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13 United States: Lessons from Abroad and Home

Joel Rogers

13.1 Introduction: A Failed System

Labor, management, and neutrals all agree that the New Deal system of labor relations, codified in the Wagner and Taft-Hartley acts of 1935 and 1947, respectively, no longer works to the good of the American economy. While it may have been well suited to the industrial society of the 1930s to 1950s, when it helped deliver enormous growth in real income and productivity, the New Deal system has not adjusted well to the economic realities of the 1990s.

The New Deal system was designed to allow worker selection of exclusive union bargaining representatives¹ through secret ballot elections free of management interference, and to buttress collective bargaining between such representatives and management as a way of dividing the economic pie between

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In thinking about the subject matter of this essay, the author benefits from ongoing collaborations with Joshua Cohen, Daniel Luria, Wade Rathke, Charles Sabel, and especially Richard Freeman and Wolfgang Streeck. See Cohen and Rogers (1992, 1993, 1995), Luria and Rogers (1993), Rathke and Rogers (1994), Rogers and Sabel (1993), Freeman and Rogers (1993a, 1993b, 1993c, 1994, in progress), and Rogers and Streeck (1994a, 1994b). The following draws freely from this joint work—in particular, from Freeman and Rogers (1993c) and Rogers and Streeck (1994a)—while holding all coauthors blameless for errors that have survived their care.

1. The entire structure of the Labor Management Relations Act (LMRA; the Wagner and Taft-Hartley Acts, as amended) is directed to specifying the rights, obligations, and conditions of emergence and stability of such exclusive representatives. The importance of exclusivity in turn derived from assumptions about the appropriate ambit of negotiated wage and benefit settlements. The LMRA contemplates collective bargaining on a firm rather than industry basis. It also generally does not contemplate use of “extension laws,” common in Europe, extending the terms of collective agreements to firms not party to negotiation. Without extension, worker gains from collective bargaining depend on worker strength within particular firms. Exclusivity is the gravamen of such power, and thus the key to stability in collective bargaining. See the discussion below.

labor and capital.² At the core of the Wagner Act was the conviction that union representation within firms was not only a moral imperative but an economic and political good. The basic economic idea was that workers, acting collectively, would be able to drive up wages. In a closed economy with unemployed resources, the resulting increase in demand would stimulate private investment and job growth. The basic political idea was that, inside the firm and out, worker organization would help American democracy by providing a “counter-vailing power” to otherwise overwhelming business domination.

The core ideas of this system—that workers should enjoy associational rights within and without the firm and that collective worker organizations can contribute to the vitality of the American economy—retain currency today. But the particular ways in which these ideas were institutionalized in the New Deal system appear increasingly inapposite to present circumstance. The New Deal system effectively premised: a sharp distinction between production workers, who were assumed to be solely concerned with wages and working conditions, and management, who were assumed to have full competence in running the enterprise;³ an essentially closed economy, with little international wage competition; the organization of production along “Fordist” and “Taylorist” lines, in which the dominant model of efficient production was a large firm featuring assembly-line mass production of standardized goods by unskilled and semiskilled labor; and the feasibility of providing a family wage and benefit package through lifetime jobs held by single male breadwinners. Put simply, the world described by these premises no longer exists—workers have other interests, management needs more worker involvement, the economy is more open, production is more flexible and quality driven, jobs are less stable, the workforce is more diverse—and the system based on them works poorly in the world that does.

The costs of this institutional mismatch are widely distributed.⁴ Unions—the only form of independent collective worker organization contemplated in the system—are effectively denied their right to organize, and escalating em-

2. Such division, of course, is not the only function of collective bargaining, much of which is concerned with nonmaterial benefits (e.g., rules on notice and fair treatment), with transfers among workers (e.g., “solidarity” bargaining), and with the appropriate form material gains should take (e.g., wages vs. benefits). Still, determining the worker share of the production surplus is the key function of collective bargaining, and the one which conditions performance of most others.

3. Reflected in the “adversarialism” that has always defined U.S. industrial relations, acceptance of this distinction was a cardinal principle on both sides of the labor-management relation. Consider the heavily circumscribed vision of George Meany, as expressed shortly after he assumed the presidency of the new AFL-CIO: “Those matters that do not touch a worker directly, a union cannot and will not challenge. These may include investment policy, a decision to make a new product, a desire to erect a new plant so as to be closer to expanding markets, etc. . . . But where management decisions affect a worker directly, a union will intervene” (quoted in Derber 1970, 92).

4. Of course, they are not distributed equally. As indicated in a moment in the text, unions are e.g. threatened with extinction while employers are only constrained in their strategies of nonunion worker “empowerment.”

ployer opposition⁵ is rapidly “disappearing” them as a presence in national public life.⁶ Individual managements, while generally welcoming the decline of unions, are limited in their ability to support advanced forms of worker participation in the nonunionized sector.⁷ Workers are denied voice, choice of its form, and protection from economic insecurity. The nation as a whole suffers from lost productivity growth, rising inequality, a failure to block the “low-road” response to rising competition, ineffective enforcement of labor standards, and, less tangible but no less real, the erosion of democratic norms.⁸

For all the reasons so many have to be unhappy with the present system,

5. Increased employer resistance is reflected in the sharp increase in employer unfair labor practice charges issued by the National Labor Relations Board (NLRB) since the early 1970s. The reasons for increased resistance are many, but two bear special note. First, internationalization and the union decline itself put wages and benefits once “taken out of competition” forcefully back in. This provides clear economic incentives for firms to resist unionization. Second, increased product market instability has put a premium on flexibility in workplaces and corporate structure. While the experience of other countries (and selective cooperative programs in the United States) indicates that such flexibility can be achieved under unionization, most managers strongly prefer unilaterally imposed to negotiated flexibility.

6. The United States now approximates the “union-free” environment favored by professional antiunionists. Private sector union density now stands just above 11 percent and on a continuation of current trends should fall to about 5 percent by the end of the decade. Of course, history has not always been kind to predictions of continued union decline. In 1932, the president of the American Economic Association spoke confidently of the “lessening importance of trade unionism in American economic organization” as one of the “fundamental alterations” of American society (Barnett 1933, 1). Without some radical changes in the conditions and strategies of union organizing, however, it seems most unlikely that the coming years will see anything like the burst in union power that made these remarks ridiculous.

7. Section 8(a)(2) of the LMRA makes it unlawful for an employer to “dominate or interfere with the formation of administration of any labor organization or contribute financial or other support to it.” Deliberately, “labor organization” is elsewhere defined broadly to include not only labor unions but “any organization of any kind or any agency or employee representation committee or plan” that features (1) employee participation, (2) the representation of some employees by others, in (3) dealings with the employer regarding (4) one or more of six traditional subjects of collective bargaining: grievances, labor disputes, wages, rates of pay, hours of employment, and conditions of work. For at least some nonunion employers, this imposes a restraint on desired innovations in worker participation and “empowerment” in workplace governance. E.g., an employer that set out the purposes and powers of a committee making decisions concerning the terms and conditions of employment (e.g., on health and safety or the use of a new technology), subsidized that committee, or appointed some of its managers to it—even if it permitted workers free choice in selecting their representatives to it—would likely be in violation of section 8(a)(2).

8. While few would blame our obsolete labor relations framework and the denial of collective voice to workers for all the country’s economic ills, there is growing consensus that they contribute to a host of problems and at this point pose a real barrier to economic renewal. Union decline accounts for about a fifth of the recent rise in American earnings inequality (Freeman 1989; Card 1991), itself an extreme outlier in comparative terms (Freeman and Katz 1994). It contributes to declining company provision of private social welfare benefits, such as pensions and health care (Rogers 1990; Bloom and Freeman 1992). And it encourages federal regulations and court suits to resolve labor problems and protect workers, which are not as flexible or effective as labor-management negotiation at specific workplaces (Flanagan 1987; Weiler 1990). The more general lack of voice representation mechanisms in the present system depresses the productivity gains that would come of substantive worker involvement in enterprise management and job design (Blinder 1990; Mishel and Voos 1992) and contributes to a “hire and fire” culture that discourages investments in human capital (Aoki 1988; Cole 1989; Kochan and Osterman 1991; Office of Technology Assessment [OTA] 1990). On the relation between democratic performance and the level

however, the path of reform is far from clear. At present, there is no consensus on the elements of reform nor even sense of how consensus might be organized. Organized business and organized labor remain sharply divided over their vision of the role of worker organization in the new economy. However unfairly, both are also generally regarded as self-serving in their proposals for reform. At the same time, each retains the power to block the other's favored agenda, and neither favors wholesale transformation of the present system of the sort that many now think is needed.⁹ Not surprising given this background, the present administration—already limited in its ability to move favored legislation by a Republican-dominated Congress—is deeply ambivalent on the topic. While its appointment of a Commission on the Future of Worker/Management Relations (the “Dunlop Commission”)¹⁰ has at least formally put labor law reform on the national agenda, few observers rank it such a high administration priority. And among the general public, whose views on the subject are barely known,¹¹ labor law reform is simply not an issue of great salience. In brief, labor law reform lacks a public constituency and an articulate and credible agent—compounding uncertainty about what a workable framework for reform might be.

It is in this context, for good or ill, that considerable interest has been expressed in importing some version of a council system to the United States.¹² Claiming potential gains to democracy, firm efficiency, and the effectiveness of workplace regulation, proponents argue that councils would: (1) provide at

of independent collective worker organization, see Cohen and Rogers (1992, 1993), Freeman and Rogers (1993c), Rogers and Sabel (1993), and Putnam (1992).

