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# Labour Unions, Workplace Rights and Canadian Public Policy

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Cet article a pour objet l'avenir des syndicats et des droits des travailleurs dans le lieu de travail, en relation avec les politiques publiques canadiennes. Je soutiens que le régime de politiques actuellement en place a limité outre mesure la portée des syndicats et les droits et protections consentis aux travailleurs et que, sous ce régime, les syndicats sont devenus de plus en plus marginalisés. Puis, après avoir considéré diverses alternatives, je plaide pour un paragdime de «bonnes pratiques» qui repose moins sur une certification formelle et des droits de négotiation collective et davantage sur l'établissement de droits universels destinés à assurer un niveau minimum de dignité, d'équité et de possibilité pour les travailleurs d'être entendus (c-à-d. de «bonnes pratiques»). Ainsi, le rôle des syndicats serait moins de négocier et de faire respecter des droits déjà approuvés que d'assurer une mise en oeuvre effective et le respect de droits mandatés par l'état dans tous les lieux de travail, sans tenir compte qu'ils aient été ou non approuvés en vue de négociations collectives.

This paper addresses the future of labour unions and of workplace rights as they pertain to Canadian public policy. I argue that the established policy regime has unduly limited the purview of unions and the rights and protections afforded workers, and that unions are becoming increasingly marginalized under it. After then considering various alternatives, I argue for a "good practice" paradigm, one that relies less on formal certification and collective bargaining rights and more on the provision of universal rights designed to ensure basic levels of dignity, fairness, and voice (i.e., good practice) at work. Under this paradigm, the role of unions would be less one of negotiating and enforcing rights where they are certified, and more one of ensuring the effective implementation and enforcement of state-mandated rights in all workplaces, regardless of whether they are certified for purposes of collective bargaining.

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Traditionally, labour unions have served as the primary institutions of workers in Canada. As such, they have formed the cornerstone of labour policy (Woods 1973), with employment laws and standards serving largely as "backstops" for those without union representation. Yet there is reason to be concerned that the established policy regime, with its focus on formal certification and bargaining, has unduly limited both the purview of unions and the rights and protections afforded workers (e.g., Adams 1993, 1995), and that labour unions have become increasingly marginalized under it.

To the extent that this is true, it has important implications for Canadian public policy. In addition to serving as the primary means through which workers can gain meaningful representation and improved terms and conditions of employment,

unions serve as important vehicles for the effective implementation and enforcement of state-mandated rights and protections, providing the "institutional backup" needed to ensure that workers have the expertise and protection needed for the effective exercise of their legal rights (Brown *et al.* 2000, 627; Weil 1999). They also provide the primary source of political pressure for the enactment of these rights and protections and have an important role to play within the Canadian political system.

This paper discusses these issues. I begin by arguing that unions have indeed become increasingly marginalized and that there is need for an alternative policy model. I then consider alternative paradigms that might be drawn on as the basis for such a model. Finally, I propose and develop a "good practice" paradigm that includes strengthened workplace rights and protections and provides for a key union role in the implementation and enforcement of these rights and protections (rather than their negotiation), even in workplaces where unions are not certified for purposes of collective bargaining. In effect, I argue that the future of labour unions not only has potentially important implications for the future of state-mandated rights and protections, but also that the future of state-mandated rights and protections has potentially important implications for the future of labour unions. Public policies that recognize and build on this complementarity could be critical to the future of both, and ultimately to the ability of public policies to help ensure that workers are able to achieve basic levels of dignity, fairness, and voice at work.

## The Current Circumstances of the Canadian Labour Movement

Compared to its US counterpart, the Canadian labour movement appears to have fared relatively well over the past few decades. As discussed in greater detail elsewhere (Godard 2003*a*, 461-67), union density, or the percentage of the paid labour force in unions, has declined since the 1980s, when it peaked at either 33 or 37 percent depending on the estimate used. Yet this decline has been relatively small. Current estimates place overall Canadian density at either 30 or 31 percent, compared to about 13 percent in the United States. Even in the private sector, available evidence suggests that, despite a substantial decline in the late 1970s and early 1980s, density has dropped by only about 15 percent (or 3 percentage points) since. This compares to a 36 percent (or 5 percentage point) drop in the United States. The primary explanation for these differences would appear to be Canada's stronger labour laws (Ibid., 470-82).

Canada's relatively stable union density levels may provide succour for supporters of the labour movement, and the finding that they are attributable primarily to Canada's stronger labour laws may illustrate the importance that labour laws hold for the future of unions under the policy regime currently dominant within North America (Ibid., 482-85). But neither can be taken as indicative of union success or of a secure future for the Canadian labour movement. Less than one in five private sector workers is at present represented by a union, and density in this sector is stagnant if not in decline (Ibid., 465). Even when the public sector is included, current density levels mean that only about three in ten Canadian workers are represented by a union.[1] Moreover, recent trends provide little reason to expect density levels to increase substantially in future.

