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Revisiting the Wagner Act & its Causes: Why Insurgency & Politics Both Matter

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The passage of the National Labor Relations Act — known popularly as the Wagner Act — in 1935 was a watershed moment in U.S. history. Breaking with over a century of anti-labor politics, the Act banned company unions and established a robust mechanism for the federal government to enforce workers’ rights to unionize. Putting an end to untrammelled corporate despotism, millions of working-class people soon won themselves an unprecedented degree of dignity, security, and power at work.

Union membership shot up under the legislation, especially once protest and politics forced the Supreme Court to uphold it in 1937. U.S. labor unions were, for the first time, firmly protected by law. Unlike in previous generations, employers were henceforth unable to easily bust their employees’ organizations once the momentum of a workers’ upsurge began to wane. In 1935, historian Selig Perlman argued that “the overshadowing problem of the American labor movement has always been the problem of staying organized.”¹ After the Wagner Act, this was no longer the case.

What brought about such a dramatic change in state policy? In Part One of this series, I challenged the standard liberal story that labor law reform was solely the product of electoral and legislative initiatives. Here I take issue with the influential account of radical scholar and activist Michael Goldfield, who argues that the Wagner Act “was the product of large-scale social unrest in general and of intense struggles by workers.”² And its primary goal, he contends, was “to constrain, limit and control the increasingly militant labor movement.”³

¹ Selig Perlman, *History of Labor in the United States, 1896-1932, Vol. 4 Labor movements* (New York: Macmillan, 1935), 7.

² Goldfield 2020, 21. Similarly, in his classic 1989 piece on the topic, Goldfield generally frames the Wagner Act’s passage as a “response to the increasingly powerful labor upsurge between 1933 and 1935.” (Michael Goldfield, “Worker Insurgency, Radical Organization, and New Deal Labor Legislation,” *American Political Science Review* 83, No. 4 (1989): 1274). Nevertheless, there is some ambiguity in Goldfield’s 1989 argument, since he briefly acknowledges that “conjunctural factors” like the 1934 election and FDR’s temporary estrangement from capitalists in 1935 “were important causal forces in making the state responsive to the developing labor struggles and the growing strength of labor radicalism” (Goldfield 1989, 1278). Even such passing nods to the causal importance of high politics, however, are absent in his most recent writings on the Wagner Act and other New Deal labor legislation (see Goldfield 2020 and Michael Goldfield and Cody R. Melcher, “Moments of Rupture: The 1930s and the Great Depression,” *Convergence*, November 9, 2021). I thereby engage here with the strong version of his argument, which is made explicit in his recent writings and which is consonant with the general thrust of his 1989 article.

³ Goldfield 1989, 1274.

Goldfield’s interpretation — which is shared widely on the U.S. Left, including by groups like Socialist Alternative and authors like Charlie Post — captures important dimensions of the 1930s working-class upsurge, but his overall explanation is flawed.⁴ While bottom-up insurgency was a necessary condition for passing the Act, it wasn’t the only major factor at play. And the Wagner Act’s main intended purpose, consequences, and social support are also different from how they’re portrayed in the writings of most radicals.

I show below that both working-class insurgency *and* government-level initiatives were essential for winning the bill — and that the latter were not simply the product of the former. Contra Goldfield, the Act’s main goal was to boost workers’ collective bargaining power. As such, the capitalist class actively opposed it and did everything possible to defang it after it was signed — a crucial point to underline, since the Wagner Act has so often been blamed for organized labor’s subsequent conservatism and steady decline.

The severe flaws in contemporary U.S. labor law today stem not from the Wagner Act itself, but from the changes made to labor law by a reactionary political counter-offensive begun in 1938. Unions’ relative weakness in the political arena proved to be a decisive block on their push to defend and expand their initial gains.

There’s a key lesson from this experience: class struggle from below advances furthest when combined with pro-labor initiatives in the governmental arena. As the experience of the 1930s illustrates, there’s no inherent zero-sum relationship between bold organizing from below and bold political initiatives. To replicate and hopefully surpass the victories of our predecessors, unions and leftists can’t afford to downplay the electoral arena. We want workplace militancy, but we want working-class politics too.

Explaining the Timing

One of the most serious problems with Goldfield’s account — beyond omitting the significant role of 1933 New Deal labor policy in spurring working-class insurgency — is that it cannot explain the timing of the Act’s passage. New York Senator Robert F. Wagner’s first attempt to pass a robust, enforceable labor reform bill *failed* in the summer of 1934, i.e. in the midst of a convulsive strike wave. But his legislative efforts succeeded in 1935, a year when bottom-up struggle, though still high, was less significant (see Figure 1). Not only did fewer workers strike in 1935, but the defeats of most union organizing drives in 1934 — due in part to AFL misleadership — had partially undercut workers’ momentum.⁵ Wagner’s indefatigable efforts to pass enforceable, pro-union legislation succeeded in 1935 despite a lower degree of mass pressure from below than a year prior.

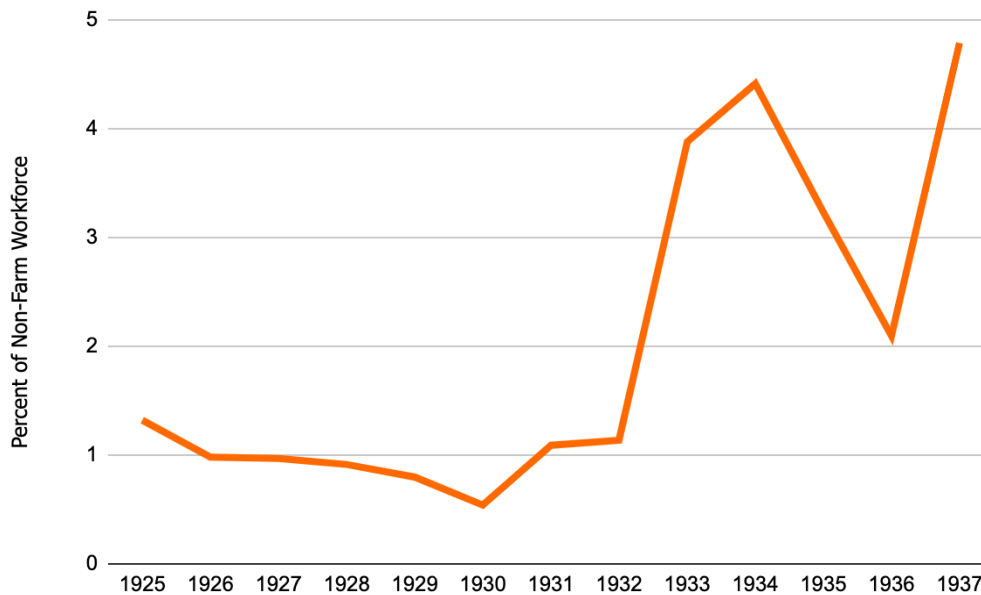
Figure 1⁶

⁴ Logan Swan, “Can Working People Rely on the NLRB?”, *socialistalternative.com*, April 6, 2022, Charlie Post, “Labor Law Reform and Class Struggle: Myths and Realities,” *Tempest*, June 09, 2021.

