

From Industrial Sedition to Industrial Democracy to the End of Unionism: Worker Control, the New Deal, and the Limits of Labor Progressivism

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I. INTRODUCTION

The labor movement in this country is in a state of collapse. Union density exceeded 30 percent of non-agricultural workers in the 1940s and 1950s. It is now less than 10 percent and only around 6 percent of the private-sector employees who were once the movement's backbone. The number of unionized workers, which peaked in the late 1970s at 21 million, is about 14 million today, despite the economy and the workforce being much larger.¹ The labor movement's degradation can also be seen in strike statistics, a key measure of unions' vitality and the power they wield. In 1970—the apogee of postwar labor activism—some 4 million workers walked off the job in over 5,700 separate strikes. Of those 5,700, 381 were “major work stoppages” involving over 1,000 participants; but in 2023, only 539,000 workers struck in 470 strikes, of which perhaps 33 were major work stoppages.²

Indeed, amid an upsurge in interest in unions, 2023 was widely dubbed the “Year of the Strike” and its activism taken as evidence of the labor movement's impending rebirth.³ Some of that optimism remains, but it is clear that there has been no rebirth. Impressive only in comparison to the many years of somnolence that preceded it, this “Year of the Strike” was unaccompanied

¹ On union density and membership levels, see generally PAUL D. ROMERO & JULIE M. WHITTAKER, A BRIEF EXAMINATION OF UNION MEMBERSHIP DATA (Cong. Rsch. Serv., 2023).

² On work stoppages, a small percentage of which are lockouts, see generally U.S. DEP'T OF LAB., ANALYSIS OF WORK STOPPAGES, (1970); U.S. BUREAU OF LAB. STAT., TRENDS IN WORK STOPPAGES (2025); Kathryn Ritchie, Johnnie Kallas & Deepa Kylasam Iyer, *Labor Action Tracker*, CORNELL UNIV. SCH. OF INDUS. AND LAB. REL. (2023), <https://www.ilr.cornell.edu/faculty-and-research/labor-action-tracker/annual-report-2023> [<https://perma.cc/7MPJ-L458>]; Margaret Poydock and Jennifer Sherer, *Major Strike Activity Increased by 280% in 2023*, ECON. POL'Y INST. (Feb. 21, 2024), <https://www.epi.org/publication/major-strike-activity-in-2023/> [<https://perma.cc/QHH2-VBCW>].

³ See, e.g., Jenny Brown, *2023 Was the Year of the Strike. What Can We Expect in 2024?*, IN THESE TIMES (Dec. 31, 2023), <https://inthesetimes.com/article/2023-in-review-year-strike-2024-unions-uaw-teamsters-hollywood-teachers-big-three-unite-here-starbucks-labor-organizing> [<https://perma.cc/L7CR-QLX5>]; Chris Isadore, *2023 Was the Year of the Strike*, CNN (Feb. 21, 2024, 5:23 PM), <https://www.cnn.com/2024/02/21/business/2023-strike-summary/> [<https://perma.cc/9TH9-VTNQ>]; Wall Street Journal Podcasts, *2023: The Year of Strike*, THE WALL ST. J., at 04:38 (Oct. 13, 2023), <https://www.wsj.com/podcasts/the-journal/2023-the-year-of-the-strike/1367FB54-BFFE-41B4-AC3F-7CF01CC9B491> [<https://perma.cc/S7XR-9EN7>].

by significant increases in union membership. Much-celebrated organizing drives at large companies like Amazon and Starbucks, which were supposed to make up for what has been lost at firms like General Motors and U.S. Steel, no longer seem so promising. Meanwhile, the Biden Administration's aggressively union-friendly National Labor Relations Board similarly failed to turn things around. For instance, NLRB-sponsored representation elections, which are a good measure of the government's successes in abetting unionism, averaged over 7,500 a year in the 1970s but have not exceeded 2,000 a year since 2009.⁴

In trying to plot a course through these troubled waters, labor's progressive supporters have repeatedly venerated the New Deal's labor program, invoking it as a tired and worn regime that has been "de-radicalized," "ossified," or otherwise divested of its essential virtues by the courts and Congress, by demographic changes, or by time itself, but that program is nonetheless well worth reforming.⁵ This was the logic behind the Biden Administration's labor policy and the spirit of proposed legislation, like the Protecting the Right to Organize Act and the Employee Free Choice Act. And it is also at the core of important scholarship, including, for instance, Kate Andrias's recent, influential call for "New Labor Law": a vision of labor law as a means of addressing "economic and political inequality" which confirms its author's more explicit acknowledgement that this "new" labor law can and should be built upon the structures of the old regime.⁶

A reflection, no doubt, of its adherents' progressive politics, this view of the New Deal and labor also draws credence from the connections that can easily be drawn between New Deal reforms and changes in the labor movement's fortunes. These reforms accompanied a genuinely impressive awakening of the labor movement following the movement's steep decline through the 1920s and into the 1930s and a surge in the labor movement's

⁴ Romero & Whittaker, *supra* note 1, at 12.