9. While perhaps sharing prudential concerns about the unintended consequences of global change, the key parties oppose it for different reasons. Labor fears change because its position is already so tenuous; business does not want change because it can already get much of what it wants outside existing legal constraints.

10. So named because of its chair, former Secretary of Labor John Dunlop. The recommendations of the commission, which postdate this writing if not this volume, will almost surely be limited—some speedup in election process, some greater curbs on employer unfair labor practices, some extension of coverage of existing law, some limited exceptions to current section 8(a)(2) prohibitions, some promotion of alternative dispute resolution systems in disputes about workplace rights. These, even if followed, will not amount to wholesale reform of the system and seem unlikely to set the agenda for whatever reform Congress does consider.

11. Determining such is the major goal of the effort outlined in Freeman and Rogers (1993b), with a preliminary report below.

12. Among those making the argument are Adams (1983, 1985), Freeman and Rogers (1993c), Kochan and Osterman (1991), Wever, Kochan, and Berg (1991), Weiler (1990), and, for some time now, Summers (1979, 1982, 1994).

In the 103d Congress, 2d Session, Senator Pell introduced legislation on the subject (S. 2499). The Pell proposal, described by his office as a “discussion starter,” would permit the establishment of labor-management committees to “discuss matters of interest and concern (including but not limited to issues of quality, productivity, improved labor-management relations, job security, organizational efficiency and enhanced economic development)” upon “the agreement of both the employer and a majority of employees.” The committees would be composed of equal numbers of employees (elected by fellow employees) and management officials chosen by the management.

least some representation to those American workers who want increased voice in firm decision making but who do not desire, or who desire but are not anytime likely to enjoy, the benefits of traditional unionization; (2) improve enterprise and general market efficiency by improving the flow of information between management and labor on issues of mutual concern and, more specifically, facilitate wider adoption of “high-performance” forms of worker organization associated with greater worker involvement, training, productivity, and, more ambiguously, compensation; (3) improve the effectiveness of government regulation of the workplace, chiefly by providing an additional set of eyes and ears for government regulations—a local means of monitoring and enforcement far exceeding the capacities of any plausibly sized inspectorate.

Apart from notice of political infeasibility or opposition to the norms implicit in the above, arguments against councils take the form chiefly of doubts about the magnitude—not general direction¹³—of the above-claimed effects, and concerns about the disruption of existing industrial relations institutions by transplant of this “foreign” one. An allied but distinct objection goes less to the merits of councils per se than to the relative weight they should receive in the portfolio of reform energies. Commonly suggested alternative foci range from a more general “experimental” approach to opening up representation options within firms—itself associated with calls for the formal repeal of the current ban on “company unions”—to facilitating union organization or, above the enterprise level, to reform of current wage regulation.

In what follows I assess these competing claims and concerns in light of comparative experience with works councils and the history of councils and council-like forms in the United States. The assessment has three parts. Against the backdrop of a growing “representation gap” in United States, section 13.2 summarizes the principal values served by collective workplace organization and the contribution of councils to realizing those values. Section 13.3 considers the history of councilist and council-like forms in the United States and the vitality of alternative nonunion forms of representation. Section 13.4 addresses the transplant issue. Section 13.5 briefly situates suggestions for councilar reform in the broader context of the present system’s problems.

13.2 Democracy, Efficiency, and Regulatory Performance

The most immediate motivation for considering works councils as a policy initiative in the United States is straightforward. After a 40-year decline, private sector union density has fallen to a pre-Wagner Act level of 12 percent (Bureau of Labor Statistics [BLS] 1994). At current rates of new organizing,

13. In all the literature considered in research on this volume, I have yet to find any argument that councils actually weaken workplace democracy, reduce the efficiency of firms, or hamper government regulatory efforts. Negative assessments invariably take the form of questioning the robustness of these positive effects, often relative to alternative means.

density will drop to 5 percent by the turn of the century.¹⁴ Given the absence of formal modes of collective voice in nonunionized firms and U.S. labor law restrictions on company unions, only a few workers will have any form of worker representation within private enterprises.

The United States is hardly the only advanced industrial economy in which union membership fell in the 1980s; decline occurred in most OECD countries. But the United States is a leader in deunionization, and it lacks any structure of worker representation, inside or outside the firm, to compensate for declining union coverage. In Europe, falling union membership in the 1980s followed a decade of increased unionization, with the result that rates of organization were still relatively high at the outset of the 1990s, and comparable to their level in the early 1970s. Moreover, mechanisms to extend collectively bargained wages to nonunionized workers, while weaker than in the past, remain operative. And mandated works councils provide workers with collective voice in nonunionized firms. In Japan, where union declines over the past 20 years have been pronounced, the *shunto* economywide wage adjustment system remains robust. And company unions and other means of consensual decision making, including joint consultation committees, provide some mechanism for worker voice within large enterprises (fig. 13.1).

Setting to the side for a moment the problem of external labor market regulation, the absence of effective mechanisms of intrafirm employee voice occasions several concerns. First, democratic ideals are compromised by the absence of collective representation for workers who want it. Survey data indicate that some 30 to 40 million American workers without union representation desire such and some 80 million workers, many of whom do not approve of unions, desire some independent collective voice in their workplace.¹⁵ These numbers dwarf the 16 million or so members of organized labor and point to a large "representation gap" in the American workplace. Second, there is good evidence that this gap harms the economy. Many studies show the critical role of effective labor relations in economic performance and the dependence of

14. At current rates of new organizing, this would describe a new equilibrium for private sector density. There is, however, no reason to assume current organizing efforts will be sustained by a substantially reduced membership. In 1992, the AFL-CIO estimated that it would lose an additional 500,000 members (*Daily Labor Report* 1992), or approximately 5 percent of its dues-paying base. A continuation of that trend suggests a roughly 40 percent reduction in membership by the end of the decade. The costs of recruiting new members through NLRB elections has also increased: Chaison and Dhavale (1990) estimate that maintenance of current density levels will require unions to make, over and above current organizing budgets, an expenditure of \$300 million annually. With rising new-member costs, a shrinking base, and essentially fixed costs for servicing existing members, the 5 percent figure could be simply another point on the line of continuing decline. On the other hand, innovative techniques of organizing, particularly outside NLRB elections, and the shrinkage of unionization to its most supportive core groups could produce a new equilibrium above the 5 percent forecast. In either case, however, we see no signs of a "burst" of unionization to an equilibrium above current rates of density.

15. This claim relies on various polls, including those reported in Gallup Organization (1988), Fingerhut/Powers (1991), Quinn and Staines (1979), Louis Harris and Associates (1984), Davis and Smith (1991), and Farber and Kreuger (1993), and, especially Freeman and Rogers (1994).

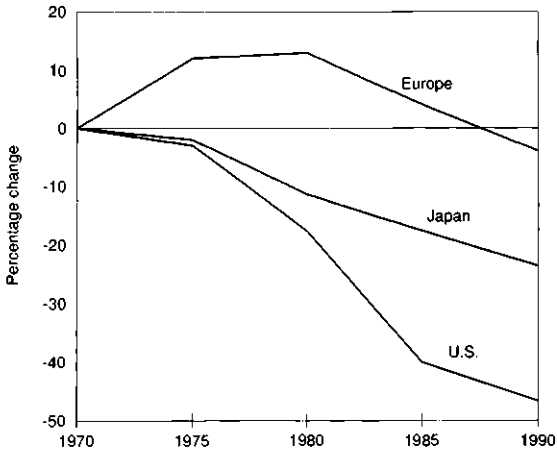


Fig. 13.1 Trends in unionization, 1970-90: Europe, Japan, and the United States

Sources: OECD (1991, 1992); BLS, union membership data gathered from various sources (1992); *The Economist Book of Vital Statistics 1990*.

Notes: Europe includes Austria, Belgium, Denmark, Finland, France, Germany, Italy, Netherlands, Sweden, Switzerland, and the United Kingdom. Union density figures for Europe were weighted using the 1988 labor force size for each country. For 1990, union density rates for Europe and Japan are 1988 figures.

effective labor relations on worker representation. Third, in many areas of public regulatory concern about the workplace—occupational safety and health, wages and hours, and workforce training among them—an effective system of workplace representation appears vital to the achievement of social goals.

13.2.1 Workplace Democracy and Collective Representation

The ideal of democracy is stated simply enough: as moral equals, all persons should be equally free to determine the terms and conditions of social association. As applied to life outside the firm, commitment to the ideal implies limiting inequalities in public life due to ethically irrelevant differences among citizens and guaranteeing equal treatment under law, equal access to public goods, and so on. As applied to the workplace, it implies equalizing power between owners and producers, managers and supervised employees.

The case for workplace democracy can be made on both instrumental and noninstrumental grounds.¹⁶ The instrumental argument is that workplace democracy strengthens democracy in the broader society. Democracy requires some equality in the distribution of material resources, and this is unlikely

16. This is a generalization. Elster's (1986) argument for workplace democracy on "self-realization" grounds, e.g., falls into neither category. See Cohen (1989) for a useful inventory of existing arguments.

without some measure of worker representation inside firms (Cohen and Rogers 1983). Also, democracy requires citizens capable and confident in their exercise of deliberative political judgment, and these citizen attributes are unlikely to arise in a society that shows no respect for such attributes at work (Pateman 1970). The noninstrumental argument proceeds by extension of democratic principles beyond formal politics. Democracy might be characterized as the idea that those involved in a socially cooperative activity and bound by its rules have a right to determine those rules. This principle has applicability beyond the state to other sorts of rule-governed cooperative activity, including the cooperative activity of the firm (Dahl 1985, 1989). And this may be particularly so when, as in the case of corporations, the democratic state itself charters and protects the institutions governing such activity.¹⁷

Thus understood, it is almost definitional that organizations that facilitate effective worker definition and expression of interests inside the firm contribute to workplace democracy. Do councils do this? Certainly. They are arenas of collective deliberation by workers about issues that concern them inside the firm, a partial counterweight to unilateral management decision making, and a check on rival forms of representation.