⁵ On the relative weakness of labor in 1935, Daniel Sipe, “A Moment of the State: The Enactment of the National Labor Relations Act, 1935,” PhD dissertation (University of Pennsylvania, 1981), 171-72.

⁶ “Work Stoppages, Workers. Involved, Average Duration, and Person-days. Idle: 1881-1998,” Historical Statistics of the United States, Table Ba4954-4964.

U.S. Workers Involved in Strikes, 1925-37



If it were true that bottom-up insurgency with a strong radical flank was the only major causal factor explaining the passage of labor law reform, then Wagner’s bill should have passed in 1934, not a year later. Though she erred in discounting strike militancy all together, political scientist Theda Skocpol was right to point this timing discrepancy out in her academic debate with Goldfield; she also correctly noted that the two most significant factors that shifted in the direction of passing Wagner’s bill from 1934 to 1935 were the election of a more progressive Congress and the demise of FDR’s newly formed National Recovery Administration in this intervening period.⁷

When pressed on this question of timing, Goldfield evaded Skocpol’s point on the NRA. And he did not try to deny that the November 1934 midterm election made Congress more favorable to labor’s demands the following year.⁸ Instead, Goldfield argued that the election of a significantly more pro-labor Congress was not an independent causal factor, but rather “an

⁷ Theda Skocpol, Kenneth Finegold and Michael Goldfield, “Explaining New Deal Labor Policy,” *The American Political Science Review* 84, No. 4 (1990): 1299-130.

⁸ On the NRA — the main economic recovery program of the early New Deal— Goldfield replied that since it was only deemed unconstitutional by the Supreme Court after the Wagner Act was passed, this could not be a factor in its passage (Skocpol, Finegold, and Goldfield 1990, 1307-08). He thereby failed to respond to Skocpol’s accurate observation that the Court’s 1935 decision was only the legal “coup de grace” for the failed NRA, whose social and political support had already cratered over the year prior (Ibid., 1300-01). Skocpol’s observation on the NRA is confirmed, among many others, by David Plotke, *Building a Democratic Political Order: Reshaping American Liberalism in the 1930s and 1940s* (Cambridge: Cambridge University Press, 2006), 79.

intervening variable that in good part reflected the Depression-inspired demands and attitudes of the vast majority of the population.”⁹

This might be true, but Goldfield’s citation above obscures the fact that pressuring the government through radical-led movements is a different mechanism of popular influence than the mechanism of changing the government’s composition through democratic electoral channels. And to demonstrate his case that insurgency was *the* major driving force in shifting government policy, he would have to provide some evidence demonstrating that bottom-up protest specifically — more than just a general, exogenous shift in the views of Democratic voters — was responsible for the election of a uniquely union-friendly Congress in 1934. But since he provides no such evidence, we have no way of measuring the plausibility of Goldfield’s overall argument about the primary of insurgency over electoral action.¹⁰

1919 vs 1934

The idea that movement militancy was the only major driving force behind the 1930s electoral changes and subsequent government policy has a hard time explaining why other peak moments of mobilization in U.S. history produced no analogous state-level transformations.

More specifically, there’s a second important question of timing that Goldfield has yet to provide a compelling answer to: Why did unions win robust bargaining rights in the 1930s rather than in the labor upsurge that followed World War One? In other words, why did the federal government — which had significantly aided unionization during the war — respond to a 1919-22 labor insurgency with repression, while in the mid-1930s it responded with union recognition? This shifting role was no minor historical phenomenon, for, as Jefferson Cowie writes, the “defeat of an industry-wide steel strike in 1919 — along with drives in meatpacking, police, and the Seattle General Strike — demonstrated that without government support, or at least neutrality, corporate opposition could not be overcome.”¹¹

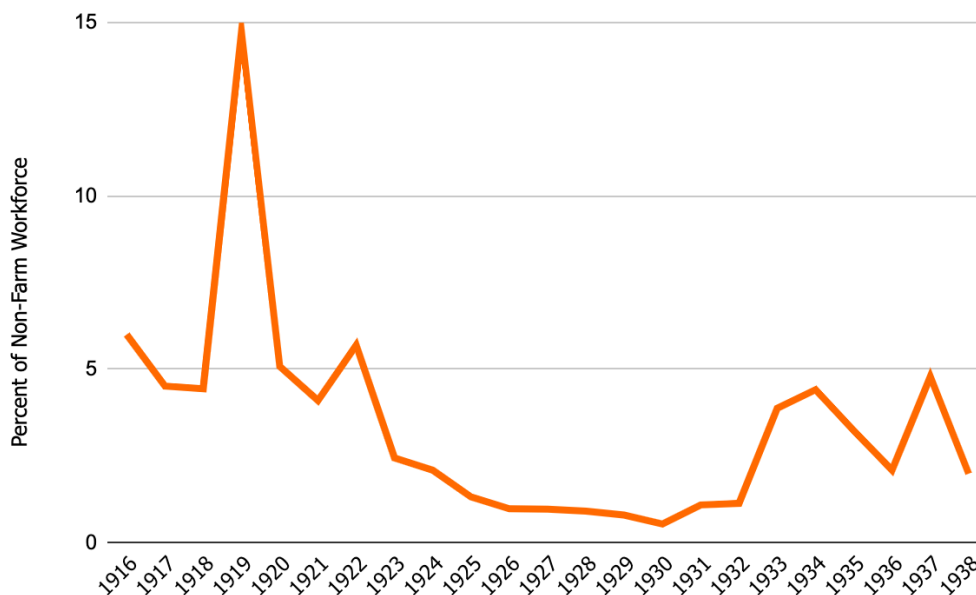
On the face of it, much of the quantitative evidence on strike activity runs against Goldfield’s thesis. A far higher percentage of the workforce struck in 1919 than at any time in the 1930s (Figure 2). Yet in Goldfield’s view, the latter insurgency was nevertheless more of a threat to ruling elites because the radical Left was stronger during the Depression and because insurgent labor struggles were magnified by wider social movements and third parties.

⁹ Ibid., 1306.

¹⁰ Absent any such evidence, a scholar such as Skocpol could just as plausibly argue that a shift in public opinion — due to Depression conditions and an expectations-raising federal government — was the cause of both the strike upsurge and progressive electoral results.

¹¹ Jefferson Cowie, *The Great Exception: The New Deal & the Limits of American Politics* (Princeton: Princeton University Press, 2016), 77-78. David Brody reached a similar conclusion from the inability of the post-WWI strike wave to overcome corporate opposition to unionization: “the bitter truth was clear: depending on their own economic strength, American workers could not defeat the massed power of open-shop industry. Only public intervention might equalize the battle.” (David Brody, *Workers in Industrial America: Essays on the Twentieth Century Struggle* (New York: Oxford University Press, 1993, 45).

