in union households continued a downward slide from about a third of the coalition in 1966 and earlier to just over a fifth in 1992," according to *Democracy's Feast: Elections in America*.⁷⁰ The decline of the unions has diminished the relative strength of the Democratic Party and reduced the influence of workers within the party.

Labor union support was important when Democrats were elected presidents in 1916, 1944, 1948 and 1960.⁷¹ Scholars have documented that U.S. senators and congressmen have been influenced by the strength of the unions in their constituencies.⁷² Since the Kennedy-Johnson era, however, the balance between the left and the right, and between the interests of workers and the interests of large corporations, has changed profoundly. The government has not been neutral in the process. Shifts in the regulation of labor relations, mainly through the federal courts and the National Labor Relations Board, have made life much more difficult for the unions.⁷³

In American political discourse, a question which is asked again and again is why there is no socialism in the United States. A European style socialist party is generally seen as the natural way of channeling the political aspirations of workers, yet no such party has emerged in America. In this discussion focus

⁷⁰ H. W. Stanley and R. G. Niemi, "The Demise of the New Deal Coalition," in H.F. Weisberg, ed., *Democracy's Feast: Elections in America* (Chatham: Chatham House Publishers, 1995) 231.

⁷¹ Dubofsky 60; Greenstone 33.

⁷² Richard B. Freeman and James L. Medoff, *What Do Unions Do?* (New York: Basic Books, 1984) 195.

⁷³ Richard B. Freeman, "Lessons for the United States," in R. B. Freeman, ed., *Working under Different Rules* (New York: Russell Sage Foundation, 1994) 223-38; Dubofsky 229; W.B. Gould IV, *Agenda for Reform: The Future of Employment Relationships and the Law* (Cambridge: The MIT Press, 1993) 157-67; Charles C. Heckscher, *The New Unionism: Employee Involvement in the Changing Corporation* (Ithaca: Cornell University Press, 1988) 34-48. Nelson maintains that the Reagan administration made "a deliberate and largely successful effort to complete the transformation of the NLRB into a pro-employer agency" (154). Many NLRB policies and precedents were reversed.

should be shifted from socialism to unions and from party structure to political participation on the part of workers. The basic question is why the unions are weak. If they had been stronger the basis for a broad labor party might have been better, but the influence of workers could also have been channeled through the existing two-party system, as it actually was during the New Deal period. In both cases the center of gravity in American politics would have moved to the left and come closer to present-day “socialism” in Western Europe. Lipset and Marks’ main conclusion is this: “American values – political structure – heterogeneous working class – party/union split: the interaction of these four factors holds the key to why socialists failed in America.”⁷⁴ The list ought to have included initiatives by public authorities to restrain the unions.

Conclusion

Labor relations typically have a cumulative pattern. Accommodation leads to more accommodation, hostility to more hostility, until some fundamental change occurs (like that of the Great Depression). Employers and labor always have some interests in common. Intervention by a third party in favor of either side easily increases bitterness and stubbornness and may thus breed more intervention. The cumulative aspect makes it urgent to analyze closely the early period of collective labor relations. Behavior is shaped not only by relatively stable social norms but also by events, as can be seen in the shift in Swedish employers’ attitude and strategy 1905-1906.

Structural change in American industry, shifts in employer strategies, and trends within the union movement itself have caused a decline in unionism since the 1960s. New legal restrictions during the same period have added much to the difficulties of the unions. The legacy of more than a hundred years of struggles about the rights of labor carries an overwhelming weight. American labor relations of today are not the products of a free interplay between employers and workers. The government encouraged employers to resist the unions’ demand for recognition, and the unions were molded by the legal system, lured into blind

⁷⁴ Lipset and Marks 264.

alleys, and forced to make Catch 22-choices, while Swedish collective laissez-faire promoted stability and order in the labor market.

In Sweden government non-intervention, a near-absence of legislation about labor relations, and key decisions in the Supreme Court facilitated a rapid growth of the unions and, indirectly, of the Social Democratic Party. Conditions in pre-democratic Sweden that counteracted government intervention in employer-labor relations and promoted workers' freedom to organize made Sweden go further to the left than other European countries. To understand why America went to the right we must take into account the constitutional position of the courts, judicial review, the common law doctrines of criminal conspiracy and injunctions, and the anti-labor stance of the judiciary, in line with Madison's warning against a faction representing the property less masses. Legal restraints were particularly effective against attempts to organize unskilled workers. Labor organizations became more conservative than in other countries and smaller and less influential than they had a potential to be. Labor in America is a suppressed alternative. Low levels of union membership affected workers' participation in politics and elections, and – indirectly – public policy.