⁵ See generally Karl Klare, *Judicial Deradicalization of the Wagner Act and the Origins of Modern Legal Consciousness, 1937-1941*, 62 MINN. L. REV. 265 (1978) (discussing the deradicalization of labor law); Cynthia L. Estlund, *The Ossification of American Labor Law*, 102 COLUM. L. REV. 1527 (2002) (discussing the ossification of labor law). A strand in this vein is the idea that New Deal labor law was undone by the 1947 Taft-Hartley Act. See, e.g., Staughton Lynd, *Government Without Rights: The Labor Law Vision of Archibald Cox*, 4 IND. REL. L.J. 483, 484, 486 (1981); see generally James A. Gross, *Conflicting Statutory Purposes: Another Look at Fifty Years of NLRB Law Making*, 39 IND. & LAB. REL. REV. 7 (1985) (detailing how the Taft-Hartley Act's incorporation of two conflicting statements of purpose makes it a tool for both sides of the aisle). See also DAVID BRODY, *LABOR EMBATTLED: HISTORY, POWER, RIGHTS* (Univ. of Illinois Press, 2005) (arguing that the subversion of New Deal labor rights played an important role explaining the labor movement's demise and that a new, revised labor law is needed); Ellen Dannin, *NLRB Values, Labor Values, American Values*, 26 BERK. J. OF EMP. & LAB. L. 223, 244, 262-263 (2005); Craig Becker, *Individual Rights and Collective Action: The Legal History of Trade Unions in America*, 100 HARV. L. REV. 672, 673, 677-679, 648 (1987).

⁶ See Kate Andrias, *The New Labor Law*, 126 YALE L.J. 2, 11 (2016); see also ALEXIS N. WALKER, *DIVIDED UNIONS: THE WAGNER ACT, FEDERALISM, AND ORGANIZED LABOR* 146 (Univ. of Pennsylvania Press, 2020) (advocating for reform that builds on state labor protections to address public sector workers' needs on a national level).

size and strength that endured through the 1950s and 1960s. Likewise, the retrenchment of these reforms unfolded alongside the movement's demise. And yet, as this essay argues, to view labor and the New Deal in this conveniently symbiotic way is to indulge an appealing but fundamentally false reading of labor history, the history of the New Deal, and the events that followed. For the New Deal's reforms on the labor front were built not only upon compromise but also the sacrifice of workers' interests, as a number of historians have shown.⁷ But as this essay argues, those reforms, which entailed a reconciliation of unionism to the demands of industrial capitalism, also set the labor movement upon the path that has brought it to its current state of collapse.

I. INDUSTRIAL CAPITALISM, THE STRUGGLE FOR CONTROL, AND THE ORIGINS OF THE MODERN LABOR MOVEMENT

If capitalism implies an inherent conflict between capitalists and workers, the nature of that conflict has evolved in concert over time. While early *manufacturing* capitalism put capitalists in a position to appropriate the products of production, it left them still frustratingly unable to control the working lives of the people they employed. That was destined to change with the rise of *industrial* capitalism, which, in the words of historian Henry Heller, presaged the industrial capitalists' "control over the production process and over the workers themselves."⁸

Heller's thinking rests on an understanding that the machinery of industrial capitalism is adopted not only, or even primarily, because of the greater technical efficiencies it achieves, or even because of its immediate payoffs in increased productivity, but because it facilitates greater control of workers and the production process.⁹ Industrial machinery is, in other words, a tool of management, a means by which capitalists can facilitate supervision and regimentation at work and finally wrest control of production from their workers. And it was precisely because of this that industrial capitalism's conquest of the workplace generated a culture of resistance among workers who opposed its authoritarian impositions.

⁷ See, e.g., CHRISTOPHER L. TOMLINS, *THE STATE AND THE UNIONS: LABOR RELATIONS, LAW, AND THE ORGANIZED LABOR MOVEMENT IN AMERICA, 1880-1960* (Cambridge Univ. Press, 1985) (urging that labor supporters recognize the role of the New Deal system of labor law in explaining the movement's decline); COLIN GORDON, *NEW DEALS: BUSINESS, LABOR, AND POLITICS IN AMERICA, 1920-1935* (Cambridge Univ. Press, 1994) (exposing New Deal labor policy and the New Deal labor movement as, in significant part, attempts at regulating the industrial economy); JEFFERSON COWIE, *THE GREAT EXCEPTION: THE NEW DEAL AND THE LIMITS OF AMERICAN POLITICS* 116-17, 120 (Princeton Univ. Press, 2016); Nick Salvatore & Jefferson Cowie, *The Long Exception: Rethinking the Place of the New Deal in American History*, 74 *INTER. LAB. & WORKING-CLASS HIST.* 3, 5-6 (2008).