Figure 2¹²
U.S. Workers Involved in Strikes, 1916-38



This is a plausible case. But Goldfield has never provided any data showing that the strength of the radical Left and non-labor social movements actually *was* greater in the 1930s than in the post-war upsurge or that these particular distinguishing factors were sufficiently relevant to the decisions of politicians to make up for lower strike activity during the Depression. On this score, there are grounds for skepticism.

On the heels of decades of deep Socialist, IWW, and Populist organizing, and the dramatic transformations engendered by the war, the Russian Revolution of 1917 played a key role in raising U.S. workers’ hopes and elites’ fears during the post-war maelstrom. “Perhaps at no time in American history did radical ideas penetrate the mainstream consciousness more deeply,” writes historian Joseph McCartin.¹³ As seen in Table 1, membership in Left organizations was significantly higher in 1919 than in 1934.¹⁴

Table 1: Membership of Radical Organizations¹⁵

¹² Table Ba470-477, “Labor force, employment, and unemployment: 1890–1990” and Table Ba4954-4964, “Work stoppages, workers involved, average duration, and person-days idle: 1881-1998,” in Historical Statistics of the United States, Millennial Edition Online.

¹³ Joseph A. McCartin, *Labor’s Great War: The Struggle for Industrial Democracy and the Origins of Modern American Labor Relations, 1912-1921* (Chapel Hill: The University of North Carolina Press, 1998), 3.

¹⁴ In a separate discussion on the Communist Party (CP) in his most recent book, Goldfield includes a similar table on membership figures illustrating that the CP was larger in 1919 than 1934-35 (Goldfield 2020, 352); the potential tension between this fact and his analysis of the Wagner Act’s genesis is not noted.

¹⁵ To provide the strongest possible case for Goldfield’s thesis, I take the lowest possible Socialist Party (SP) and CP estimates from 1919. The Socialist Party’s membership in the first quarter of 1919 was 104,108; membership over

1919 Socialist Party: 69,517
1919 Communist parties: 27,500
1919 IWW: 25,000

1934 Socialist Party: 19,121
1934 Communist Party: 26,000
1934 IWW: —

No less importantly, the Depression upsurge immediately followed a decade of crushing defeats for labor and the Left, which created an especially unfavorable balance of forces for workplace organizing, as did mass unemployment.¹⁶ To be sure, protests from the unemployed were uniquely disruptive during the early 1930s, but it's unclear how these could have been determinative for pressuring state actors to pass a reform primarily benefiting *employed* workers. And the comparative data on U.S. third party strength, one of the factors that Goldfield highlights as favoring the Depression-era insurgency, shows that Left third party voting was consistently higher in the 1910s than it ever was in the 1930s.¹⁷

Historians have put forward compelling alternative hypotheses for why labor outcomes diverged in these two periods. Elizabeth Cohen and Jefferson Cowie stress how demographic and cultural changes in the 1920s paved the way for greater inter-racial and inter-ethnic workers' unity in the 1930s; Mike Davis similarly notes the rising importance of confident young,

the course of the year dropped due to the subsequent factional crisis that culminated in the September 1919 formation of two new Communist parties; in the fourth quarter of 1919, SP membership averaged 34,926 ("Socialist Party of America Annual Membership Figures," marxists.org). The estimate I use above is the average of these two figures. The plausibility of this as a rough estimate for SP members in 1919 that did not split away to become Communists is enhanced by the fact that this SP average (69,517), plus the CP membership listed after the split (about 27,500), gives about the same total (104,108) as the early 1919 Socialist Party before its debilitating crisis. I also take a low 1919 estimate of Communist membership. The Communists' two new parties together claimed 50-60,000 members in 1919, but since scholars generally argue that these numbers were inflated, I have used the most conservative available estimate. (Harvey E. Klehr, *The Heyday of American Communism: The Depression Decade* (New York: Basic Books, 1984), 4. On SP data for 1934, see the "Mapping Social Movements Project," University of Washington, depts.washington.edu. The CP's 1934 membership is from the end of the year (Klehr 1984, 166). The Project does not include CP data for 1935; note, however, that even by January 1937 CP membership was only 38,000. On the IWW, see Eric Thomas Chester, *The Wobblies in their Heyday: the Rise and Destruction of the Industrial Workers of the World during the World War I Era* (Santa Barbara: Praeger, 2014), 209. In August 1917, the IWW counted over 150,000 members (Ibid., 227) As demonstrated by Chester, the IWW was mostly destroyed by state repression, and subsequent factionalism, by 1924; scattered groups of Wobblies helped lead some strikes in the 1930s, but I have found no works that cite membership numbers for the IWW during the Depression. In comparing the relative influence of organizations *within* a given year, readers should of course keep in mind that membership requirements for the CP were more strict than for the SP, which in turn were more strict than for the IWW.

¹⁶ Plotke provides a useful assessment of the actual strength of the Left in the 1930s, whose relative weakness throughout the decade significantly constrained both its overall impact and the space for it to effectively pursue a dramatically different approach than that set by top CIO leaders and their political allies (David Plotke, "The Wagner Act, Again: Politics and Labor, 1935-37," *Studies in American Political Development* 3 (1989): 104-156.)

¹⁷ Barry Eidlin, "Why is there No Labor Party in the United States? Political Articulation and the Canadian Comparison, 1932 to 1948," *American Sociological Review* 81, No. 3 (2016): 3.

second-generation immigrant workers in the 1930s.¹⁸ Melvyn Dubofsky and Joseph McCartin have demonstrated how unions' rapid-but-temporary growth with federal support during World War One was quickly reversed as the government turned against labor after the war ended. In contrast, the government's backing of union rights in the 1930s took place in peacetime, in order to extricate the economy from a depression — a political dynamic which helped ensure a more long-lasting recognition for unions.¹⁹ Along similar lines, authors including Skocpol point to state-level factors such as the watershed Democratic electoral realignment of 1932-36, which pushed reactionary Republicans out of office and which raised the costs of labor repression for urban liberal politicians that hoped to get reelected.²⁰ Goldfield and others sharing his views have yet to either disprove these contending explanations or to show that radical insurgencies from below were greater factors.

Recognition or Repression

Goldfield argues that the strength of bottom-up unrest and radicalism took repression off the table as a “live option” for governmental leaders in 1934-35. This both underestimates the agency of state officials and it underestimates the extent of repression that *did* take place in the 1930s, by employer thugs, local police, or, in some regions, troops sent in by hostile state officials (see Figure 3).