17. If these sorts of arguments for workplace democracy are familiar, the arguments for qualifying commitments to workplace democracy are equally so. Two objections might be distinguished. The first is that people can more easily avoid autocratic bosses than they can autocratic governments. In a market economy, they can quit their jobs and find a different employer or set up their own business. But it is easy to exaggerate the power of exit. Quitting unsatisfactory conditions is an attractive, even exhilarating prospect if you can rapidly find a job paying comparable compensation elsewhere. But in practice, substantial unemployment, large wage differences across firms and sectors, and many firm-specific, nonportable social benefits, makes exit nonviable for many workers, and potentially least useful to those most in need of protection from autocratic management: the less skilled. Moreover, even where exit options from undemocratic conditions exist, they are not recognized, in formal politics, as compelling arguments against remediation. That it is possible to move from a town that denies its citizens the right to vote, e.g., is never seriously offered as a reason not to reform that town's government. Employing the obverse of the extension argument used above, there is no reason such an argument *not* respected outside the workplace should be respected within it.

A second objection goes to the different functions of formal government and firms. Firms, the argument goes, are designed to produce economic value, not to govern social life, and this implies different criteria of performance. Governments are at least in part judged by representativeness. What firms are judged by is the "market test" of profitability. This objection, which denies any force to the extension argument, might be answered in two ways. First, the distinction between firms and governments is overdrawn. Governments are routinely judged by their success in producing economic value. As a vast literature in comparative politics attests, economic performance is the single best predictor of stability in government (Eulau and Lewis-Beck 1985; Lewis-Beck and Lafay 1991). And firms are routinely judged by standards of conduct more encompassing than profitability. While firms must meet the market test, along the way to doing so they must typically meet other tests, including the recruitment and nondiscriminatory treatment of an adequate labor force. Second and more directly, however, the argument has little practical force. If workplace democracy extracted immense losses in production, we might decide that it was not worth the cost. But while we could undoubtedly devise forms of workplace democracy that are economically costly, the analysis just offered and the practical experience of successful capitalist economies with high levels of worker representation suggest that the opposite is more likely to be true in the real world: a well-designed system of workplace democracy can raise social production.

That councils provide a form of democratic participation attractive to workers themselves is evident from the level of worker participation in them. As the country studies here show, that level is high. In the highly developed German system, for example, councils are elected every four years on a nationwide election day, with opposing slates of candidates in each workplace that has a council, and turnout averaging around 90 percent. During the election campaign unions contend with opposition from competing unions and from non-union groups, which often try to win votes by distancing themselves from unionism and emphasizing their closeness to the employer. For the largest German union confederation, the *Deutscher Gewerkschaftsbund*, it has been a source of strength, legitimacy, and pride that the candidates of its affiliates regularly win about 80 percent of works council seats nationwide (more in most large firms). In countries with multiunionism, works council elections force unions to match their policies to the preferences of large numbers of workers, unionized or not, and to measure regularly and publicly their support against that of their competitors. In these ways, a council system promotes a certain accountability of unions to those they purport to serve.

13.2.2 Contributions to Efficiency

Modern economic analysis shows that a well-designed system of intrafirm worker representation can produce economic benefit not just workers, but to firms themselves.

Recognition that information exists at various levels of organizations implies that in many situations it is inefficient for management to make key decisions. Hierarchies tend to work best when there is very low or very high uncertainty at workplaces (so that workplace-specific information provides little guidance on optimal decisions), but at intermediate levels of uncertainty, giving workers the authority to make some workplace decisions is efficient, as they can react better (more quickly, with a response informed by appropriate local knowledge) than centralized management to workplace-specific shocks or unusual circumstances (Aoki 1990, 1988).

The potential for divergent interest groups within firm hierarchies to use information for their own benefit at the expense of the firm implies that there may be payoffs from devising information and incentive structures that link top management to workers outside the standard hierarchy. Diverse principal-agent models make this point in various ways; Tirole (1986) develops it in the context of a three-level firm hierarchy: top management, supervisors, and workers, where a major issue is the possibility for coalitions among the players. Other work focuses on strategies to elicit effort, from incentive pay systems—such as rank-order tournaments (Lazear and Rosen 1981; Lazear 1991), profit sharing (Estrin, Grout, and Wadhvani 1987; Weitzman and Kruse 1990), “gain-sharing” schemes such as the Scanlon, Rucker, and Improshare plans (Eaton and Voos 1992; Kaufman 1992), and employee ownership through employee stock ownership plans (ESOPs) and other mechanisms (Bloom 1986;

Blasi 1988)—to worker participation in management (Levine and Tyson 1990; Eaton and Voos 1992). The major finding is that innovations that give employees substantial decision-making authority (“strategic participation”) and a share of resultant productivity increases improve productivity. Weitzman and Kruse report favorably on profit sharing. The General Accounting Office (GAO 1986, 1988) and Conte and Svejnar (1990) find that the productivity effects of ESOPs are substantial and positive when the ESOP links worker stock ownership to substantial participation in daily firm management but not when worker participation is weak or ambiguous. The importance of such linkage finds general support, over a wide range of incentive schemes, in the reviews of Levine and Tyson (1990) and Eaton and Voos (1992).¹⁸

Labor relations practices based on voice instead of exit also show benefits in training practice. Human capital analyses of investment in firm-specific skills point to the advantages of job rotation and consultation (Koike 1984, 1989; Cole 1979, 1989; Morishima 1991a, 1991b) and highlight the incentive to make investments in training specific to enterprises when workers and firms expect low turnover.¹⁹ This contrasts with studies documenting the limited firm training efforts directed to “frontline” production workers in the United States (Commission on the Skills of the American Workforce 1990; OTA 1990; Osterman 1990).

In chapter 2 of this volume, Freeman and Lazear model the ways in which works councils can produce such happy effects. They stress the virtue of the following: increasing information flows from management to labor, which can lead to worker concessions in difficult economic times, saving troubled enterprises; increasing information flows from workers to management outside the hierarchical chain; providing a forum for both sides to devise new solutions to problems; and motivating workers to make longer-term commitments to the firm. In this analysis, collective voice in the workplace has benefits to the enterprise beyond discouraging strikes due to unmet grievances (a major goal of the Wagner Act) or saving the costs of turnover by reducing quits or giving workers the compensation package they desire (stressed by Freeman and Medoff 1984). It alters the way management and labor operate, creating a more cooperative and informative decision process.

The way it does so, it bears emphasis, and of relevance to our focus on *collective* representation, is by changing the power relations between workers

18. Firm experiments with Quality of Work Life and Total Quality Management programs, discussed in section 13.4, suggest that managers recognize this link but still have problems developing successful participation schemes. Despite the widespread finding that worker participation is key to the success of ESOPs, e.g., the GAO (1986) estimates that only one in four ESOPs includes greater employee input into decision making.

19. In Germany, to take a prominent example, the effect of intrafirm representation is to force management to train more broadly than would otherwise be the case. Since pervasive council representation effectively diffuses this effect across firms, however, no firm is uniquely disadvantaged by training more workers or more broadly than it would otherwise choose. And the economy as a whole benefits from the resulting effort.

and management. On the side of workers, it is their greater control over the use of information they provide to management that leads them to provide it in the first place. Without such control, workers are reluctant to provide the information useful to improving enterprise efficiency for fear that gains in efficiency will come at the expense of their security or compensation. On the side of management, the same increase in the ability of workers to constrain management explains the most commonly observed efficiency effects on management. First, knowing that workers will interrogate decisions that affect their jobs, management must consider more fully the costs and benefits of actions it proposes to take. This limits costly mistakes arising from simple lack of reflection. Second, a management that must discuss its labor decisions with employee representatives will invest more in knowing how workers currently fare, and the likely consequences to them of a change in action, than a management concerned solely with stockholders.²⁰

Works councils institutionalize such a power shift inside firms. With strong works councils, employers cannot abolish worker participation unilaterally. Since they know this, they will consider it a waste to try and will direct their efforts to building constructive relations with workers, and the operation of the council itself will not be shadowed (as union relations typically are in the United States) by a prehistory of employer resistance. On the side of workers, knowledge that the employer cannot abolish the council, and therefore will not try, permits workers to be less defensive in their employer dealings than under less safe conditions. The permanence of the council structure, finally, permits both sides to extend their time horizons in mutual dealings through it. A council can extend "credit" to the employer over long periods. And, not having to insure against aggressive short-termism from worker representatives uncertain of their long-term status, management can assume that works councils will keep commitments even in difficult times.