⁸ HENRY HELLER, *THE BIRTH OF CAPITALISM: A 21ST CENTURY PERSPECTIVE* 184 (Pluto Press, 2011).

⁹ See *id.* at 185.

As historian Eric Hobsbawm demonstrated, this kind of resistance was central to Luddism, for instance, which could not be reduced to some atavistic or irrational opposition to technology for its own sake.¹⁰ And such resistance was, in this country, the defining commitment of the labor movement as it came into its own later in the nineteenth century. Working people organized themselves to defy the factory system, with its supervisors and foreman, its workplace rules, its clocks, quotas, and schedules, its “speed-ups” and “stretch-outs,” and all the other means by which the machinery of industrial production imposed on workers a new system of employer sovereignty that divested them of a sovereignty that was once their own.

Opposition to this expansion of employer control was central to the more radical strains of labor activism that emerged in the late nineteenth and early twentieth centuries. The leading expression of this tendency, labor anarchism or anarcho-syndicalism, was nothing if not a rebellion against the dehumanizing, alienating, and authoritarian ways that industrial capitalism refashioned the workplace—a rebellion whose aspiration to overthrow industrial capitalism and replace it with a workers’ commonwealth was the utmost confirmation of this orientation.¹¹ The Industrial Workers of the World, which was the foremost development of this tradition, built itself around a culture of martyrdom and suffering in the face of incredible repression not because its members craved higher pay and shorter hours, but because martyrdom aligned with its members’ overriding concern to defy industrial capitalism’s claims over their lives and working experiences.¹²

At the center of the IWW’s program was sabotage, which for the union encompassed everything from on-the-job sit-downs, quicky-strikes, and slowdowns to the actual wrecking of machines. In every one of these manifestations, sabotage operationalized the Wobblies’ defiance of their employers’ sovereignty and of the machines by which this sovereignty was effectuated. And because it served these purposes so well, this kind of defiance was hardly the exclusive province of these Wobblies, either. In the early twentieth century, craft unionists employed these methods in their own rebellions against industrial capitalists and against their attempts, by means of mechanization, to divest these workers of the enormous control that they had traditionally enjoyed over the work that they performed.¹³

¹⁰ See E.J. Hobsbawm, *The Machine Breakers*, 1 PAST & PRESENT 57, 58-60 (1952).

¹¹ See generally EMMA GOLDMAN, SYNDICALISM: THE MODERN MENACE TO CAPITALISM (1913) (succinctly expounding on this philosophy and its influences by one of its leading practitioners); LUCIEN VAN DER WALT, SYNDICALISM 249 (Carl Levy & Matthew S. Adams eds., The Palgrave Handbook of Anarchism, 2018) (discussing the essential meaning of labor anarchism).

¹² See generally SALVATORE SALERNO, RED NOVEMBER, BLACK NOVEMBER: CULTURE AND COMMUNITY IN THE INDUSTRIAL WORKERS OF THE WORLD (State Univ. of New York Press, 1989) (discussing the IWW’s connection to the syndicalist and anarchist traditions); AHMED WHITE, UNDER THE IRON HEEL: THE WOBBLIES AND CAPITALIST WAR ON RADICAL WORKERS (Univ. of California Press, 2022) (on the culture of martyrdom).

¹³ See HERBERT G. GUTMAN, WORKER’S CONTROL IN AMERICA 93-108 (New York: Cambridge University Press, 1979); cf. HERBERT G. GUTMAN, WORK, CULTURE, AND SOCIETY IN INDUSTRIALIZING AMERICA, 1815-1919 (New York: Vintage Books, 1973) (describing the

In many ways, the craft union movement was quite conservative, as it abjured the kinds of revolutionary goals that defined anarchism and IWWism and, unlike those movements, is fairly notorious for its parochial and exclusionary practices. But its conservatism mainly consisted of an unwillingness to concede the prerogatives that skilled workers had traditionally enjoyed and in that respect was not all that far removed from what the Wobblies believed. Indeed, in the late nineteenth and early twentieth century, workers' activism across an entire front, radical and conservative, was in its very conception backward-looking in much the same way that Luddism, for instance, was as once a radical and a "reactionary" movement and also a "rebellion against the future."¹⁴