Faced with an upsurge in strike militancy, government actors had real choices. They were not simply forced from below to move away from a long-standing heritage of labor repression. We know from detailed histories of the 1934 strike wave that state violence *was* a live option for employers and government officials, as seen most dramatically in the defeat of the textile workers' strikes in the South — by far the largest strike of the year — during which at least fourteen workers were killed and hundreds wounded.²¹

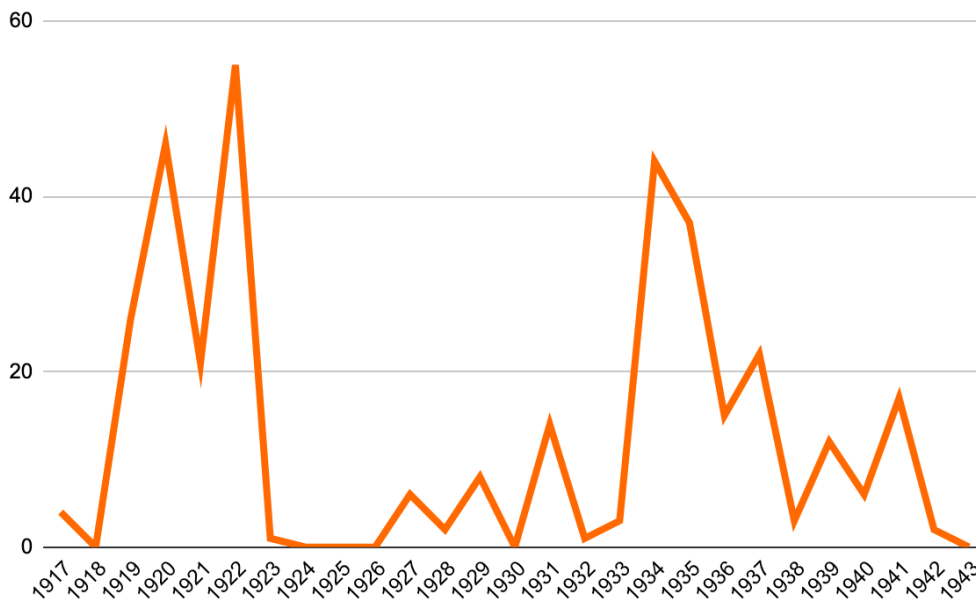
¹⁸ Lizabeth Cohen, *Making a New Deal: Industrial Workers in Chicago, 1919-1939* (Cambridge: Cambridge University Press, 1990), Cowie 2016, Davis 1986, 40-51, 55.

¹⁹ Dubofsky 1994 and McCartin 1998.

²⁰ Theda Skocpol and Kenneth Finegold, *State and Party in America's New Deal* (Madison: University of Wisconsin Press, 1995). As discussed in Part Two, another key dynamic overlooked by Goldfield is that union recognition strikes became far more central after Section 7(a) was passed in June 1933.

²¹ Though further comparative research is needed on strike outcomes in 1934, the most systematic study of the textile strike argues that one of the major reasons for its defeat was that Southern workers faced more hostile state actors, New Deal politicians included, than in the North. See Janet Christine Irons, *Testing the New Deal: The General Textile Strike of 1934 in the American South* (Chicago: University of Illinois, 2000), 176.

Figure 3²²
U.S. Strike Fatalities



In contrast, the decision of other state actors to take a less repressive approach was a significant factor in the success of San Francisco longshoremen and Minneapolis teamsters, who achieved the two most important strike victories of 1934.²³ Of course, there would have been no work stoppages in the first place without daring militancy from below. Workers drove these strikes forward, including by defying the law and facing off, when necessary, against police, troops and armed strike breakers. High-ranking government officials would not have been placed in a position where they were obliged to intervene in these conflicts one way or the other had it not been for an explosion of working-class self-activity.

Such heroic bottom-up elan, however, was not a new phenomenon. U.S. history from 1877 through 1919 was littered with inspiring mass strikes that were ultimately crushed and defeated despite the bravery of their participants and the militant strategies of their radical organizers. One of the key things that made the 1933-37 upsurge different was the role of the state this time around. A historian of the San Francisco general strike thus concludes that “while the longshoremen's strike of 1934 fell into an established pattern of waterfront struggle, the decisive

²² Paul F. Lipold, “Laying it All on the Line: the Configuration & Causes of Strike Fatalities within the United States, 1877-1947,” PhD dissertation (The Florida State University, 2003), 74.

²³ The other major radical-led strike of 1934, the Toledo Auto-Lite strike, witnessed more of an intermediary dynamic. The (state-level) National Guard was called in, leading to violent clashes and the killing of two workers. Governor White ultimately, however, rejected demands that he re-open the Auto-Lite plant under military protection — a decision that played a decisive role in the strike’s ultimate victory. See Sipe 1981, 150 and Irving Bernstein, *The Turbulent Years: A History of the American Worker, 1933-1940* (Chicago: Haymarket Books, 2010) 218-229.

element in bringing about a successful conclusion from the labor point of view was the neutrality or positive assistance of the Federal Government.”²⁴

Though strikers in 1934 had many legitimate criticisms of the tortured attempts by Governor Floyd Olson in Minneapolis and the FDR administration in the San Francisco strike to be “even handed” in the midst of open class warfare, the big story of the 1930s is how much of a departure this was from past state practice.²⁵ Both workers and employers clearly recognized this shift away from repression, and they drew their political conclusions accordingly. As such, in September 1934 a Minneapolis Central Labor Union resolution praising Governor Olson for his conduct during the strike was approved by the delegates, with the open backing of Local 574 Trotskyist leader Miles Dunne.²⁶ Increased class polarization marked the 1934 and 1936 elections, as mobilized workers surged towards what they now saw as FDR’s party. On the other side of the class divide, most corporations in the years after 1934 broke from what in their view was a lamentably pro-labor administration.²⁷

This experience suggests that popular desires expressed through the mechanisms of political democracy *can* be a significant constraint on politicians. Politicians generally want to get re-elected. And when they hope to maintain the support of large numbers of pro-union voters — as was the case with Olson and FDR — they face more popular pressure than their right-wing peers, such as the Republican governor of California, Frank Merriam, who did not hesitate to send in the National Guard troops that killed two strikers in San Francisco. Even if we leave aside the possibility that some politicians can act on sincere pro-labor convictions, it therefore makes sense that repressive practices will tend to vary and that such shifts cannot be explained solely by the degree of movement pressure from below.

The Act’s Purpose

Goldfield states that the primary goal of the Wagner Act was to “constrain, limit and control” an insurgent workers’ movement. This is, at best, a very one-sided formulation that stands in tension with the actual provisions of the bill, the actions of the National Labor Relations Board (NLRB) established to enforce it, and the robust documentation, both public and private, of the Act’s intentions, which centered on equalizing power relations between capital and labor by promoting strong trade unionism.²⁸ If Goldfield’s thesis were true, for example, then why did

²⁴ Frederic C. Chiles, “War on the Waterfront: The Struggles of the San Francisco Longshoremen, 1851-1934,” PhD Dissertation (University of California, Santa Barbara, 1981), vii.

²⁵ Chiles 1981, 147-48, 256-57 and Mayer, *The Political Career of Floyd B. Olson* (Minneapolis: University of Minnesota Press, 1951), 184-221. Not all state actors shared this “neutral” approach. At least four workers were killed, and many more wounded, in these strikes at the hands of the local police in Minneapolis and of the National Guard troops sent to San Francisco by California’s Republican governor, Frank Merriam.