Consultation and co-determination rights vested in representative bodies create space for joint deliberation of decisions between management and worker representatives. Typically, exercise of consultation and co-determination rights delays decisions while at the same time improving their quality; this is the tenor of research on the impact of co-determination on German management. Works councils that provide managers with skillful interlocutors able to interrogate proposals and projects in depth make management consider

20. Imagine two interlocutors, A and B, at point X. A wishes to move to point Y; B, with blocking power, must be persuaded of the wisdom of doing so. In seeking to persuade B that a move to Y is in B's interest, A has incentives to familiarize itself intimately with B's present circumstance, if only better to show B that (perhaps contrary to B's initial perception of things) this move is in fact in B's interest, and to learn of the least costly means (to B) of making it. Along the way, A will gain knowledge of how B works and of alternative ways of getting from X to Y. In general, A will become more skilled in making X-to-Y changes in incremental steps and in more routinely spotting opportunities for incremental improvement. In this way, the change in power relations helps underwrite continuous improvement in the organization of production and work—the alleged *sine qua non* of contemporary business success.

intended decisions more carefully and mobilize extensive information for their justification. Co-determination, which gives works councils temporary veto powers over decisions, may protect managements from narrow, short-term responses to market signals, helping them avoid costly mistakes arising from lack of reflection.

If councils can thus promote efficiency within firms, they also have positive effects on the efficiency of labor markets and multifirm production systems. The way the former happens is straightforward. Increased information flow to employees permits them to adjust to changed circumstances before they directly affect welfare—think of the positive effects of advance notice on plant closings. The latter is more complicated but essentially derives from flows of information and pressures for upgrading mediated by councils themselves.

In successful works councils systems, councils serve liaison functions with the environment outside the firm, often helping the firm perceive and import good practice. In this way councils help diffuse innovations across firm boundaries. In dealing with technical change and its consequences for work organization, for example, councils in several countries may call in experts in ergonomics to advise them and the employer on state-of-the-art solutions. Expert advice helps standardize conditions across firms and draws the attention of firms to advanced solutions that they might have found on their own only with delay and at high cost. In Germany, council members have the right to attend training courses, often organized by unions or employers' associations, on company time and at the employer's expense. Courses deal with questions of new technology, work organization, working-time regimes, health and safety regulations, changes in labor law, and the like. Such courses spread information on high-standard solutions to a large number of workplaces.

Councils can also pressure managers to consider productivity enhancement as opposed to other competitive strategies. By influencing firm decisions, they force managers to consider decisions in light of the interests of employees, to explore alternatives before presenting them for approval, and to learn about their interlocutors (the workers themselves) and the conditions under which they work in arguing for one among these alternatives. This forces a management style that looks closely for the "win win" with employee interest. Moreover, the sheer imposition of demands for the satisfaction of such interests, for example for further training, submits managers to certain productivity-enhancing constraints. Councils cannot bargain over wages, but they can effectively pressure management in ways that can push management toward high-wage strategies, just as would imposition of high wages. These pressures, diffused throughout the economy, exert a cumulative force for restructuring along the path of upgrading labor.

13.2.3 Contributions to Regulatory Performance

Every society regulates some market outcomes, either to remedy market imperfections or externalities, or for reasons of income redistribution. In the United States, government inspectorates usually enforce regulations, often

joined by private attorneys pursuing statutory rights through civil actions. In many areas of public concern, however, including the labor market, neither of these means of regulatory enforcement is adequate. Sites of regulated activity are too numerous (six million work sites) for any plausibly sized state inspectorate to monitor, and activity within them is too heterogeneous for a distant state agency to decide the best means of achieving desired outcomes. Private litigation, on the other hand, is a very costly and brittle way to settle disputes about standards of behavior, and its cost makes it least amply supplied to the less skilled who typically are most in need of standard enforcement. The result is often regulatory failure—inadequate performance standards, cumbersome reporting requirements on matters of uncertain relevance to desired ends, inflexibility in adjusting standards to varied or changed circumstance, and weak enforcement.²¹ The prominence of regulatory agents and lawyers in the compliance process is widely perceived as a barrier to the intrafirm understandings and practices needed to get desired results.

The example of worker safety and health suffices to carry the general point. U.S. workers rate safe working conditions at the top of their expectations of company performance (National Safe Workplace Institute [NSWI] 1992, 10), and the 1970 Occupational Safety and Health Act (OSHA) commits the government to “assure safe and healthful working conditions for working men and women” (Public Law 91-596). But OSHA enforcement, which relies chiefly on 2,000 federal and state inspectors, falls short of these expectations. Since OSHA’s enactment, some 200,000 workers have been killed on the job (about 300 per day), 1.4 million have been permanently disabled, and another 2 million have died from occupationally related diseases. As of the early 1990s, about 9 million workers sustained workplace injuries each year, of which 2.5 million were “serious,” 70,000 resulted in permanent disablement, and 10,000 to 11,000 were fatal. Along with pain and suffering, this carnage carries costs in the form of survivor benefits, insurance for hospitalization and other treatment, and days lost in production estimated to run to some \$200 billion annually (NSWI 1992).²² Moreover, while health and safety data are difficult to compare cross-nationally—due to different measurement standards and variations in reporting—comparison of like cases shows poor relative U.S. performance. Comparing the United States to Sweden and Japan, for example, which use the same reporting measures on occupational fatalities, shows death rates in the United States 3.5 times those in Japan and 5.8 times those in Sweden (International Labour Organization [ILO] 1988).²³ Both countries also show

21. The resulting regulatory failure is evident in low and uneven compliance with a range of statutory protections—from child labor laws to occupational safety and health rules (GAO 1990, 1991).

22. This estimate includes the costs of deaths, injuries, and occupationally related disease. Deaths alone (calculated on a 7,000 per year basis) are estimated to cost about \$40 billion (Moore and Vicusi 1990), and workplace injuries more than \$80 billion (Hensler et al. 1991).

23. This comparison reflects adjustment for underreporting, applicable both to the United States and Japan, by the National Safety and Work Institute.

greater improvements in performance over time. In the 1980s, for example, the percentage reduction in Japan's rate of workplace fatalities was better than twice that of the United States.²⁴

While many factors contribute to the poor U.S. occupational health and safety record, experts view the U.S. regulatory mechanism as a key factor (Bardach and Kagen 1982; Noble 1986). U.S. reliance on state inspectors to enforce health and safety standards contrasts to Japanese and European (and, increasingly, Canadian) reliance on mandated worker health and safety committees within plants to supplement direct state regulatory efforts. These committees operate with delegated legal powers; they monitor, and in some measure enforce, compliance with regulations, while enjoying more or less broad discretion in bargaining with management (usually also represented on the committee) in choosing the most appropriate local means to achieve regulatory goals.²⁵ In principle, a system that lodges responsibility for monitoring compliance with health and safety committees, who should be better informed about problems than government inspectors, and that gives those committees some authority to address problems should enlist the knowledge of regulated actors in finding ways in particular settings of satisfying publicly determined standards. That it does so in a context of declared representation rights, moreover, mitigates use of costly litigation. Deputizing workers as local coadministrators of health and safety regulation, of course, carries costs of its own. Worker deputies must be trained and given time off from work to carry out committee responsibilities. Still, most observers believe that the committees provide a more efficient regulatory regime for safety and health than inspectorate and civil liability schemes; this extends to initial experimentation with the approach in the United States itself (Bryce and Manga 1985; Deutsch 1988; U.S. Department of Labor [USDOL] 1988; GAO 1992; Meridian Research, Inc. 1994; Weil 1994).

In Europe, as several of the country studies in this volume show, councils are active in many more areas than health and safety, however. Recurring to the German case, works councils are charged by law to monitor the employer's observance with pertinent labor regulations—including legislation on employment protection or equal employment opportunities. German works councils are also bound by any industrial agreement that unions and employers' associations may negotiate at the sectoral or national level—which, given extension agreements, take on at least the color of more general public regulation—and have the duty to ensure that employers do not pay wages below the industrial agreement. They supervise compliance with statutory or collectively bargained

24. This comparison uses the same ILO series, but without adjustment for underreporting. It shows a 67 percent decline in the rate of workplace fatalities in Japan over 1981–89, as compared to a 29 percent decline in the United States (ILO 1988).

25. For overviews of Europe, see Bagnara, Misiti, and Wintersberger (1985) and Gustavsen and Hunnius (1981); for a review of Japan, see Wokutch (1992); for a report on Ontario, the most developed of the Canadian cases, see Ontario Advisory Council (1986).

working-time regulations and are typically charged with negotiating the details of their local implementation. Finally, they have the rights and obligation to monitor employer compliance with Germany's public-private system of apprenticeship vocational training. They monitor implementation of the nationally standardized curricula for apprentice training at the workplace and are obligated to ensure that apprentices are not unduly used for production and that the skills they are taught are portable and not primarily workplace specific.

In all these areas, the availability of competent enforcement agents, with interests and powers to make regulation "work" in ways respectful of local variation, facilitates the achievement of public goals by facilitating cooperation both between labor and capital and between the private sector and the state. Employers would not have been willing to accept the 1980s German industrial agreements on working-time reduction, for example, had they not known that the enforcement of those agreements through councils would admit flexible adjustment to local preferences and circumstances; unions would not have been content with such enforcement had they not known that "flexibility" would not amount to subversion. And neither unions nor employers would support Germany's fabled apprenticeship-based vocational training system as strongly as they do without the same confidence in council flexibility and powers. Nor could the state plausibly contemplate governing such a system—two-thirds of each age cohort undergoing three and a half years of apprenticeship in one of about four hundred certified occupations—without the contribution of local enforcement agents enjoying the confidence of private parties. And German industrial policy would not be nearly as extensive and sophisticated as it is if the state could not look, as it regularly does, to councils to provide information on emerging needs, worker perspectives, and the effectiveness of past use of government monies and other supports—information of a sort not necessarily provided by employers.

