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## DEBATES

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### UP AGAINST THE WALL: THE POLITICAL ECONOMY OF THE NEW ATTACK ON THE CANADIAN LABOUR MOVEMENT

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#### ABSTRACT

The Canadian labour movement faces an existential crisis. State and business hostility to unions is not new, but the attack has recently intensified as conservative political forces and major employer groups have embraced the agenda of the US Republican right. Mirroring anti-union US labour law would lead to the precipitous decline of union density in Canada, which is already eroding due to the manufacturing crisis and the long-standing failure of unions to organize in private services. The new attack is more a product of labour movement weakness than strength, and will be most effectively resisted by increasing union density and bargaining power in the private sector.

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#### INTRODUCTION

The Canadian labour movement still represents one in three workers, but has been slowly declining since the 1980s in terms of representation, bargaining power and political influence. Union density (union membership as a proportion of workers) has been high and stable in public services at about 75 percent, notwithstanding privatization and contracting out, but has been eroding in the private sector. Here, density has fallen from about one in three workers in the mid-1980s to a little over one in six workers (17.5 percent) in 2011. Within the private sector, density has been very low, but stable, over the past decade in the major private service industries—trade (about 15 percent), finance (about 10 percent), and accommodation and

food services (about 8 percent)—and it has been relatively high and stable in other industries, except manufacturing, where it has fallen from one in three workers to one in four workers since 2000. Some 300,000 unionized manufacturing jobs were lost over the past decade (Jackson 2009; Statistics Canada 2011).

Employer hostility to unions tends to be a reverse function of union strength, waning when labour is strong in terms of bargaining power and political influence, and waxing when labour is weak (Heron 1996). In the post-war period, strong unions were generally accepted by employers, partly because there was little alternative given state acceptance and, indeed, promotion of collective bargaining, and partly because high private sector union density and pattern bargaining took wages out of competition to a significant degree, leaving employers on the same competitive footing. In the neoliberal era, growing employer power has been registered in changes to labour law that have made new organizing more difficult, and has intensified state intervention in free collective bargaining, especially in public services. However, labour law has remained much more union friendly than in the United States. This has changed quite recently as conservative political forces and major employer groups have wholeheartedly embraced the radical anti-union policy agenda of US employers and the Republican right. Mirroring US labour law would almost certainly lead to a similarly precipitous decline of union density in Canada.

This paper is structured as follows: Part one briefly summarizes the implications of union decline. Part two examines the current state of the movement in Canada and the United States, emphasizing the importance of the legal framework to union survival. Part three provides an overview of the current attack on unions which is focused on undermining union security by making union dues voluntary, and severely limiting the political role of unions. Part four examines the forces behind the attack, emphasizing that, while Canadian unions do still have a significant social and economic impact, hostility is more a response to union weakness than to union strength. By way of conclusion, part five briefly suggests how the labour movement might most effectively respond.

## **THE IMPLICATIONS OF UNION DECLINE**

Unions emerged to define and represent the interests of workers under capitalism, and have helped shape the nature of capitalism itself. Unions have been key actors in the workplace, have a significant influence in the economy and wider society through their impact upon the level and structure of wages, and have been important political actors. In the social democratic era, which lasted from the 1940s to the early 1980s, labour movements provided a strong counter-balance to the power of capital. While having retreated since that time,

Canadian unions still make a significant difference for their members and the wider working class.

From a democratic and human rights perspective, unions provide workplace representation for their members, have some influence over the labour process, and provide protection from arbitrary discipline and dismissal. Non-union workers have theoretical access to a set of rights and standards through individual litigation and complaints under employment standards legislation, but these are basically means to seek redress after an employment relationship has been terminated. In short, unions give workers a collective voice and some power vis-à-vis the employer in the workplace.