In the case of the Luddites, this sort of resistance was condemned as a kind of industrial sedition whose essence was that it constituted an affront, not to the sovereignty of the state, but to that of industrial employers. By the late 1900s, this notion had begun to play a crucial role in justifying labor repression in industrial America. The prosecution of the 1886 Haymarket bombings was among a great number of cases in which labor activists were punished for industrial sedition in the guise of holding them to account for crimes like murder.¹⁵ In other cases, the charge of sedition was used to authorize even blunter forms of repression, like military interventions and vigilantism. And union organizing was also codified. Between 1917 and 1921, almost half of the states enacted criminal syndicalism laws that made it a felony either to advocate "industrial" change by means of violence, sabotage, or other criminal means, or to belong to an organization engaged in such advocacy.¹⁶

By the mid-1920s, Wobblies, the labor anarchists, and even the traditional craft unionists all stood on the verge of irrelevance, their defiance of industrial capitalism having yielded, it seemed, to the capitalists' great power and perhaps the weight of destiny and progress themselves. But the price of victory was great, as the struggle to contain these seditionists had come at the expense of tremendous violence, social upheaval, and economic disruption. Between, 1880 and 1920 there were roughly 60,000 strikes in the United States.¹⁷ These involved over 20 million workers and claimed

extent of workers' resistance to industrial capitalism, its frequent focus on the control of work, and the role this played in shaping the course of labor relations and labor policies).

¹⁴ KIRKPATRICK SALE, *REBELS AGAINST THE FUTURE: THE LUDDITES AND THEIR WAR ON THE INDUSTRIAL REVOLUTION* 5, 195 (1995); *see also* CRAIG CALHOUN, *THE QUESTION OF CLASS STRUGGLE: SOCIAL FOUNDATIONS OF POPULAR RADICALISM DURING THE INDUSTRIAL REVOLUTION*, 4, 7-11, 60-92, 113-14 (Univ. of Chicago Press, 1982).

¹⁵ *See* *Spies v. People*, 12 N.E. 865, 903, 986 (Ill. 1887) (upholding murder convictions and concluding that inflammatory speech that incites violence can constitute accessory to murder).

¹⁶ *See* ELDRIDGE F. DOWELL, *A HISTORY OF CRIMINAL SYNDICALISM LEGISLATION IN THE UNITED STATES* 147 (The Johns Hopkins Press, 1939) (showing that 21 states and 2 territories enacted criminal syndicalism laws during this period).

¹⁷ *See* Florence Peterson, U.S. DEP'T OF LABOR, *STRIKES IN THE UNITED STATES, 1880-1936* 21 (1938).

the lives of well of 1,000 men and women.¹⁸ Untold thousands had been assaulted, arrested, and imprisoned as well. Though beyond any means of calculation, the financial toll of all this trouble was obviously immense as well. And if industrial capitalists were on the verge of victory, it was not clear how secure that victory was destined to be, not when the Bolsheviks were consolidating their rule; and not when worker discontent continuously erupted on the railroads and in industries like textiles and coal, where there continued a series of particularly large and violent strikes. In this context, it became increasingly common to think that perhaps a different, more progressive way was needed to address what had come to be called the "labor problem."¹⁹

II. THE LABOR PROBLEM AND THE PROGRESSIVE FOUNDATIONS OF NEW DEAL REFORM

In 1904, the sociologist Thorsten Veblen described how the "machine process" seemed bound to define the nature and ambitions of the labor movement. The machine "compels the adaptation of the workman to his work, rather than the adaptation of the work to the workman."²⁰ Therefore, the union must become a "mitigated expression of what the mechanical standardization of industry inculcates," an institution that can only offer "compromise" manifested in a "schedule of...demands" that includes collective bargaining for wages, hours, benefits, safety, and other basic working conditions, as well as arbitration concerning discipline and other workplace conflicts.²¹

Veblen's forecast was perhaps premature but not by much. By the time that the United States was formally involved in the First World War, these and similar notions informed an alternative vision of unionism, one whose intellectual foundations were built upon a progressive reconceptualization of Taylorism or scientific management, which had emerged earlier as attempts to intellectualize and operationalize industrial capitalism's demands for sovereignty over production in the first place.

A number of progressives who would play important roles in devising and administering the New Deal cultivated or embraced this program. Among them were Louis Brandeis and Robert Wagner; journalist

¹⁸ See *id.*; see also Paul F. Lipold & Larry W. Isaac, *Striking Deaths: Lethal Contestation and the "Exceptional" Character of the American Labor Movement, 1870-1947*, 54 INT. REV. OF SOC. HIST. 167, 168 (2009).