13.3 U.S. Experience with Councils, Shop Committees, and Company Unions

The United States has never mandated nonunion collective worker representation, but American firms have "experimented" at various times with institutions that give elected nonunion employee committees a role in firm governance. Called "employee representation plans," "shop committees," or "company unions" (depending largely on the sympathy of the observer)—or, sometimes, "works councils"²⁶—these organizations grew in periods when employers worried about finding tractable forms of employee voice to forestall

26. In his superb review of the choice against councils that the Wagner Act represented, David Brody (1994) offers this advice on naming firm-specific joint committees: "The damning term commonly used by historians, and by critics at the time, was the company union, but we will do better to accept the term advanced by employers and one more functionally descriptive—the employee representation plan (ERP), or, in some companies, the works council."

unionization or to reduce labor market strife that threatened wartime production or, most recently, when employers sought to involve workers in responding to international competition. The U.S. experience is valuable because it shows how representation institutions function in a decentralized labor market absent legal or other external mandating.

13.3.1 Early U.S. Experience

U.S. shop committees date back to 1833, and the giant cigarmaker Straiton & Storm developed an elaborate employee representation scheme, including independent arbitration for the resolution of employee-manager disputes, in the late 1870s (Montgomery 1987, 350; Hogler and Grenier 1992). The first great wave of employer representation plans in the United States, however, came during World War I. Introduced to curb wartime strikes (they typically involved explicit renunciation of the strike weapon), and with an eye to inoculating the public against communist agitation, "works councils" or "shop committees" were promoted by various wartime authorities. From virtually zero in 1917, their number grew spectacularly. By 1919, the National Industrial Conference Board (NICB 1919) reported 225 plans covering half a million employees, and by 1922, 725 plans operated throughout the country. Employers reported decreased threats of unionization and reduced grievances as obvious benefits of the plans. With the exception of a small number of plans that provided more or less extensive participation rights, including representation on plant committees, representation on boards of directors, and participation in profits and stock ownership or collective bargaining,²⁷ however, most of these plans gave workers no real power in decision making.²⁸

After the war, some large firms continued their company unions and welfare programs. Many of those who introduced shop committees under pressure from the NLB, however, dropped them (NICB 1919). In the mid-1920s, popularization of the "American plan" open-shop drive to prevent unionization led many smaller firms to introduce representation plans. Over 1919–28, total membership in employer-initiated representation schemes grew from 0.4 to

As late as 1934, in announcing a labor settlement for the auto industry that explicitly recognized such forms as legitimate, Franklin Delano Roosevelt expressed hope that it would provide the basis on which "a more comprehensive, a more adequate and a more equitable system of industrial relations may be built than ever before. It is my hope that the this system may develop into a kind of works council in industry in which all groups of employees, whatever may be their choice of organization or form of representation, may participate in joint conferences with their employer" ("Comparison of S. 2926 and S. 1958," *Legislative History of the National Labor Relations Act, 1935*, 2 vols. [Washington, D.C.: Government Printing Office, 1959; reprint 1985]. 1. 1347). See as well Douglas (1921).

27. Brandes (1976, 131–32) notes that company unions had some success in wage and hour negotiations at both Kimberly Clarke and the Colorado Fuel and Iron Company, and developed wage scales at Standard Oil of New Jersey.

28. These included Filene's, Dutchess Bleacheries, Boston Consolidated Gas, Louisville Railroads, Columbia Conserve Company, Philadelphia Rapid Transit, Dennison, and Nash (see Derber 1970, 267–68).

1.5 million. Along with declining union membership during the 1920s, this dramatically shifted the relative strength of the two representation forms. In 1919, plan membership equaled only 10 percent of union membership; by 1928, the ratio was 45 percent (Millis and Montgomery 1945, 837).

With the coming of the Depression, representation plans ebbed again: membership fell to 1.3 million over 1928–32. But the National Industrial Recovery Act (NIRA) of 1933, which brought about a marked growth in trade union activity and organization, also led to a resurgence in company unions. The NIRA forbade employers from forcing employees to join company unions, but not from encouraging the formation of such bodies (an encouragement that was often tantamount to force). With increased threats of union organizing, the company union movement again grew sharply. NICB and BLS data indicate that, by 1935, over 3,100 companies, with 2.6 million employees, had some significant percentage of their employees covered by representation plans, of which two-thirds had been established since 1933 (Wilcock 1957). The ratio of representation plan membership to trade union membership surged to 60 percent (Millis and Montgomery 1945, 841). In some sectors coverage was even more widespread: for example, after passage of the National Recovery Act, most basic steel companies established employee representation plans, which spread to cover from 90 to 95 percent of the industry workforce (Bernstein 1970). This, however, was the highpoint for representation plans. In the late 1930s the massive organizing drives of the CIO, aided by the prohibition on employer “encouragement” of worker representation in section 8(2) of the NLRA, effectively killed most of them.

During World War II, the government again promoted cooperative workplace relations, this time the form of joint labor-management committees, chiefly in union shops. These flared during the war, growing to cover some seven million workers, but faded immediately thereafter (de Schweinitz 1949). In the early postwar period, again chiefly in the organized portion of the workforce, scattered efforts were made to formalize labor-management cooperation. The best known of these were the Scanlon, Rucker, and other schemes aimed at increasing employee productivity through profit sharing and bonuses. Outside a few specific sites, however, these efforts never caught on in the unionized sector; economywide, their appeal was also limited (Derber 1970, 478–82).²⁹ One survey found that no company with more than 1,000 employees and no establishment with more than 5,000 employees enjoyed an actively cooperative relationship with its union. With very rare exceptions, the “cooperative” strategy was limited to medium-sized, closely held firms, or to marginal

29. Harris (1982, 138–39) also describes efforts at “progressive” firms, notably U.S. Rubber and General Electric, that were allied with the Committee for Economic Development and the National Planning Association, two industry associations that encouraged labor-management cooperation, to raise productivity through labor-management cooperation.

companies; even here, it essentially disappeared in the late 1950s (Harris 1982, 195).³⁰

As the prime historic case of employer-initiated works councils operating in a largely nonunionized decentralized labor market, the U.S. experience in the 1920s to 1950s provides valuable insight into the potential for councils in such a setting. It shows, first, that employer-initiated councils were neither a long-lived stable institution nor one that was extended to the majority of the workforce. Even at its peak the council movement covered only a minority of workers, largely in big firms, and the peak came under threat of outside unionization. Still, this minority was at times higher than the modest private sector unionization rates of the early 1990s. Second, the NICB reports (1919, 1922) and historical investigation (Jacoby 1989; Jacoby and Verma 1992; Nelson 1993) of the operation of councils show considerable diversity. In many cases, company unions were the sham they have come to be widely viewed as, but in some cases they offered significant and meaningful means of worker representation. Taking the NICB studies as valid, absent a guarantee of hard worker rights to such things, or unionism or its immediate threat, "successful" worker representation depended on management commitment—as evidenced in regular meetings, education, and, ideally, concrete payoffs to workers through, for example, a profit-sharing (collective dividend) system (NICB 1922). Not contemplating an actual extension of hard worker rights within the firm, the NICB concluded that "where management is not thoroughly sold to the idea . . . a Works Council should not be formed" (NICB 1922, 10).

13.3.2 Recent U.S. Experience

Renewed interest in employee participation began building in the early 1970s. Focused on Quality of Work Life (QWL) programs, it was initially motivated by concerns about worker alienation (the "blue-collar blues"), which many viewed as responsible for increased militance by assembly-line workers. The National Commission of Productivity and Quality of Working Life and the Ford Foundation sponsored a number of QWL experiments in the early 1970s in both union and nonunion plants. The most widely known included the Rushton Mining Company and the General Motors (GM) Tarrytown plant, which prior to the QWL program had one of the poorest labor relations and production records of all GM plants but within a few years of QWL adoption became one of the company's best-performing assembly plants. But implementation of QWL programs was never widespread, and most of the most-visible experiments faded by the late 1970s—when government funding stopped (Kochan, Katz, and Mower 1984, 6–7).

In the 1980s, driven by competitive pressures and management recognition of the need to enlist employee energies to meet them, QWL programs enjoyed

30. See Nelson (1989) for an analysis of the historic roots of divergent managerial strategies in the rubber industry.

a resurgence. As noted, some 80 percent of the top 1,000 firms in the United States reported having an employee participation or employee involvement program (EIP), and many smaller firms experimented with one or another form of employee involvement. The more recent programs came under various names³¹—QWL committees, quality circles, autonomous work teams, gain sharing and ESOPs—and varied considerably in structure, representativeness, scope of issues, substantive decision-making power, and links to other changes in work organization. Cutcher-Gershenfeld (1987) estimated that 10 to 15 percent of all American organizations had worker participation programs in the 1980s, covering about 20 percent of the workforce. Cooke (1990) estimated that 40 to 50 percent of the unionized sector is involved with quality circles, QWL programs, or some other form of employee involvement; of these, between one-third and two-thirds are jointly administered; about one-third of the unionized sector has committee-based participation, with health and safety being the most common focus. In a more recent survey of large firms, Osterman (1994) has found wider incidence of teams (54 percent), job rotation (43 percent), quality circles (41 percent), and Total Quality Management programs (34 percent)—although no unique combination of these innovations shows up in more than 5 percent of companies.