From a social justice perspective, unions are a significant force for economic equality. Collective bargaining raises the wages of unionized workers relative to non-union workers, especially the lower-paid, and compresses wage differentials in the unionized sector, including differentials based on gender and race. These equalizing impacts spill over to lower-paid non-union workers in communities and countries where union density is high (Jackson 2011; Card, Lemieux and Riddell 2004). The wage distribution is thus significantly more equal in high union density jurisdictions, and declining unionization has been a significant cause of rapidly rising wage inequality since the 1980s, especially among men. It is important to underline that the goal of labour movements should be to narrow overall wage differentials rather than raise the wages of a union elite relative to non-union members. Unfortunately, as union density shrinks, unions can increase inequality by increasing the wages of relatively well-off unionized workers without raising the relative wages of lower-paid workers (Card, Lemieux and Riddell 2004).

The more equal wage distributions found in high union density countries are not a fundamental barrier to competitiveness, even in a neoliberal world. According to World Bank economists

[u]nion density *per se* has a very weak association, or perhaps no association, with economic performance indicators such as the unemployment rate, inflation, the employment rate, real compensation growth, labor supply, adjustment speed to wage shocks, real wage flexibility, and labor and total factor productivity. There is, however, one significant exception: union density correlates negatively with labor earnings inequality and wage dispersion (Aidt and Tzannatos 2002).

The impact of unions on the level and structure of wages influences how a capitalist economy functions. In the social democratic era, union bargaining power underpinned a tight connection between productivity growth and the growth of middle-class wages, while, in the neoliberal era, the profit share of national income has increased at the expense of wages. At the same time, wage and salary growth, especially in the US, the UK and Canada, has been

concentrated among very high income earners consisting mainly of senior corporate management. The 2012 Organisation for Economic Co-operation and Development (OECD) Employment Outlook (Chapter 3) documents the sharp decline of labour's share of national income and wage stagnation in advanced industrial countries. In Canada, the labour share of total national income fell by no less than six percentage points between 1990 and the mid-2000s if one excludes from the labour share the incomes of the top one percent. To cite another striking statistic, Canadian real GDP per person grew by 50 percent from 1981 to 2011, but the real median hourly wage rose by just 10 percent over this extended period (Morissette, Picot and Lu 2012). In the most neoliberal advanced industrial countries, which have seen the largest declines in union density and the most marked stagnation of real wages, growth has become dangerously dependent upon an unsustainable increase in household debt. Neoliberal capitalism has become much more unstable and prone to crisis as the working class has been squeezed and societies have become much more unequal (Stiglitz 2012).

Last but not least, labour movements have been important political actors and the anchor of social democratic and socialist political movements which have mobilized for the expansion of social and economic rights for all citizens and provided an important counter-balance to the political power of capital. Social movement unionism, as opposed to narrowly workplace-based unionism, has sustained a critical vision of society and mobilized workers for progressive political change. In their important recent study of US politics, Hacker and Pierson (2011) argue that union decline is strongly associated with the decline of progressive politics in the United States and the political and economic ascendancy of corporate elites and the extreme right. The decline of labour, they argue, has eclipsed class-based political narratives for the middle and lower class, which led to a shift to the right that could not be countered by the so-called new social movements. In Canada, of course, the labour movement has been a major force behind the social democratic Co-operative Commonwealth Federation (CCF) and New Democratic Party (NDP), albeit that unions have been, and remain, divided over political strategy (Savage and Ross 2012).

## **THE STATE OF THE MOVEMENT IN CANADA AND THE UNITED STATES**

The Canadian labour movement has long been much stronger than the labour movement in the US. In the early 1960s, union density was about one third in both countries. By the mid- to late-1980s, however, mainly as a result of the expansion of public services unions in Canada combined with private sector decline in the US, Canadian union density had risen to about 40 percent, while it had fallen to 20 percent in the US (Kumar 1993). Union density has since fallen to

32 percent in Canada and to just 12 percent in the US, and is just 6.9 percent in the US private sector compared to 17.5 percent in Canada. Further decline in the US seems highly probable given that new organizing under the National Labor Relations Act has virtually ground to a halt, and the recent frontal assault on the collective bargaining rights of workers in former labour strongholds in the Midwest.