²⁶ Mayer 1951, 221. Dunne had been one of the Local 574 leaders arrested by Olson when, during the strike, he directed the National Guard to take action against the leaderships of both the union and the employers’ Citizens Alliance, an act that hurt the former more than the latter. Unlike in the San Francisco longshore and Southern textile strikes, however, Minnesota’s National Guard troops never fired upon strikers.

²⁷ On the general business opposition to Roosevelt in the mid-1930s, see Plotke 1996, 132.

²⁸ Karl E. Klare, “Judicial Deradicalization of the Wagner Act and the Origins of Modern Legal Consciousness, 1937-1941,” *Minnesota Law Review* 1732 (1978): 282-83; Melvyn Dubofsky, *The State & Labor in Modern America* (Chapel Hill: The University of North Carolina Press, 1994), 129; Leon H. Keyserling, “The Wagner Act:

Wagner in 1933 threaten to withdraw his support for the NIRA unless it included the union rights provisions of Section 7(a)?²⁹ In other words, Wagner made this pivotal pro-union ultimatum at a moment *before* there was any strike wave and *before* unions began to regain strength.

After 1933, Wagner proceeded to wage a relentless battle in Congress to win robust pro-union legislation against the reluctance of FDR and the indifference, at best, of most of his colleagues. In the words of historian Arthur Schlesinger, “Wagner was almost alone among liberal Democrats in placing a high value on trade unions; and it was Wagner who was almost single-handedly forcing a reluctant administration into a national labor policy.”³⁰

Schlesinger is right that Wagner’s proactive fight for union rights was unique among Democrats. That said, his argument taken on its own needlessly downplays the causal importance of the strike upsurge, which helped make attempts to resolve “the labor question” a top legislative priority. And there were other key factors that also pushed Congress to act, including the policy vacuum suddenly created by the implosion of the NRA, hopes to spark an economic recovery by raising workers’ purchasing power, and, not least of all, the widespread assumption that the Wagner Act would get quickly overturned by the Supreme Court.

But Wagner’s stubborn initiatives *were* consequential. Without them, there very well might not have been a robust pro-union bill brought to the floor of Congress at the especially favorable junction of 1935. The most detailed study of this history argues that a unique constellation of events created a brief opening that Wagner seized, despite the relative weakness of organized labor: “Largely ignored [in explanations of the Act’s passage] is an evaluation of how the specific conjuncture of forces and events may have opened up the situation so that timeliness and position were more important than raw power.”³¹

There are further reasons to question Goldfield’s contention that the bill was primarily intended to constrain labor militancy. Liberal Democrats no doubt wanted to see fewer strikes. But had the Wagner Act *primarily* been focused on constraining the workers’ insurgency, it surely would have included some penalties or prohibitions on work stoppages. Instead, it explicitly stated that “nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike.”³² Even if one agrees with Goldfield’s contention that

Its Origin and Current Significance,” *George Washington Law Review* 29, No. 2 (1960): 215-24. This desire to boost workers’ organized strength was, in turn, deeply linked to hopes to end the Depression by boosting workers’ purchasing power.

²⁹ Jacob Joseph Huthmacher, *Senator Robert F. Wagner and the Rise of Urban Liberalism* (New York: Atheneum, 1968), 147.

³⁰ Arthur Schlesinger, *The Coming of the New Deal: 1933-1935* (Boston: Houghton Mifflin, 1958), 403.

³¹ Sipe 1981, 171.

³² Irving Bernstein, *The New Deal Collective Bargaining Policy* (Berkeley: University of California Press, 1950), 160. Though there were no anti-strike provisions in the Act, its preamble did include some negative formulations about strikes blocking “the free flow of commerce.” The reason for this was that the legal case for the legislation depended on its congruence with the U.S. constitution’s “commerce clause” giving Congress the right to regulate firms involved in interstate commercial activities. Given the impending likelihood of Supreme Court invalidation, Wagner’s lawyers who drafted the bill included such formulations as part of their meticulous, ultimately successful, efforts to give the Act as much legal precedent as possible. See James A. Gross, *The Making of the National Labor Relations Boards. A Study in Economics, Politics, and the Law, Volume I*, Albany, N.Y: State University of New York Press, 1974), 173-230 and Peter H. Irons, *The New Deal Lawyers* (Princeton: Princeton University Press, 1982), 229-232, 254-289). The Court’s final ruling upholding the Act thus declared that Congress had the right to

strike pressure obliged the passage of labor law reform, it doesn't follow that the content of such reform had to be as overwhelmingly pro-labor — and as conducive for industrial unionism — as the Wagner Act. As David Plotke notes, the alternative could have been “extended repression, expanded company unions, support for AFL unions and their initiatives in mass production industries, [or] a minimal NLRA and limited recognition of industrial unions.”³³

The anti-strike, anti-labor legal provisions of modern U.S. industrial relations were generally introduced only years *after* the Wagner Act, through policy amendments, Supreme Court decisions, and NLRB case law. Goldfield, like many other leftists, unjustifiably conflates the 1935 Wagner Act with the far more constraining legal system that had been erected by the late 1940s, which dramatically limited workers' ability to effectively strike, organize new industries, and bargain for a broad range of demands.³⁴

This evolution was *not* a necessary product of the Wagner Act itself. In fact, the Act — enforced by the newly established NLRB — immediately boosted labor organizing efforts, especially those from the movement's left, industrial CIO wing.

From 1935 through 1938, the National Labor Relations Board wasted no time in lending its support to the insurgent labor movement. Invoking the recently passed Act, the new NLRB aggressively fought company unionism, armed guards, and company spies. It held companies responsible for the anti-union activities of their managers and supervisors. It leveraged the unfair labor practices provision of the Act to prevent company intimidation of workers and to actively curtail employer free speech by banning employers from most forms of anti-union propaganda.

The NLRB held that it was illegal for an employer to refuse to enter into a collective bargaining contract once an agreement with the union was reached. It forced employers to reinstate workers who had been fired for anti-union activities — and it forced employers to pay back governmental relief agencies all costs incurred for supporting the worker when unemployed. It decided in favor of the “card check” process in which a union could be recognized by getting a majority of workers to sign cards, rather than needing an election process in which employers could seek to intimidate their employees — 31 percent of unions were certified in that manner in 1938 and 1939.³⁵

And, unlike today's much-weakened board, the NLRB had both the capacity and legal standing to quickly enforce its decisions, especially after the Wagner Act was legally upheld by the Supreme Court in early 1937. As one scholar put it, the early NLRB was “the most high-powered and effective law enforcement in our history.”³⁶

intervene in labor relations “to protect interstate commerce from the paralyzing consequences of industrial war” (cited in Irons 1982, 287).

³³ Plotke 1996, 119.