¹⁹ See Mark Barenberger, *The Political Economy of the Wagner Act: Power, Symbol, and Workplace Cooperation*, 106 HARV. L. REV. 1379, 1475 (1993). For a good summary of the "labor problem" as it was conceived in the late nineteenth and early twentieth centuries, see generally, ROBERT ZEIGER, *REPUBLICANS AND LABOR, 1919-1929* 1-16 (Lexington, KY: University of Kentucky Press, 1969).

²⁰ THORSTEN VEBLEN, *THE THEORY OF BUSINESS ENTERPRISE* 180, 191-92 (Book Jungle, 1904).

²¹ See *id.* at 180, 191-92.

Herbert Corly; intellectuals in Veblen's mold, including William Leiserson, Stuart Chase, and John Commons, as well as Rexford Tugwell and Isador Lubin; progressive businessmen like Joseph Filene, Walter Teagle, Averell Harriman, and Herbert Lehman; and, significantly, the country's two leading industrial unionists: John L. Lewis, the president of the United Mine Workers of America, and Sydney Hillman, president of the Amalgamated Clothing Workers of America.²²

All of these figures recognized, no less than Wobblies and other practitioners of industrial sedition, or for that matter the most reactionary employers, that the labor problem grew out of a conflict over sovereignty in the workplace. But what distinguished progressives from radicals and reactionaries on this question was that the progressives tended to conclude that, like contests over sovereignty in the political realm, conflicts in this context were best dealt with by imposing on the parties a set of necessary compromises. What was needed was a program of "industrial democracy" which would function as the workplace equivalent of representative democracy in the political world, with all that this entailed.

Industrial democracy's gravamen was that, in exchange for higher wages, benefits like retirement and health care, and immunity from continued persecution as seditionists, workers would largely concede control of the workplace to employers, their supervisors and managers, and the machines by which they effected their control. What modest measures of control workers retained would have to be shared with the bosses, formalized and bureaucratized in rules regarding hiring, firing, safety, and such, and funneled through systems of grievance arbitration in which their interests would be administered on their behalf by union representatives. A right to strike would survive, but in a limited way. Strikes could not be violent or excessively disruptive. They would have to meet with the approval of the state and honor the principle of contract, formalized in written and judicially enforceable collective bargaining agreements. Moreover, the main purpose of striking was reduced to securing agreement to those contracts.²³

If industrial capitalism had extended the control which manufacturing capitalism had given the capitalists over the fruits of production to the processes of production itself, what industrial democracy proposed to do was partially reverse the former while consecrating the latter. Workers would get more of the products of capitalism but little prerogative to control how it functioned in their working lives, something that happened to accord very well with an emerging economy of consumer capitalism, its impending

²² See Barenberger, *supra* note 19, at 1398, 1401-07, 1413-17; STEVE FRASER, *THE LABOR QUESTION* 60-61 (Princeton Univ. Press, 2020); Rick Tilman, *Thorsten Veblen and the New Deal: A Reappraisal*, 50 *THE HISTORIAN* 155, 16 (1988).

²³ See generally Katherine Van Wezel Stone, *The Post-War Paradigm in American Labor Law*, 90 *YALE L.J.* 1509 (1981) (providing a useful genealogy and criticism of this notion of democracy, albeit one that tends to locate its roots more in the postwar machinations of the courts than in New Deal reforms themselves).

dependency on Keynesian interventions, and an all-consuming culture of commodification.

III. THE NEW DEAL, THE WAGNER ACT, AND THE INSTITUTIONALIZATION OF INDUSTRIAL DEMOCRACY

The Great Depression further weakened the labor movement, driving membership and strike activity below the dismal levels already reached in the 1920s. But these losses not only created further opportunities for labor reform, they accompanied renewed fears of revolution and an increasingly widespread belief that capitalism itself could only be saved by means of a new political economy—a belief that happened to align with the role that Lewis and other reformers envisaged for labor in industrial society.

Indeed, among the defining features of the New Deal were the notions that stabilizing the national economy would require rationalizing labor relations, and that accomplishing this would require a government-managed system of unionization and collective bargaining reconciled to the mandates of industrial capitalism. The centerpiece of the so-called First New Deal, the National Industrial Recovery Act, endorsed the right of workers to organize and to engage in collective bargaining, as it presumed that, properly domesticated, unions would play a central role in realizing the overriding aim to stabilize the economy by a process of cartelization. When the First New Deal ended in failure, its successor, the Second New Deal, embraced, instead, a looser system of Keynesianism, but one whose political economy presupposed an even more central role for unions and workers, properly managed.²⁴

At the center of the Second New Deal's legislative program was the National Labor Relations Act, which took its popular name, the Wagner Act, from that of its main legislative champion, Senator Robert Wagner. Along with Brandeis and other labor progressives, Wagner believed that rectifying the surfeit of sovereignty that industrial employers arrogated to themselves meant nothing more radical than to require that they share some of this sovereignty with their workers.²⁵ In fact, Wagner's act was a realization of the vision of labor relations foreseen by Veblen. And after a couple of years of resistance and frustration, the statute began to succeed in at least some of its purposes. While the process of enacting the law and making it effective owed much to the efforts of elite figures like Wagner and Secretary of Labor Frances Perkins, labor activism was also essential to securing its fate.