The difference in the relative strengths of the Canadian and US labour movements has been commonly attributed to the stronger Canadian tradition of social unionism; a more democratic and inclusive labour movement; a stronger commitment to new union organizing; a more assertive stance in collective bargaining; and greater political influence through the New Democratic Party, which has been more reliably pro-labour than the Democratic Party (Kumar 1993). Most observers agree that whatever the underlying sources of greater union strength in Canada, differences in labour law have played a major role (Warner 2012).

No Canadian jurisdiction has adopted so-called “right-to-work” (RTW) legislation which fundamentally undermines the financial and institutional capacities of unions by giving individual members the right to opt out of the payment of union dues, even though they benefit from the union contract and even though the union owes non-dues-paying members the duty of fair representation. Dating back to the Taft-Hartley Act of 1947, twenty-three US states, mainly in the South and West, had RTW laws in 2011 and union density in these states averaged just 7.6 percent compared to 18.6 percent in the non-RTW states. A recent major push to pass RTW laws in formerly high union density states in the Midwest led to Indiana, followed by Michigan, shifting to the RTW column. Further, under federal labour law dating back to 1988, even workers in non-RTW states are able to withhold that part of their dues which would be used to support political and other activities not related to workplace representation and collective bargaining. Access to this provision has been supported by mandatory disclosure of union spending broken down by area of activity. In Canada, by contrast, the Supreme Court of Canada ruled in the Lavigne case that political activities are a reasonable extension of the workplace role of unions in a democratic society. (Most provinces do, quite appropriately, require disclosure of union finances to members.)

Another key difference is that many US states deny collective bargaining rights to public sector workers, or limit their bargaining rights through separate statutes. While some Canadian public sector workers have restricted collective bargaining rights, such as the inability to bargain seniority, most operate under the same legislative framework as private sector workers. These differences help explain why US public sector union density was just 35 percent compared to 75 percent in Canada. Many US states imposed further restrictions on the scope of public sector bargaining in 2012, while several Canadian governments used

legislation to impose settlements.

There are also profound differences in law and practice between the US and Canada related to union organizing (Warner 2012). New organizing in the US is now almost impossible other than through voluntary recognition since votes for representation can be dragged out, union activists can be fired with impunity, and there is no mechanism to impose a first contract if workers do manage to gain certification (Moody 2007; Slinn and Hurd 2009). By contrast, the majority of jurisdictions in Canada still have card-check certification and, where votes are required, they are held very quickly; illegal employer intervention in the democratic decision of workers to seek collective representation is generally held in check by sanctions imposed by Labour Relations Boards; and first contracts can be imposed in most jurisdictions. In some cases, provision has been made for multi-employer collective bargaining which can greatly facilitate organization drives. The annual rate at which non-union workers in Canada are organized through new legal certifications has fallen from about 2 percent of non-union workers at the peak in the 1980s, to about 1 percent in the early 2000s, to perhaps .5 of a percent today, but remains much higher than in the US (Katz-Rosene and Athaide 2003; 2007).

Labour law and administration make a major difference to new organizing and to union density, as indicated by the significant increase in union organizing under NDP governments in Ontario and British Columbia, and by continued high union density in Quebec which has card-check certification, first contract arbitration (which led to the only instances of Wal-Mart unionization in North America) and anti-scab legislation (Warner 2012). Private sector union density in Quebec is, at 25 percent, well above the national average of 17.5 percent and has fallen only slightly over the past decade.

## THE NEW ATTACK ON UNIONS

The Canadian state has often intervened in free collective bargaining through back-to-work legislation and imposed contracts, especially in the public sector; but the institution of unionism itself has been generally accepted. Indeed, the Supreme Court has recently expanded constitutional protection of core labour rights. However, the right wing and employers have increasingly pressed for the adoption of US anti-labour laws. The Fraser Institute and the Montreal Economic Institute have published numerous recent studies on differences in the two legal regimes and argued for US anti-union legislation (Godin et al. 2006; Fortin, Chassin and Gagnon 2011). The Fraser Institute produces an annual report, *Measuring Labour Markets in Canada and the United States*, which gives negative ratings to jurisdictions that allow for union security and dues check-off, allow card-check certification and the imposition of first collective agreements, and enact anti-scab laws. The allegedly negative impacts of unions on worker rights

and competitiveness have been reiterated in numerous media placements and commentary and in submissions to provincial governments.