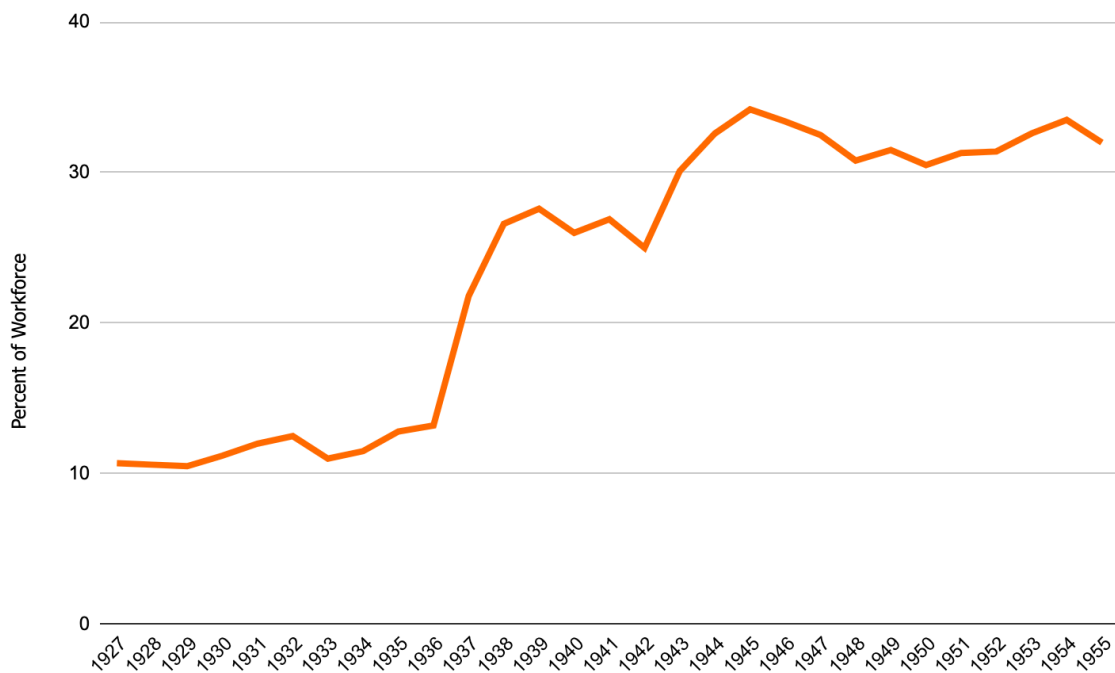
³⁴ Goldfield writes that “the NLRA was extremely important in determining the type of union growth that was to take place and the structure of labor-management relations from the 1930s until the present.” (Skocpol, Finegold and Goldfield 1990, 1309).

³⁵ On the early NLRB, see James A. Gross, *The Making of the National Labor Relations Boards. A Study in Economics, Politics, and the Law, Volume I*, Albany, N.Y: State University of New York Press, 1974) and James A. Gross, *The Reshaping of the National Labor Relations Board: National Labor Policy in Transition, 1937-1947*, Albany, N.Y: State University of New York Press, 1981).

³⁶ Cited in Gross 1981., 23. See, also, Plotke 1996, 124, 149.

To be sure, few of the gains of the period would have been possible without a simultaneous workers' upsurge, as epitomized in actions like the 1934 strike wave and the 1937 Flint-sit down strike. But any rigorous account has to acknowledge that the Wagner Act and the new NLRB were *also* key reasons why roughly two decades of unprecedented unionization growth began in 1937 — i.e. once the Act was fully recognized and enforced as the law of the land (Figure 4).³⁷

Figure 4: U.S. Union Density, 1927-1955



The Act's Social Support and Transformation

After over a century of undiminished authoritarian employer rule over their employees, the Wagner Act helped millions win a substantial, and lasting, degree of dignity and democracy at work. This was no small transformation. As illustrated in Lizabeth Cohen and Eric L. Davin's vivid studies of Chicago and Western Pennsylvania, workers of all races and backgrounds enthusiastically celebrated these New Deal transformations, viewing them as victories won through their own efforts, with the help of their allies in what they now experienced as an increasingly responsive state.³⁸ An overwhelming majority of unionized workers during the

³⁷ Additional factors for this growth include the political dynamics of World War Two, which cemented union recognition while simultaneously constraining its scope, as discussed in Nelson Lichtenstein, *Labor's War at Home: the CIO in World War Two* (Cambridge: Cambridge University Press, 1982).

³⁸ Lizabeth Cohen, *Making a New Deal: Industrial Workers in Chicago, 1919-1939* (Cambridge: Cambridge University Press, 1990) and Eric L. Davin, "Blue Collar Democracy: Ethnic Workers and Class Politics in Pittsburgh's Steel Valley, 1914—1948," PhD dissertation (University of Pittsburgh, 1999).

Depression — Black, white, and immigrant — would certainly have disagreed with Goldfield’s contention that the Act was not “progressive.”³⁹

The idea that Wagner’s bill was simply an effort by politicians to restore order fails to sufficiently account for the fact that there were a number of plausible routes to promoting “industrial peace.” It’s true that neither its author nor most congresspeople were advocates of class struggle. Wagner was a pro-union progressive liberal who wanted order in industrial relations. But the New York Senator argued in 1935 that only a significantly different *type* of order — one that significantly increased workers’ organized power and “industrial democracy” — could minimize violent industrial strife.⁴⁰ In his view, granting robust union rights, the Act’s major intended purpose, would have the additional benefit of lowering strike activity, by eliminating the ability of employers to force workers to resort to bitter strikes in order to win union recognition. Without justice, there would be no labor peace.

Beyond securing union rights, nobody could know in 1935 what the Wagner Act’s impact would be on future labor insurgency. To this day we have no way of knowing what fate lay in store for the U.S. labor movement had the NLRB remained pro-union and had the unadulterated 1935 Wagner Act remained intact, rather than being systematically gutted and transformed after 1938.

For its part, big business went on a major offensive to prevent the Act from getting signed in 1935. Corporations and their representatives overwhelmingly insisted that the legislation would increase, rather than decrease, militancy, as had occurred with Section 7(a).⁴¹ Once we correctly understand the actual content of the original Wagner Act, it is much easier to explain why it was stridently and almost unanimously opposed by big business.⁴² Contrary to the Communist Party’s dogmatic assumption that Wagner was acting on behalf of corporate America, the overwhelming majority of capitalists actually fought bitterly to prevent the bill from passing. During the 1935 congressional testimony of Communist leader William Dunne against the Act, Wagner thus interjected that “you say the bill lines up with big business. If that is so, they do not seem to appreciate it.”⁴³

Once Wagner’s legislation passed despite the opposition of most capitalists, they immediately pivoted to doing their best to disobey it, hoping that it would get overturned by the Supreme Court. And within a year after it was legally upheld by the Court in 1937, employers and Republicans responded by initiating a successful political offensive to “de-radicalize” the Act and the NLRB.⁴⁴

³⁹ Goldfield and Melcher 2019, 50.