By 1936, no such activism was more important than what unfolded under the banner of the Committee for Industrial Organizing, or CIO. Founded in 1935, principally by Hillman and Lewis, this new labor federation provided

²⁴ See GORDON, *supra* note 7 (describing the New Deal's reliance on industrial unions as a means of regulating the industrial economy).

²⁵ Barenberger, *supra* note 19, at 1442-43.

a structure by which legions of organizers and rank-and-file workers overcame the resistance of the many employers who were not yet convinced of the virtues of a new industrial order. Over the course of several years, the labor federation successfully organized for the first time a significant fraction of the industrial workforce.²⁶

These organizing gains were very real: In the twelve years that followed the enactment of the Wagner Act, union membership increased by nearly 11 million. And the gains were purchased at a significant price in courage, hardship, and sometimes bloodshed. But like the Wagner Act itself, the triumph of New Deal unionism was not a victory over capitalism but an accommodation with it. Whether under the aegis of the CIO, whether industrial or craft-oriented in form, it marked the rise of industrial unionism in a literal sense, which is to say of a unionism largely reconciled to the mandates of industrial capitalism. And in this respect, it adhered to the law, whose license to unions was subject to an edict that they must not revert to the kinds of ambitions and demands that earlier had gotten so many condemned as seditious. Tactical transgressions might temporarily be tolerated, so long as they, like the sit-down strikes of 1936 and 1937, which helped overcome concerted opposition to the statute among key industrial firms, conformed to this agenda. But thoroughgoing defiance of the industrial system would be prohibited.

Indeed, it is vitally important to see the Wagner Act not only as a means of advancing labor rights and worker prerogatives but restricting them as well. From the very outset, it functioned as a way of casting some forms of unionism beyond the ambit of protection, of using the limits of the protections it offered to draw a clear line between illegitimate and legitimate forms of unionism. On one side of this line, formed around limits to the right to strike and the scope of collective bargaining, where both radicals and conservatives, including die-hard IWWs and Trotskyists as well as craft unionist, who remained genuinely unreconciled to the mandates of industrial society and its demands for discipline and a concession of control to management and machinery. On the other side were unionists, including most CIO unionists and many ostensible socialists and communists, who were resigned to this new order and ready to accede to its demands.²⁷

The New Deal's labor law and policy program reflected a vision of "regulatory unionism" that relied on unions to rationalize and stabilize production and costs in industries that had been crippled by cutthroat competition, overproduction, and wages that were often at once uncompetitively high for

²⁶ *Id.* at 1404-10, 1413-17; see also Thomas Ferguson, *From Normalcy to the New Deal: Industrial Structure, Party Competition, and American Public Policy in the Great Depression*, 38 INT'L ORG. 41, 69-89 (1984). On the role of UMW and ACWA figures in shaping New Deal law and policy, see, for example, GORDON, *supra* note 7, at 170.

²⁷ Barenberger, *supra* note 19, at 1394-95, 1428-29; GORDON, *supra* note 7, at 92, 100, 119-25, 230.

employers and unbearably low for workers.²⁸ In this particular respect, it was conspicuously aligned with a notion that John L. Lewis and his lieutenants in the UMW had advanced as a means of stabilizing the coal industry in the 1920s and that Sidney Hillman and his colleagues had envisaged in clothing production. For the economy as a whole, this policy imagined a key role for unions in propping up effective demand, thus addressing what was widely thought to be the underpinning of the Great Depression, while reconciling the working class to its emerging role as the cornerstone of a consumer society. This new program was met with dissent, particularly in the form of wildcat strikes and other kinds of shop-floor unrest led by rank-and-file militants.²⁹ But by the mid-1940s, it was dominant, both within the CIO and among the craft unions that comprised the country's larger and older labor federation, the American Federation of Labor, which had emerged from the New Deal period mostly reconciled to the mandates of industrial capitalism as well and in many ways no longer recognizable as craft unions anyway.³⁰

IV. POSTWAR UNIONISM, THE REALITIES OF INDUSTRIAL DEMOCRACY, AND THE LABOR MOVEMENT'S LONG DECLINE

Shortly after the Wagner Act was validated by the U.S. Supreme Court in April 1937, the courts, the Congress, and the President began to make clear how little was actually required of employers and how intolerant the new regime would be of militants and radicals who defied its program.³¹ What also became increasingly evident, particularly during the Second World War, was how faithful union leaders would be in enforcing these norms as they suppressed strikes, tempered the demands of their members, and purged their organizations' ranks of revolutionaries and intransigent shop-floor troublemakers.