The right-wing think tanks have recently been joined by a new organization, Labour Watch, which publishes their “research” and co-ordinates anti-union legislative initiatives. It is publicly supported by leading Canadian employer organizations, including the Canadian Federation of Independent Business (CFIB), the Canadian Restaurant and Foodservices Association (CRFA), the Conseil du patronat du Québec (CPQ), the Retail Council of Canada (RCC), and the so-called Merit Contractors Associations. Through its web site, Labour Watch ([www.labourwatch.com](http://www.labourwatch.com)) provides advice to individual workers opposed to unionization campaigns or interested in decertifying their workplace, supports right-to-work laws and mandatory union disclosure of spending on political and lobbying activities, and publishes an annual report, *State of the Unions*, geared to the media opportunity of Labour Day. It purports to show, based on opinion polling, that so-called “forced unionism” is a significant issue and that most Canadians oppose political advocacy by unions.

In addition to its support for Labour Watch, the Canadian Federation of Independent Business has focused a great deal of attention on pay and pension benefits of public sector unionized workers which, it argues, far exceed those of workers in the private sector and need to be reduced. It has strongly lobbied for more restrictive laws around new union organizing. These legislative and lobbying efforts have been supported by some provincial Chambers of Commerce, notably in Saskatchewan, where the newly elected Conservative government was strongly pressed to enact a right-to-work law. Employer advocacy for an attack on union security has had at least one important success, at least in terms of political commitment by a mainstream political force which has a real likelihood of taking power. In 2012, the Ontario Conservatives issued a major policy paper promising that a future government would make union dues voluntary, make unions responsible for the collection of dues, and require unions to disclose their finances (Ontario PC Caucus 2012). Conservative leader Tim Hudak has also promised to unilaterally change public sector collective agreements. This agenda would essentially make Ontario labour law little different from that in the most strongly anti-union jurisdictions in the US, and goes much further than either Premier Klein of Alberta or Premier Harris of Ontario were prepared to go in the past. Both considered RTW laws but did not take that step, likely because employers feared strong union resistance would be unduly disruptive. As of the end of 2012, voluntary payment of union dues was also supported by the opposition Wildrose Party in Alberta, was included as a topic for discussion in a comprehensive review of labour legislation in Saskatchewan, and Federal Conservative MP Pierre Poilievre was canvassing legislation to make dues voluntary for federal government employees.

At the federal level, a private member’s bill, Bill C-377, has been strongly

supported by Labour Watch and by the Conservative caucus. Based on US legislation, it would require unions, including some 25,000 union locals, local labour councils and union trusts, to file detailed statements of revenues and expenses with the Canada Revenue Agency. Expenses would have to be broken down by area of activity, including political advocacy and lobbying. The Bill also requires disclosure of the details of all union expenditures above \$5,000. The major purpose seems to be to impose very costly reporting requirements on unions, going far beyond the normal preparation of audited financial statements, and, as in the US, to secure the information base needed to support legislation that would allow union members to withhold dues spent on activities other than collective bargaining and workplace representation. The stringent and intrusive reporting requirements for unions would not apply to other organizations, such as employer groups and professional associations that similarly engage in lobbying and political advocacy. The Canadian Bar Association (2012) argues the Bill violates Charter rights of freedom of expression and freedom of association by excessively interfering with the internal administration and operations of unions. Nonetheless, in December 2012, the Bill had passed in the House of Commons with the overwhelming support of Conservative MPs and Cabinet Ministers (including the Minister of Labour) but still needed Senate approval. It is abundantly clear that the federal Conservative caucus supports a radical anti-union legislative agenda.