⁴⁰ Keyserling 1960, 216-18. A similar approach was promoted at the time by the world’s preeminent reformist Marxist party, the Swedish Social Democracy. See Walter Korpi, *The Democratic Class Struggle* (London, Boston: Routledge & Kegan Paul, 1983), 46-49.

⁴¹ Haskett 1957, 18; Skocpol and Finegold 1995, 134; Klare 1978, 288-89.

⁴² Sipe 1981, 177-190; Bernstein 2010, 336-49; Stanley Vittoz, *New Deal Labor Policy and the American Industrial Economy* (Chapel Hill: University of North Carolina Press, 1987), 149-53; Plotke 1996, 102-105.

⁴³ United States Senate, “To Create a National Labor Board: Hearings Before the Committee on Education and Labor, United States Senate, Seventy-Third Congress, Second Session” (Washington D.C.: United States Government Printing Office, 1934), 989-90. The Communist Party reversed its opposition to the Act, as well as the New Deal, relatively soon after the bill was passed.

⁴⁴ Dubofsky 1994, 130, 151-61, 167, 201-204.

The accretion of major anti-worker legal provisions to our modern-day labor relations system was the product of dramatic *political* defeats, starting in the late 1930's and 1940's. Backlash against labor came hard and fast in 1938, as corporations, Republicans, and conservative craft union leaders from the AFL joined together in an unholy alliance to weaken and transform the Wagner Act and the NLRB, which they accurately saw as boosting the CIO and Left-leaning industrial unionism. Opposition to labor militancy also came from below from hitherto allies like farmers and professionals, as well as some non-unionized workers, leading to a surge in Republican electoral wins in 1938. These efforts were given a major institutional boost by the anti-democratic framework of the U.S. political regime and party system, which tended to marginalize third parties while giving reactionaries, particularly from the South, a disproportionate political say, as well as numerous veto points on progressive advance, by either blocking legislation in Congress or circumventing it through "states rights" federalism.

This new anti-CIO coalition succeeded, with FDR's backing, in purging the Left from the NLRB after 1938. The new Board soon proceeded to allow employers to hire strikebreakers as permanent workers, it ended the practice of "card check" for union recognition, and it limited the scope of permissible bargaining issues. For his part, Wagner stridently opposed amendments to gut the Act's expansive, pro-union purpose.⁴⁵ Though these initial attempts at federal amendments were defeated, many states from 1938 onwards leaned on the country's reactionary "state's rights" federal framework to adopt anti-labor laws undercutting the Wagner Act's provisions — laws that served as the basis for the later Taft-Hartley bill nationally.⁴⁶ World War Two temporarily checked this employers' offensive, as labor was incorporated into tripartite institutions for the war effort. Unions grew their ranks significantly during WWII, though usually with the trade off of accepting narrow, routinized labor relations and pledges not to strike.⁴⁷

The push to roll back the Wagner Act and organized labor was successfully ratcheted up after the war's end, resulting in the 1947 passage of the infamous Taft-Hartley bill, which banned wildcat and political strikes, prohibited secondary boycotts and mass picketing, barred Communists from holding union office, enabled "right to work" states, ended card check union recognition, banned foremen and supervisors from unionizing, and slowed down the process for redressing (and minimized the penalties for perpetrating) unfair labor practices by employers.⁴⁸

The Act's Limitations and Contradictions

None of this is meant to imply that the original Wagner Act was flawless. In order to garner votes from Southern Dixiecrats in Congress, it included no anti-discrimination clauses and it

⁴⁵ Keyserling 1960, 205-06.

⁴⁶ Anthony Michael Daniel, "From Wagner to Taft-Hartley, Revisited," PhD Dissertation (Columbia University, 2017).

⁴⁷ Nelson Lichtenstein, *Labor's War at Home: the CIO in World War Two* (Cambridge: Cambridge University Press, 1982).

⁴⁸ On Taft-Hartley's significance, see Nelson Lichtenstein, "Politicized Unions and the New Deal Model: Labor, Business, and Taft-Hartley," in *The New Deal and the Triumph of Liberalism*, eds. Sidney Milkis and Jerome Mileur (Boston: University of Massachusetts Press, 2002).

excluded agricultural and domestic workers from its protections, a large workforce that was disproportionately African American.⁴⁹ The legislation also excluded public sector workers.⁵⁰ And it fell well short of establishing the centralized national-level bargaining that would go on to play such a major role in facilitating sustained union power in the Nordic countries and much of continental Europe.⁵¹

These are all major and impactful flaws. But they are not the grounds upon which authors like Goldfield and Charlie have rested their case against the bill, which they accuse of constraining, bureaucratizing, and conservatizing the labor movement.⁵²

Such criticisms *do* capture important elements of the historical record, though they tend to conflate potential problems with inevitable problems. It's true that the Wagner Act's empowerment of a strong federal government agency to enforce and adjudicate labor law carried with it potential dangers, especially in the event that the NLRB were to come under the sway of anti-labor forces. This insight was integrated into a well-rounded 1935 analysis from the Socialist Party, which was the only major radical organization of the era to support the law. Underscoring the Act's pro-labor core, the Socialists insisted that it created significant new openings for "militantly aggressive labor organization." At the same time, however, they noted that the Act "may be construed by an unfriendly board or by reactionary courts in a fashion contrary to the interests of labor." In their view, this was not a reason to oppose the legislation — rather they drew the conclusion that because so "much depends on the administration of the act," unions had to stay strike ready and they had to increase their *political* influence to shape the state through "a political party of their own making."⁵³

What is often glossed over in radical criticisms of the Act's empowerment of the federal state is that by 1935 bitter experience had demonstrated that legally enforcing union recognition against an exceedingly hostile capitalist class *required* strong national enforcement. Wagner and AFL leaders *had* initially supported the light-touch, voluntarily enforced regulatory approach embodied in the 1933-34 National Recovery Administration. But persistent capitalist hostility to collective bargaining wrecked this plan. And precisely because 7(a) under the NRA was so consistently ignored by employers — as well as local politicians and repressive forces — demands from below for the New Deal administration to intervene were central to the strike upsurge that erupted after July 1933. No radicals at the time, or since, have ever compellingly

⁴⁹ Roughly two thirds of the Black workforce was thereby exempted from the Act's purview. For an overview of U.S. labor law and Black workers, see Herbert Hill, *Black Labor and the American Legal System: Race, Work and the Law* (London: University of Wisconsin Press, 1977).

⁵⁰ Alexis N. Walker, *Divided Unions: The Wagner Act, Federalism, and Organized Labor* (Philadelphia: University of Pennsylvania Press, 2020). The fact that governmental, agricultural, and domestic laborers experienced significantly weaker union growth in the decades after 1937 further illustrates the importance of the Act for the union growth that *did* take place.

⁵¹ Lynn Rhinehart & Celine McNicholas, *Collective Bargaining Beyond the Worksite: How Workers and Their Unions Build Power and Set Standards for Their Industries*, Economic Policy Institute, May 4, 2020. The original draft of the Act had left the door open for the NLRB to establish bargaining units beyond the company or plant level, but under pressure from Southern congressmen and AFL leaders hoping to keep bargaining units narrower, this was amended out (Gross 1974, 145-46).