Studies of these experiments confirm the 1920s experience. While studies generally indicate positive economic effects from employee involvement, especially at the team level (USDOL 1993; Pfeffer 1994; Jacoby 1994), the economic effects of worker involvement are most likely to be positive when workers are empowered in decision making and receive concrete payoffs to cooperation (Blinder 1990). In unionized settings, where worker power exists independent of management, the evidence shows the greatest gains from cooperation (Eaton and Voos 1992; Kelley and Harrison 1992). In nonunionized settings, where workers have no reserved rights, the performance and stability of the programs depends on management attitudes, which vary widely across firms and over time, and which are subject to an important core ambivalence: even where managers recognize “empowerment” as necessary to productivity gains, they are reluctant to relinquish discretion and control. To guarantee effective empowerment, much more is needed than management will provide on its own.

13.4 A Rejected Transplant? Works Councils and the United States in Comparative Context

Even if the representation gap is real and threatening and works councils are broadly effective and useful in Europe, it does not follow that they can be easily transplanted to the United States. Again leaving aside questions of politi-

31. See Eaton and Voos (1992, 208–10) for a comprehensive glossary of terms used to describe contemporary innovations in employee participation and work organization.

cal feasibility, the central issue here is how to get good effect out of a presumptive council system without destroying what little representation currently exists.

Generalizing, the continental European systems in which councils appear most effective have a developed "first channel" of worker representation and labor-management dealings, centered on regional or national wage-setting practices and political bargaining over the social wage and labor market policy, *external* to the firm. In this context, councils provide a useful "second channel" of worker representation *internal* to the firm. Indeed, as we have seen, one of their central functions is to interpret and elaborate, within firms, the terms and conditions of external agreements about how the economy should be run and how the benefits and burdens of economic cooperation should be distributed. Performance of this function often complicates, but seldom directly threatens, the viability of external standard setting and agreements on these more global concerns. The more centralized bodies provide technical assistance, coordination, and economic and political support to intrafirm activities; the councils provide flexibility in achieving general standards and a multiplier on the density of their diffusion and enforcement.

In the United States, however, the first channel barely exists. It generally lacks institutions linking workers in the political system or in wage setting beyond direct collective bargaining. There is of course no labor or labor-dominated party, and American politicians rarely articulate or explicitly direct issues to achieving the aims of workers qua workers. Since the New Deal, unions have been allied with the Democratic party, occasionally dominating local party machines. But labor was a junior partner in the New Deal coalition, and by the late 1970s had become an unfavored one (Ferguson and Rogers 1986). In the 1980s it faced "an indifference bordering on contempt" from party leaders (Trumka 1992, 57). More broadly, unions have had a largely clientelistic relation to the Democrats, looking to the party for patronage, favors, and select program supports, not as a "second arm" to achieve its vision of a good society.

This situation contrasts with Western Europe, where social democratic or labor parties govern countries regularly; with Canada, where unions affiliate with the New Democratic party; and even with Japan, where socialist parties are represented in national and regional government, and where the Rengo union federation has run candidates for political office. In the United States, by contrast, labor's main route of influence in the political system is through special interest lobbying rather than through direct electoral power (fig. 13.2).

The relative weakness of labor in government, itself substantially a function of low union density and centralization, in turn substantially explains why the United States provides less benefits to citizens in the form of universal "social wages" than European countries (fig. 13.3 and table 13.1). On a rank ordering of OECD states by social funding of pensions, health care, unemployment insurance, and the like, the United States is second to last (Esping-Andersen 1990). As a consequence, the well-being of workers depends on market earn-

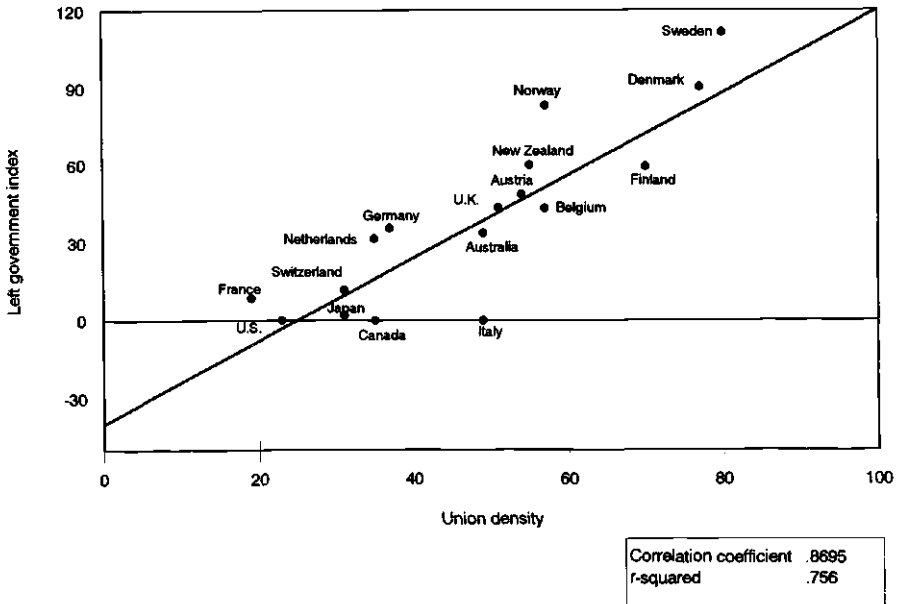


Fig. 13.2 Left government against union density

Sources: Left government index created by Wilensky (1981) and compiled by Wallerstein (1989); union density from Visser (1991).

Notes: Left government index is a cumulative index from 1991 to 1980. Union density is the percentage of total employed that are union members.

ings and employer-provided benefits more in the United States than in most other countries. Moreover, taxes and cash transfers are less redistributive than in other countries. Comparing the effect of tax and transfer programs on poverty among a group of OECD countries, for example, shows an average 79 percent reduction in poverty abroad, and only a 33 percent reduction in the United States (Mishel and Bernstein 1992).

In turn, the greater universalism of nonwage benefits overseas, which takes these benefits "out of competition," has an important consequence both for the incentives and ability of workers to organize unions and for management to oppose such organization. In the United States the onus of providing vacation benefits, parental leave, access to training, health insurance, and so on, falls on collective bargaining or individual employer personnel policy. As a result, union-nonunion differences in these components of compensation as well as in wages are exceptionally great. Large union-nonunion differentials in turn motivate employer opposition to unions: when a union is certain to bargain for greater expenditures on fringe benefits, which will put the firm at a cost disadvantage, management will fight hard against unionization. At the same time, the dependence of important benefits on nonunion personnel policies reduces worker willingness to oppose management.

In terms of wage setting, the United States is the prime example of a decen-

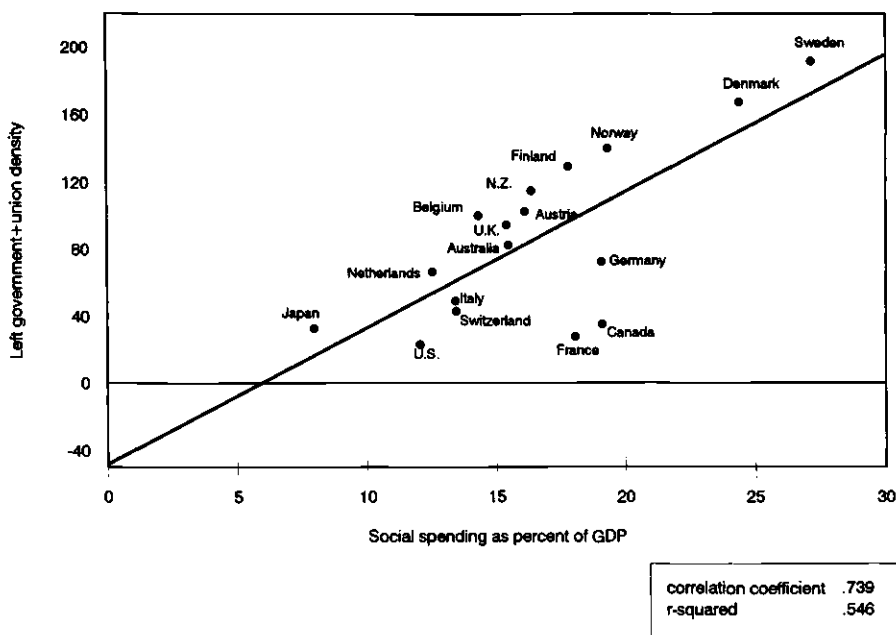


Fig. 13.3 Left government/unionization against social spending

Sources: Organisation for Economic Co-operation and Development, *OECD National Accounts* (Paris, 1991); OECD (1991); Wallerstein (1989).