## **ORIGINS OF THE NEW ATTACK ON UNIONS**

As union density has fallen and as competition, both domestic and global, has intensified, unions have, from an employer perspective, tended to become a more serious competitive liability. The power of unions to negotiate wages and benefits in line with productivity growth is, however, very significantly constrained in highly competitive markets, and few unions will want to bargain wage increases that would lead to job losses. Controlling for differences such as occupation, education and age, the union wage premium—the difference in wages between union and non-union workers—has been falling, from about 20 percent in the 1980s to a modest 8 percent in 2002, and likely even less today (Fang and Verma 2002). Moreover, over the past decade, major union wage settlements have barely exceeded inflation. Consumer prices were 28.9 percent higher in 2011 than in 2000, while the cumulative increase in wages from major union wage settlements in the private sector was 33.2 percent, and 34.9 percent in the public sector (Statistics Canada 2012). The small and shrinking union wage premium is offset by the fact that unionized workplaces have much lower worker turnover and higher productivity, reducing employer labour costs. However, unionized firms may still be less profitable than non-union firms, explaining why employer hostility to unions can be strong even as union

bargaining power has been falling (Hirsch 2008).

Canadian manufacturers have faced an intense cost competitiveness squeeze due to the soaring Canadian dollar and low productivity growth. Between 2002 and 2010, Canadian unit labour costs rose by 67.6 percent in US dollar terms, while US unit labour costs fell by 10.8 percent (US Bureau of Labor Statistics 2012). This massive loss of competitiveness is almost entirely attributable to the rise of the Canadian dollar against the US dollar and lagging productivity growth: Canadian manufacturing annual wages increased in real terms by a total of only 1.5 percent over more than a decade. But unionized manufacturing employers have nonetheless demanded huge wage concessions, two-tier wage systems, and the dismantling of employer pension plans in order to compete, as demonstrated by the Electro-Motive closure and the 2012 round of auto bargaining. In embracing US right-to-work laws, Ontario Conservatives have argued that major wage cuts, which would be resisted by unions, are essential to the survival of manufacturing (Ontario PC Caucus 2012).

The continued strength of public sector unions also has some implications for the profitability of private sector employers paying relatively low wages. The overall public sector pay advantage is very modest, and is almost entirely the product of higher pay for women in lower-paid occupations, significantly offset by lower than private sector pay for mainly male workers in senior public sector professional and managerial jobs. As summarized in the foreword to a study by Gunderson, Hyatt and Riddell (2000: ii)

[...] the answer to the question of whether there is a 'pay premium' associated with employment in government is far from a simple one. On the one hand, some groups, such as senior managers and specialized occupational groups, such as information technology workers, are paid less than their private sector counterparts. On the other hand, women in government, especially those employed in service jobs, such as food services, tend to be more highly paid than women in the private sector. It is clear that employment and pay equity policies, coupled with decades of collective bargaining, have narrowed the pay differentials between men and women and between the highest and lowest paid workers.

More recent studies (CUPE 2012; Macdonald/NUPGE 2012) confirm that public pay overall is comparable to that in the private sector, but that there is still a significant public sector pay advantage for lower-paid women. Taken together with the fact that pension coverage is much higher for lower-paid workers in public services, some private sector employers likely face some upward pressures on wages and working conditions due to public sector unionism. While this helps explain the hostility of employers to unions, their argument that unionization significantly raises total public sector compensation costs and thus inflates taxes is not valid.

While the new right-wing attack on unions can partly be explained by the impact of remaining union strength on profitability, a more convincing explanation is that employers and the right are taking advantage of union weakness. As private sector union density and bargaining power have diminished, the labour movement has found it increasingly difficult to connect in a positive way with workers.