In fact, the 1947 Labor Management Relations Act, or Taft-Hartley Act, was in many ways a codification of the policies and practices that had been built around the Wagner Act, and not a deradicalization of that law. Whatever its other consequences, the new statute certainly did nothing to divert the labor movement from the accommodationist path that it had taken, a point evident in the ratification of the "Treaty of Detroit," the agreement

²⁸ GORDON, *supra* note 7, at 102.

²⁹ See, e.g., Nelson Lichtenstein, *Auto Worker Militancy and the Structure of Factory Life, 1937-1955*, 67 J. OF AM. HIST. 335, 335 (1980).

³⁰ See generally Christopher L. Tomlins, *AFL Unions in the 1930s: Their Performance in Historical Perspective*, 65 J. OF AM. HIST. 1021 (1979) (discussing the transformation of AFL unions into organization with little resemblance to their traditional craft antecedents).

³¹ See, e.g., AHMED WHITE, *THE LAST GREAT STRIKE: LITTLE STEEL, THE CIO, AND THE STRUGGLE FOR LABOR RIGHTS IN NEW DEAL AMERICA* (Univ. of California Press, 2016) (showing how little the courts, the President, and other New Deal officials did to vindicate steel unionists, some of them radicals, who resorted to militant tactics in defiance of employers' violent, unlawful opposition to labor organizing); see also Jim Pope, *Worker Lawmaking, Sit-Down Strikes, and the Shaping of American Industrial Relations, 1935-1958*, 24 L. & HIST. REV. 45, 97-100 (2006).

reached between the United Auto Workers and General Motors Corporation in 1950. Brokered by the UAW President Walter Reuther, who excelled at collaborating with employers in disciplining and controlling rank-and-file union members, that agreement set the pattern for organizing throughout the automobile industry and beyond, delivering for workers as much in improved compensation and benefits as it surrendered in sovereignty over their working lives.³²

In the near term, and by its own terms, this new model of labor law and labor relations delivered broad gains for the labor movement. Conciliation helped the labor movement becoming a prominent constituent of the Democratic Party. By working within the program's structure and through organizations established during the New Deal, the movement grew rapidly during the Second World War and in the years that followed. It was helped along by a semi-nationalized Cold War economy, historically low immigration, and considerable political consensus. But the movement's outward growth belied an internal rot. The unions' surrender on the question of control in exchange for their members' license to earn and consume more, produced in their ranks an epidemic of alienation and disaffection with work and unionism alike, much of it a reaction to increasingly bureaucratized forms of management and the continued degradation of work at the hands of automation and mechanization.

All of this contributed to high rates of deskilling, job loss, and overall insecurity and, already in the 1950s a great deal of dissent within labor's ranks. This in turn led to the suppression of that dissent by an increasingly entrenched and authoritarian union bureaucracy whose actions in turn produced more disaffection.³³ By the 1960s, the currents of opposition to New Deal unionism, not unlike the old culture of industrial sedition, had fully transcended conventional political lines. They enveloped everyone from Barry Goldwater conservatives crowing about the "right to work" and condemning "union bosses" and "big labor" for racketeering and self-dealing, to New Left radicals who denounced unions as collaborators in Cold War militarism and imperialism and as accomplices in building workplaces that were unbearably stultifying.³⁴ Not every condemnation of labor during this period was well-founded, whatever the politics behind it. But there was much truth in these complaints, easily corroborated in the country's factories and union halls by the testimony of working men and women who found themselves at the mercy of armies of foremen, managers, and supervisors as well as the

³² See NELSON LICHTENSTEIN, *STATE OF THE UNION: A CENTURY OF AMERICAN LABOR* 77, 122-24 (Princeton Univ. Press, 2002).