Table 13.1 Statutory Regulations Governing Benefits and Rights to Workers in European Countries and the United States, 1991

Benefits and Rights	Europe	United States
Public holidays	12	8–10
Annual vacation	4 weeks	No statute
Sickness leave		
Maximum weeks of leave	54	No statute
Earnings paid during sickness (%)	62	
Maternity leave		
Maximum weeks of leave	18	13
Earnings paid during leave (%)	89	0
Severance pay		
Workers with severance pay (%)	72	No statute
Unemployment insurance		
Months covered	16	6
Earnings paid during unemployment (%)	47	50

Source: Freeman (1994), tabulated from Ehrenberg (1993, tables 2.3–2.5 and 5.1) and from OECD (1991, table 7.2).

tralized system in the developed world. Most collective bargaining and firm wage setting is done on a firm-by-firm, even plant-by-plant, basis. Moreover, except for "prevailing-wage" statutes in government construction (and some procurement), the United States has few mechanisms, particularly in the private sector, for extending the results of union-employer bargaining to non-unionized employees.³² The government plays little role in wage determination (itself a consequence of the political weakness of labor) and sets the minimum wage at levels that do not affect general wage patterns. Lack of extension of collective bargaining settlements means that coverage by collective contracts is essentially synonymous with union membership; if only 12 percent of private sector workers are unionized, only 13 percent are even covered by some union agreement. This contrasts with Europe, where many governments extend the terms of collective contracts to nonunionized workers in a sector or region, and Japan, where the *shunto* offensive establishes economywide wage patterns. U.S. decentralized wage setting, with rent sharing between prosperous firms and their workers, and limited provision of social wages, puts the country at the top of the developed world in wage inequality (fig. 13.4).³³

The absence of a labor party and of encompassing wage-setting mechanisms has important implications for the character of representation within firms. In the United States, unions bargain for fringe benefits that are guaranteed by the state elsewhere and bargain for wages that are set outside the firm in other countries. Because higher fringes and wages can put firms at a competitive disadvantage compared to others, confrontation at the bargaining table lies at the heart of labor relations. In Europe—and to some extent even Japan—by contrast, where general welfare benefits and wages are determined outside the firm, there is greater space for the expression of cooperative employee voice and bargaining within the firm. In effect, both sides can "afford" to cooperate because their positions are secured or restrained outside the firm. Workers know that their basic social benefits will remain intact and that their wages will keep pace with those of other workers whatever trade-offs they make within the firm. Management knows that the works council will not place it at a competitive disadvantage through within-firm bargaining. External guarantees—be they social benefit guarantees, centrally determined wages, or rights-based sanctions on job loss—in some measure render moot much intrafirm disagree-

32. Pattern bargaining—the copying of a limited set of key bargains such as for steel or auto manufacturing in many other parts of unionized manufacturing—and spillovers of union wage and benefit gains to nonunionized workers due to the threat of unionization produced some implicit institutional coordination in U.S. wage setting. While even at its peak pattern bargaining dominated only a few unionized sectors, some experts believed that patterns spread informally to white-collar workers in unionized firms, and as nonunionized firms raised blue-collar pay to forestall unionization to dominate the overall labor market (Bok and Dunlop 1970).

33. Freeman (1991) and Card (1991) find that declining unionization accounts for one-fifth of the increased variance in male wages over 1973–87. Lemieux (1993) attributes 40 percent of the greater inequality in wages in the United States than in Canada to the difference in the rate of unionization.

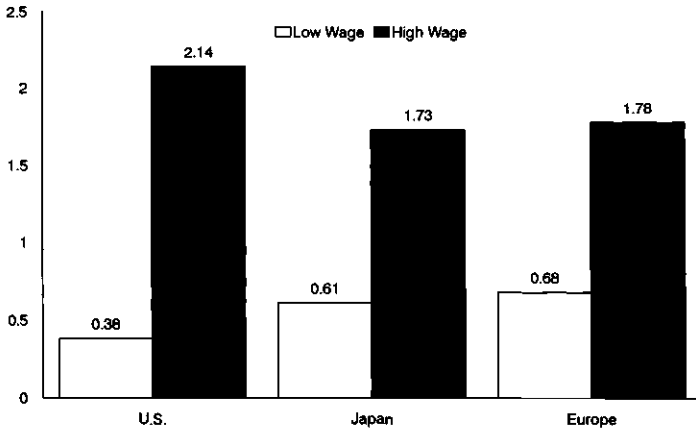


Fig. 13.4 Pay of low-wage and high-wage workers relative to median: United States, Japan, and Europe

Source: Freeman (1994), calculated from OECD (1993, table 5.2)

ment about the division of the surplus. By taking many intrafirm disputes over the surplus “off the table,” these guarantees underwrite internal cooperation and flexibility toward the joint goal of increasing firm performance. Standard principles of rational behavior imply that when the share of the pie is exogenous, self-interested parties will cooperate to make a bigger pie, as this is the only way they can benefit themselves. When the share of the pie is “up for grabs,” by contrast, there is danger of noncooperative, low-output solutions to prisoner’s dilemma problems, including strikes, withholding information that might raise output, and the like.

The implication of this analysis is that all labor relations systems face a fundamental trade-off between external flexibility on one side and internal cooperation and the flexibility that depends on cooperative arrangements on the other. More flexibility in the external market implies less cooperativeness in the internal market. European labor relations systems resolve the tension by a dual channel of labor representation. They provide external guarantees through encompassing collective bargaining and state provision of certain benefits and seek internal cooperative relations through within-firm worker councils.

If external constraints and guarantees thus facilitate internal cooperation and joint dealing, real external organizational power makes that dealing meaningful. As is evident from the country studies, the interaction of unions and councils, the terms of their mutual dependence, are complex and varying. As a general matter, however, it is clear that councils inside the firm work best when they enjoy some relation, however distanced, to a powerful union movement outside it. The latter is a source of residual political support—including, vitally, that needed to extract resources necessary to council functioning from

employers or the state—and expertise in issues of council concern, from ergonomics to new technologies, work organizations, or whatever.

Where, as in the United States, wage bargaining is decentralized, the social wage is exiguous, and the bargaining parties are not linked systematically to a powerful set of encompassing political organizations; on the other hand, the second channel of local union representation effectively takes on the welfare function and stands alone. Defined by reference to the particulars of individual firms, its preservation is contingent on the preservation of union strength in particular settings. Accordingly, much importance is assigned to the precise terms under which collective bargaining rights would attach within individual firms and to the conditions for maintaining the fruits of organizing success within firms. The arcana of American law regarding the formal certification of bargaining representatives, and the requirement that those representatives be exclusive, were solutions to the problem of contested, decentralized unionization and wage bargaining. Without a general presumption of unionization, or its equivalent in wage and benefit guarantees, employer assumption of these costs was justified only upon a showing of majority support. Without generalizing support from the state, the welfare of individual workers depended unusually on their bargaining power vis-à-vis specific individual employers. In relation to those employers, *exclusivity* in representation—a guarantee of a single collective voice—was the gravamen of worker power. Lacking a social mandate, moreover, worker representation in the nonunionized sector depended by definition on the will of employers. Given the destabilizing effect of employer-dominated company unions in the 1920s, however, the expression of this will in the form of material support or assistance to representative non-union labor organizations was itself barred.³⁴

Translating councils to this setting thus poses a series of nested challenges—particularly threatening to labor, but posing more general threats to the stability and success of a council system. For councils to be effective, the country studies tell us, they are best located within and supported by a broader framework of labor-management dealings external to the firm. Construction and administration of such a framework, which does not now exist, would require a considerable increase in the power of competence of regional and national worker organizations. A precondition of such an increase in power, however, is a strengthening of the labor movement. And given its existing structure and fo-

34. For the rationale for such a bar—employer interference with autonomous employee choices about representation—we do no better than to consider the first case decided by the NLRB, *Pennsylvania Greyhound Lines*, 1 NLRB 1 (1935), *enfd. denied* in part 91 F.2d 178 (3d Cir. 1937), *revd.* 303 U.S. 261 (1938); cited in *Electromation Inc.*, 309 NLRB 163 (1992). As the Greyhound manager in charge of the company union challenged there summarized management's goals: "[I]t is to our interest to pick our employees to serve on the committee who will work for the interest of the company and will not be radical. This plan of representation should work out very well providing the proper men are selected, and considerable thought should be given to the men placed on this responsible Committee."

cus, it is far from clear that the introduction of an alternative representative structure, potentially overlapping with many of the functions now performed by local unions, would have a strengthening effect. It seems at least equally plausible that it would lead to substitution away from unions—as is suggested by the Dutch case, and that of France—and a further devolution of the importance of extrafirm structures of mediation and support of the very sort desired. If the above analysis of the sources of labor weakness is correct in its emphasis on the negative effects of decentralization and particularity in bargaining, it raises an obvious question. How would the introduction of further decentralization strengthen labor? Or posed more generally, if councils need external unions to function well, and the introduction of councils would weaken unions as presently organized in the United States, how would the introduction of councils into this already decentralized system do anybody any good?

Identification of this tension does not amount to a convincing argument against councils. It does suggest, however, the need for some care in their potential design in the United States. Several requirements would need to be satisfied. First, premising an interest in not destroying what workplace organization does exist, encouragement of councils as independent forms of representation would seem to need to be limited to nonunionized settings.³⁵ Second, and whatever the range of issues councils discuss, some bright line would need to be established between them and the wage-bargaining system. This might be done categorically, by restricting council discussion to topics other than wages and benefits. But experience both abroad and at home indicates the difficulty of enforcing such categorical distinctions in practice. A more practical approach, then, would be to limit council *powers* to information and consultation. Third, even within this information-consultation power domain, it appears vital to build in some resource guarantees for their functioning—time off from work, money to hire outside assistance, enforceable rights to elicit information from employers.