The right has found it easier to frame unionized workers as a working-class elite. While this is a gross exaggeration, in that very few union members are to be found in the top 1 percent where income gains have been concentrated, low union density in low-paid industries and occupations does tend to tilt union membership to the middle and upper middle of the income spectrum. In 2009, just one in five unionized workers (23.6 percent) were in the bottom four deciles of the earnings distribution (based upon hourly earnings), compared to fully one half (48.8 percent) of all non-union workers. While just under one in three (31.4 percent) of workers were unionized in that year, union members made up almost half (45.0 percent) of workers in the middle to higher deciles 6 to 9, though they are only slightly over-represented in the highest paid 10 percent of all workers (Statistics Canada 2009).

While characterized by the right as privileged, it remains the case that union wages have stagnated, that many benefits, such as pension plans and health care coverage, have eroded, and that union status is no guarantee of job security. This further tends to undermine the attractiveness of unions to non-union workers. Labour Watch polling by Nanos shows that just under one in five non-union workers are interested in union representation, which is similar to the results of public opinion surveys commissioned by unions which are not in the public domain. These surveys indicate that non-union support for unionization was stable at about one third until the early 2000s, and was significantly higher if the question included reference to non-reprisal by employers. The Nanos poll, again in line with union polling, shows that the great majority of union members, at least 70 percent, both value and want to remain members, especially because of perceived impacts on job security.

The new attack on Canadian unions is also a reflection of both political strength and weakness. The Conservatives' very strong hostility to unions almost certainly reflects the success of the anti-Conservative Working Families Coalition in the 2012 Ontario provincial election, a similar campaign against the Wildrose Party in Alberta, and, perhaps, the relative electoral success of the NDP in the 2011 federal election. In those provinces that have or may soon elect NDP governments, the right is anxious to block the prospect of progressive labour law reform. However, labour's political influence is undermined by the split between NDP partisans and advocates of strategic voting to block the right, and neither side is necessarily very successful in terms of influencing the vote of union members. The Conservatives continue win the votes of many (especially male)

unionized workers. In the final analysis, the right is advancing an anti-union agenda not so much because the labour movement is politically powerful but because they sense an opportunity to weaken their opponents without paying too high an electoral price.

## CONCLUDING REFLECTIONS

Canadian unions have come under attack from employers and right-wing political forces partly because they continue to limit the power of capital and have some relatively modest impacts upon profitability, even in the context of a clear decline of bargaining power. But the attack is more a result of weakness than strength. The right has characterized unionized workers as privileged, while unions have become increasingly unattractive to non-union workers. The ability of unions to offset job losses in manufacturing through new organizing in private services has been modest at best and has been declining. The future of public sector unionism is surely in doubt if private sector union density continues to decline.

Successful organizing in private services depends upon achieving sufficiently high density in a specific sector and/or geographical location to raise wages and improve conditions, as in the organizing of cleaning and hotel workers on a city-wide basis and organizing workers in community services such as child care and home care. Often, this has been achieved through community-based rather than workplace-based campaigns that have won support from local and state/provincial governments (Kelleher 2008; Milkman and Wong 2001). Labour law reform to promote sectoral, multi-employer certification and bargaining is needed to support these kinds of efforts, as shown by the achievement of high union density among child care workers in Québec. As has often been noted, successful organizing would also be promoted by greater co-operation between unions, perhaps through local labour councils conducting community campaigns that create a space for organizing by affiliates. Public sector unions have a clear interest in building higher private sector union density.

The labour moment has also engaged in successful political campaigns that speak to the interests of lower-paid non-union workers, not least the recent Canadian Labour Congress campaign for an expanded Canada Pension Plan, campaigns in defence of Employment Insurance and public services, and campaigns for higher minimum wages and better employment standards. A greater focus on mobilizing workers for better minimum standards could, perhaps, set the stage for organizing campaigns since union membership and workplace representation is by far the most effective vehicle for gaining access to statutory minimum rights and standards. There is, then, a need for campaigns that engage and mobilize both union and non-union workers, seek to expand and not just defend labour rights, and create spaces for new union organizing.

The labour movement needs to put its collective efforts and resources into a counter-offensive, before it is too late.

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