³³ According to one sympathetic study, already by the 1940s, only a minority of CIO organized industrial unions were "highly" democratic while over 30 percent were "oligarchical." See Judith Stepan-Norris & Maurice Zeitlin, *Insurgency, Radicalism, and Democracy in American's Industrial Unions*, 75 *SOC. FORCES* 1, 2 (1996). As that same study claimed, oligarchy was not the product of some immanent tendency in organized labor but rather political forces within these organizations. *Id.*

³⁴ See LICHTENSTEIN, *supra* note 32, at 136-71.

machines by which they effected their control and the bureaucratized norms that formalized their rule.³⁵

This kind of internal conflict gave impetus to the surge in activism that characterized labor relations in the late 1960s and 1970s, as dissidents protested for better representation.³⁶ But by this time, both conventional unionists and dissenters were also battling on a separate front with employers that were ready to forsake regulatory unionism. Disappointed with its workings and facing surging competition from foreign and non-union firms, they had discovered other ways of accomplishing rationalizing production that did not involve sharing any real authority at all with their workers. These methods included new and sophisticated management practices, ever more extensive personnel and human relations offices, and employers' own compliance with a rapidly proliferating range of individual employment laws. Therefore, employers demanded unreasonable concessions in bargaining with the hope, in many cases, of provoking strikes, which they then broke by aggressive and sometimes unlawful means; they bitterly resisted organizing efforts by methods that also increasingly violated the labor law; and they rediscovered their penchant for denouncing unions as champions of industrial sedition—in part with the ironic charge that even the most restrained of impositions on employers' sovereignty were yet again obsolete and reactionary.³⁷

By the 1980s, the labor movement was in freefall, the result not only of company and government hostility but workers' indifference to a kind of unionism that did little to ensure good compensation and job security, let alone safeguard their dignity and autonomy. Unions also suffered from a loss of jobs and increasing performance pressures at the hands of escalating interstate and international competition, automation and mechanization, a resumption of mass immigration, and a new political consensus that was, if not hostile to the New Deal, indifferent to unionism's premises and aims. It is easy, as many do, to presume that the labor movement had no chance in the face of these developments. Indeed, surely it did not, when its reconciliation to industrial capitalism and its faith in progress made it a faithful accomplice in these very developments.

³⁵ See generally, HARRY BRAVERMAN, PAUL M. SWEETZ, & JOHN B. FOSTER, *LABOR AND MONOPOLY CAPITALISM: THE DEGRADATION OF WORK IN THE TWENTIETH CENTURY* (New York Monthly Rev. Press, 1974) (for the classic exposition of this critique); see also PAUL BUHLE, *TAKING CARE OF BUSINESS: SAMUEL GOMPERS, GEORGE MEANY, LANE KIRKLAND, AND THE TRAGEDY OF AMERICAN LABOR* (Monthly Rev. Press, 1999) (an account, focused on the labor movement's leadership, of its postwar decent into collaboration with business interests). See generally, JOHN DOS PASSOS, *MIDCENTURY* (Pocket Books, 1961) (a fictionalized but highly illuminating exposition of these themes from a more conservative perspective).

³⁶ See generally, the various chapters in *REBEL RANK AND FILE: LABOR MILITANCY AND REVOLT FROM BELOW DURING THE LONG 1970s* (Aaron Brenner, Robert Brenner, & Cal Winslow, eds. 2010) (an excellent introduction to this history).

³⁷ For an example of how unions today are denounced as reactionary, see, for example, David Dayen, *Anatomy of an Anti-Union Meeting*, AM. PROSPECT (Aug. 2, 2021) <https://prospect.org/2021/08/02/anatomy-of-an-anti-union-meeting/> [<https://perma.cc/ECM9-E8DS>].

V. CONCLUSION

The world of work in this century is a wasteland whose worst features can be found not just in low wages, inadequate benefits, or a lack of union representation, but in the many expressions of sovereignty that New Deal unionism and labor policy conceded to employers. Those concessions echo today in the unchecked advance of artificial intelligence and other means of automation, totalitarian human relations bureaucracies, authoritarian rules and regulations, inhumane performance pressures, and extraordinary levels of insecurity, boredom, and alienation. And outside of work, one sees the broader consequences of industrial capitalism's unhindered reign, including catastrophic environmental degradation and widespread spiritual and social decay. Given these conditions and the failure of what remains of the labor movement to achieve much anymore by the terms it has set for itself since the New Deal, it seems clear that unions and unionists should learn again to defy industrial capitalism's mandates, to renounce its faith in a progress built upon machines and technology, and to find inspiration less in the progressive liberalism of Brandeis or Franklin Roosevelt and more in the rather unprogressive radicalism of Simone Weil, the Wobblies, or even the old craft unionists. As the history recounted in this essay makes clear, those who dare to do this are liable to be condemned as seditionists and persecuted accordingly. They will probably not win very much, at least by the conventional measures of union success in industrial society—successful contracting, growing membership rolls, and legitimacy in the eyes of the political elite. But as this history also makes clear, losing in these ways may be the price of averting an everlasting defeat.