Such provisions would work to ensure that councils were in fact a supplement to, rather than detraction from, existing workplace representation. But they would not address the issue of management domination of the committees. In addressing that issue, we distinguish at the outset between the current legal meaning of “domination” and the more precise normative concern with abrogations of employee freedom in selecting representative forms. The current bar on “company unions,” deliberately, does not respect this distinction; it treats identically situations that give no offense to the principle of employee free choice in the selection of representative forms and those that do. The reasons for this are many, but all come down finally to doubts among the framers

35. And, presumably, settings where unions are not currently engaged in organizing drives.

of the Wagner Act about the stability and usefulness of drawing this distinction too finely. On the one hand, the state's capacity to monitor offensive sorts of domination inside firms was thought to be limited; better to go with institutions whose very powers would provide the needed demonstration of independence. On the other hand, the sorts of powers sought, during a period of deep depression in an essentially closed economy, went directly to wage-setting powers. As Senator Wagner (1934) wrote in the *New York Times* at the time, while nonbargaining or non-independent-bargaining institutions had "improved personal relations, group welfare activities, discipline, and other matters which may be handled on a local basis . . . [they have] failed dismally to standardize or improve wage levels, for the wage question is a general one whose sweep embraces whole industries, or States, or even the nation."

How, in a context in which even unions are incapable of setting wage levels—removing, as Jacoby (1994) notes, at least one reason for not reopening discussion—might the relevant distinction be made? Straightforwardly, it would appear, by carving an "employee free choice" exception to section 8(a)(2). Hyde (1994) and Summers (1994) suggest how this might be done. Leaving that section intact and permitting a very expansive definition of "labor organization," "an employer who would otherwise violate that section by establishing or supporting a system of employee representation or communication may defend against unfair labor practice charges by showing: (a) that the system was authorized by a majority of employees in a secret ballot; (b) that before the ballot, employees were specifically advised of their right to oppose the creation of such a plan without reprisal; (c) that such authorization expires in some uniform period of time, perhaps three years, unless reauthorized" (Hyde 1994). To these provisions we might add: (d) that the system may be abolished by a majority of employees in a secret ballot at any time; and (e) that the system cannot at any time be unilaterally abolished by the employer. Were such conditions satisfied, employer "domination" in the sense of "infringing worker independence in choice of representative form" would be effectively extinguished. Of course, the number of employers that would, under such clarification, actually seek nonunion independent worker representation is an open question. How many workers, assuming enactment of the other reforms suggested here, would choose this over rival representative forms is open as well. The real values at stake, however, would be clarified in a way that they are not in the present debate.

Comparative and domestic experience, along with a little creative drafting, suggests how the transplant problem could be overcome. As I read the evidence, it would in theory be possible to graft a "council option" onto the existing U.S. system, despite its obvious differences from European ones, without serious damage to what currently exists. The essential requisite attributes of the system would be powers limited to consultation and information, limitation in independent incidence to the nonunionized sector, direct supports for

functioning, and guarantees of employee freedom in opting into the structures in the first place, choosing representatives, and termination.³⁶

Finally, we may ask about the form that “encouragement” of council formation might take. It is striking, and instructive, that all functioning council systems involve some degree of state *mandate* of these forms—either direct or the form of *de minimus* expressions of employee interest triggering their formation. Prospects for such in the United States are at the moment vanishingly remote, and the above considerations on design are framed by that fact. But for all sorts of obvious reasons—uncertainty, adverse selection, snowballing effects upon reaching critical mass—a commitment to diffusing councils would appear to require their being mandated strongly (by, e.g., the conditioning of such government benefits as contracts or ESOP tax expenditures on their establishment). The basic point is that there is no good reason to expect that council structures will widely emerge on their own, and good reason to believe that they would not, even if the general presence of councils were preferable to the present state.

13.5 Related Aspects of Reform

Thus far, I have attempted to assess the potential contribution and requirements of council reform considered as a stand-alone reform. This exercise, however, has been doubly artificial: in abstracting from the political realities that make this a very low probability event and in considering councils merely as an add-on to an otherwise unchanged system. Keeping the first abstraction we might ask in closing, what are the sorts of other reforms that would enjoy an “elective affinity” with some council initiative?

Three broad categories of reform seem most relevant:

First, as a widening of employee choice beyond the “all or nothing” choice of majority unions or nothing, while guaranteeing freedom in that choice, council reform might naturally be accompanied and supported by other measures aimed at the same goal.

Recognizing various imperfections in the “market” of associational choice bearing on representation of worker interests, efforts might be made to perfect that market. This means widening the range of employees permitted collective representation, reducing the direct cost of their choosing such, and widening the range of choice itself.

Widening the range of protected employees would mean abolishing most if not all restrictions on the free choice of farm workers, individual contractors, and supervisors, as well as those public employees in that half of the United States that have still not recognized even minimal rights to self-organization. Reducing the direct costs to employees in choosing representation would mean

36. Such guarantees find broad support in the Worker Representation and Participation Survey (Freeman and Rogers 1994).

institutionalizing respect for individual freedom in choice and collective worker deliberation about how it might best be made. At present, as regards the only available form of collective representation—unions—this condition is clearly not satisfied. Whatever one's opinion of unions, current levels and kinds of employer resistance to them clearly impose direct costs on employees and corrupt the process of deliberation.³⁷ Getting closer to free deliberation would thus appear to require more effective sanctions on such employer behavior, quickly applied,³⁸ and some expedition of the election process itself. Expansion of the range of representative forms naturally might not be limited to the council option but might be extended to include minority unions, employee caucuses, and other associations below the majority level.³⁹

Second, on no account do councils significantly contribute to wage equality. And on all accounts their effective operation requires some external norming of wages and benefits. So, the introduction of councils might naturally be allied with efforts to raise the social wage in the United States, and to move bargaining over wages and benefits beyond the individual firm.⁴⁰ Raising social minima is in principle simple enough. Whether administered through firms or not, certain basic benefits would be guaranteed on a societywide basis, much as is currently being promised for health care. The efficiency benefits of doing this are many. As against other means, minima are an efficient way to redistribute income, especially when receipt is conditioned on employment.⁴¹ By raising the base price of labor, minima can also be an important spur to more productive labor use, setting dynamic efficiencies in motion. And, by generalizing certain standards of behavior and performance, minima facilitate flexibility in the deployment of productive resources. As emphasized in recent discussions of health care benefits, socializing benefits promotes greater

37. Apart from repeated documentation of employer violations of the spirit and letter of the LMRA, and the close correlation between such resistance and union failure in representation elections, perhaps the best evidence for the importance of management resistance to current employee choices is provided by the public sector. Controlling for age, income, race, sex, occupation, and all other conceivable individual and group variables, unionization in the public sector—essentially free of management resistance—runs better than three times as high as in the private sector.

38. Sanctions might include such things as outright fines and treble compensatory damages for actual violations of the law, or disqualification from government contract eligibility for repeat offenders. Speed might be achieved by a requirement of hearings and determination of the merit of employer unfair labor practices within 30 days of filing.

39. On their face, sections 9(a) and 8(a)(5) provide no suggestion that employers are *not* obligated to bargain with such "minority unions." Contrary NLRB and court interpretations have stood so long, however, that statutory amendment would now probably be required to establish this obligation. Apart from administrative difficulties in handling the claims of such multiple unions (themselves navigable through threshold representation requirements and rules on their interaction), there seems no reason why it should not be—again, in the absence of an elected majority representative. See Summers (1990).

40. Is this an appropriate topic of labor law reform? It is if that reform is seen as it should be—as an effort aimed at addressing issues not only of worker representation or management prerogative inside the firm but of the appropriate design of a societywide system of production and reward.

41. For a recent argument to this effect, and a more general review of the evidence on minima, see Freeman (1993).

allocative efficiency in the labor market. A firm A employee economically (given skills, taste, whatever) best suited to firm B is more likely to find her way to firm B if firm B does not suffer from a crippling shortfall in benefits compared to those provided by firm A. The most obvious benefit, however, is to the level of equality itself. By removing a chunk of individual welfare from wage competition, minima make it more likely that those less fortunate in that competition will still live a decent life.

While the United States seems unlikely ever to contemplate true peak bargaining between unified union federations and a unified business community, nor even anytime soon to contemplate the full use of extension laws in the unorganized sector,⁴² more modest efforts to facilitate wage generalization on a regional or sectoral basis might be considered. The law on multiemployer bargaining might be amended, shifting the presumption away from the voluntariness (and, inevitably, instability) of such arrangements and toward their requirement.⁴³ And more ambitious schemes of "sectoral bargaining," of the sort now being discussed in Canada, might be usefully considered.⁴⁴ In a given area or industry grouping or both, sectors of employees, defined by common occupational positions across different employers, could be defined (e.g., "restaurant workers in New York City"). Unions demonstrating support among members of the sector at different sites would be permitted to bargain jointly with all the employers corresponding to those sites. In subsequent organizing during the term of the resulting contract, union certification at additional sites would automatically accrete their employers to the population covered by the contract, with that employer joining in the multiemployer bargaining in the next round.⁴⁵ To make the scheme more palatable to employers and the general public, its application might be limited to traditionally low-wage, underrepresented sectors, characterized by highly uniform conditions of work.

Each of these areas of reform, of course, certainly no less than councilar reform, are subjects of intense conflict. The point here is simply that in thinking about councils, policymakers would do well to consider the natural external supports to their functioning.

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42. Outside, i.e., their traditionally limited American purview of prevailing-wage statutes.

43. We are speaking of presumptions here. It would be important in any scheme to permit employers a chance to defeat the presumption by showing why the conditions of their enterprise were sufficiently distinct from those with whom they were asked to join.

44. See Balgent, Ready, and Roper (1992); Fudge (1993).

45. Again, it would be important to leave room for some variation due to local circumstance. Authority to make such allowances might be assigned to regional offices of the USDOL, or to the NLRB, or to a more formal, new system of regional labor market boards.

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