⁵² Goldfield and Melcher 2019, 50.

⁵³ "The Socialist Party's Stand On the Wagner Labor Act," *The New Leader*, July 27, 1935.

explained how labor rights could have been legally enforced in such a context *without* robust federal intervention.

The progressive potential of the Wagner Act under favorable state actors was clearly shown by the pro-labor, pro-CIO practice of the NLRB from 1935 through 1938. Goldfield asserts that the Wagner Act was intended to prop up “the AFL leadership group” against radical threats to its left — yet the opposite dynamic occurred. As noted above, the main immediate beneficiary was the CIO, in which Communists played a major role.⁵⁴

It is true that unambiguously pro-labor state practice proved to be exceedingly rare in the following decades. Legalistic, bureaucratized, Democratic Party-dependent unionism increasingly crowded out the more autonomous, combative, and visionary unionism of the mid-1930s CIO. This sad outcome, however, was inseparable from the labor movement’s relative lack of political power, which would have seriously impinged on the evolution of *any* new labor order.

Unions have generally advanced further in their organizing efforts under Democratic administrations, but they have never progressed past being a junior partner in the Democratic coalition. Barry Eidlin illustrates in his insightful comparison of U.S. and Canadian labor politics that this subordinate interest group dynamic in the United States undermined unions’ policy sway and their ability to win over broader public opinion through political interventions — a dynamic that, in turn, significantly limited U.S. unions’ power and growth.⁵⁵ Unlike in the rest of the advanced capitalist world, unions in the United States could not lean on a mass workers’ party to defend and advance their interests within the state or to broaden their “historical bloc” through policy reforms, mass organization, and political agitation.

Conclusion

In light of the constraining legal restrictions and procedures later added to U.S. labor law, historian David Plotke concludes that while the Wagner Act was “a clear defeat for capital... elements of the New Deal labor relations system may eventually have become obstacles to the growth of the labor movement—given many intervening developments. Yet to make this claim does not show either that this result was inevitable or that the new system was a significantly more conservative outcome than others that were realistically possible at the time.”⁵⁶

Subsequent events, in short, should not obscure our view of the significance of the Wagner Act itself, especially for those workers who benefitted from its protections. It was one of the few moments in U.S. history where organized labor *was* able to find a transmission belt, however limited, for its demands and interests within the state. The rapidfire and ultimately successful reactionary assault on the Act after its passage showed just how exceptional this opening was.

Though the Act unfortunately failed to cover the entire working class, no other piece of U.S. legislation has ever done so much to bolster the collective interests of working people and to help

⁵⁴ Goldfield 1989, 1276. On the NLRB in 1935-37, see Dubofsky 1994, 150, Gross 1974 and Gross 1981. This history will be discussed in detail in Part Four of this series.

⁵⁵ Barry Eidlin, *Labor and the Class Idea in the United States and Canada* (Cambridge: Cambridge University Press, 2018).

⁵⁶ Plotke 1989, 134, 150.

win them a substantial measure of dignity at work. Efforts today to match such a leap forward would do well to understand what it took to bring about this exceptional victory in 1935.

Of course, history never repeats itself exactly. It's important to acknowledge that we face many unique problems from that of labor on the eve of the New Deal. For starters, today's struggles take place in a polity that provides some institutional structures — constrained and hollowed out, to be sure — for union recognition. The openings and obstacles for union organizing are thus not identical to the pre-Wagner Act era.

Socio-economic shifts have been no less dramatic. The decline of strike rates and union growth across the industrialized world since the 1980s reflects not just labor leader timidity, but epochal structural transformations that have shifted the balance of forces against workers, making private sector militancy more difficult than before, especially when waged on a decentralized, firm-by-firm basis inside a legal system stacked against unions. Deindustrialization, financialized globalization, mass unemployment, neoliberal atomization of working-class communities, the growth of precarious work and “fissured” firms — all these factors make workplace action and organizing riskier not just for union officials, but for working people generally.⁵⁷

That said, after decades of declining strike rates and entrenched union inertia, the fate of unions, at least insofar as it's within their own control, appears to be inseparable from efforts to scale up bold new organizing drives and strike activity. The inspiring organizing at Starbucks and Amazon, like the 2018-19 teachers' strike wave, is posing a much needed alternative to unions' risk aversion and their self-defeating reliance on corporate Democrats. As Republicans and the Supreme Court further undermine majority rule, mass disruption may in the short term often be the most salient *tactic* for helping turning things around. But disruption is not a *strategy*. Insurgencies are inherently episodic — to maximize their transformational power, they need to crystallize into institutions, both inside and outside the state. The experience of the Great Depression era suggests that the sustained growth and success of insurgent labor organizing requires parallel initiatives in the political arena. And this may be even more true now because of the fissured political economy of our current era.⁵⁸

In the political arena today, corporate politics clearly continues to dominate. We have, however, seen some promising new developments recently. These include the Bernie campaigns, the rebirth of Democratic Socialists of America, the election of “the Squad” and democratic socialists across the country, and the commendable efforts of the new NLRB to protect union organizing efforts.

Within labor, the most promising strategic development in recent memory is the “bargaining for the common good” approach articulated by unionized educators from Chicago to Los

⁵⁷ For useful overviews of these structural shifts, and their consequences for labor, see Kate Andrias, “The New Labor Law,” *Yale Law Journal*, 2016, 126 (1): 2-100 and Joseph A. McCartin, “Solvents of Solidarity: Political Economy, Collective Action, and the Crisis of Organized Labor, 1968-2005,” in *Rethinking U.S. Labor History: Essays on the Working-Class Experience, 1756 – 2009*, edited by Donna Haverty-Stacke and Daniel J. Walkowitz (New York: Continuum International Publishing Group, 2010), 217-239.

⁵⁸ Chris Maisano, “Levers and Labyrinths,” *Socialist Forum*, Spring 2021.

Angeles, an approach that centers fights for the whole multiracial working class.⁵⁹ Expanding this orientation beyond public education and other care-based industries, however, will likely require even more directly and systematically intervening in the electoral arena, since not all workplaces are as intertwined with the community as schools and hospitals.

To rebuild working-class power today, we'll need many more strikes and daring unionization drives, but we'll also need serious and sustained pro-labor initiatives within the official halls of power on local, state, and federal levels. And to get further than our predecessors in the 1930s, we may very well have to find a way to turn the United States into the robust political democracy it has long claimed to be.

⁵⁹ Sarita Gupta, Lauren Jacobs, Stephen Lerner, and Joseph A. McCartin, "The Lever and the Fulcrum: Organizing and Bargaining for Democracy and the Common Good," in *The Cambridge Handbook of Labor and Democracy*, edited by Angela B. Cornell and Mark Barenberg, *Cambridge University Press*, 102-116.