Any argument that the Canadian labour movement has been successful under the established policy regime can thus only be made in comparison to the US experience (Adams 1993). By almost any other standard, its success has been limited at best — especially in the private sector. Particularly serious from a labour standards perspective is the low union representation in "low wage" sectors, which are typically also most characterized by "bad" employer practices. For example, the two sectors that most epitomize such practices are the trade sector and the accommodation and food sector, where union density is only 13 percent and 7.5 percent, respectively (Statistics Canada 2003*b*, 50). As of 2000, the median

wage in the former sector was only $10, and only 28 percent had any retirement benefits, compared to $16 and 56 percent, respectively, in manufacturing. In the latter sector the median wage was only $7.60 and only 10 percent had retirement benefits. Between them, these sectors account for a quarter of all employees in Canada (Marshall 2003, 10).

More important, union density figures may be misleading if used as indicators of union strength (Meltz and Verma 1996). Union effectiveness under the present policy regime depends in considerable measure on union bargaining power, which tends to be low in more competitive, low pay sectors, thus limiting the extent to which unions can win improved terms of employment and possibly helping to explain the relatively low union density levels in these sectors.

It also appears that unions have witnessed an overall decline in bargaining power (also see Rose and Chaison 2001). Although Canadian unions appear to have been more successful than their US counterparts at resisting concession bargaining (Rose and Chaison 1996), they have been unable to capture many of the gains in productivity of the past few decades. Despite an aggregate productivity increase of more than a quarter since the late 1970s, private sector wage settlements have amounted to less than 5 percent after inflation.[2] Public and private sector wage settlements have in combination actually been below the rate of inflation (Akyeampong 1999, 65; Statistics Canada 2003*b*, 55). The estimated union wage premium has dropped from over 20 percent in the late 1970s, to 10 percent in the late 1980s, to only 8 percent as of the late 1990s (Renaud 1997; Gunderson, Hyatt and Riddell 1999; Statistics Canada 2002*b*). Strike activity, which is in part an indicator of union power, has over the past decade been less than one quarter of what it was in the 1970s (Godard 2000, 84). Although these developments could reflect some sort of strategic reorientation by the labour movement (Gunderson and Hyatt 2001, 393), it is difficult to determine what this reorientation may have been.

It would also appear that unions have become increasingly marginalized in policy circles. At the federal level, government policy has come increasingly to focus on economic productivity and innovation, with little if any role countenanced for unions or the values they have traditionally stood for. This is especially evident from recent government white papers on industrial strategy (Industry Canada 2002; Human Resources Development Canada 2002), which contain little mention of labour unions.[3] In addition, the government "Workplace and Employee Survey," an annual survey of over 25,000 workers and 6,000 employers begun in 1999, virtually excludes consideration of unions and collective bargaining. In marked contrast to its British and Australian counterparts, it contains only a handful of questions about unions, representing 6 percent of the employer and 2 percent of the worker questionnaire (Godard 2001*a*, 23-24). Also symbolic is a recent roundtable on "modernizing labour policy within a human capital strategy" held by the federal minister of labour and appearing in a 2002 issue of *Canadian Public Policy/Analyse de Politiques* (Vol. 28-1, 71-152). Of five papers, only one gives unions and collective bargaining more than passing mention (Taras 2002). Paradoxically, this article focuses on non-union systems of representation.

In addition, support for collective bargaining seems to have given way to one of mere tolerance at best. This has been reflected in government policies, especially the weakening of labour laws in a number of provincial jurisdictions. For example, automatic card certification, considered perhaps the primary strength of the Canadian "system" relative to its US counterpart and to have substantial implications for union organizing success (Johnson 2000, 2002; Bentham 1999; Riddell 2001; Slinn 2003; Godard 2003*a*), has been eliminated in Nova Scotia, Alberta, Ontario, and British Columbia, jurisdictions that between them account for over half of the Canadian labour force.[4] Even ostensibly labour-friendly governments have been hesitant to improve labour laws, even where doing so would only reverse the anti-labour changes of a previous

government. In Manitoba, for example, a government led by the New Democratic Party restored the right to card certification in 2000, but with the condition that a union must first sign up not a clear majority, but rather 65 percent of all eligible workers. But weaker labour laws have not been the only tangible indicator of reduced government support for collective bargaining. Canadian governments have also continued to abrogate or undermine collective bargaining rights when it has suited their interests (International Confederation of Free Trade Unions 2003), a trend that began in the early 1980s (Panitch and Swartz 2003).

## The Need for a New Policy Model

There may be a number of reasons for the decline in labour's fortunes. A common explanation has been that changes in industrial composition and a decline in "traditional" jobs have rendered the assumptions underlying the current policy regime increasingly untenable and that unions have had increasing difficulty not only in organizing workers, but also in effectively representing them where they succeed. But compositional shifts appear to have had only a minor effect (Meltz and Verma 1996; Johnson 2000), and Labour Force Survey data reveal density levels to be relatively high among "nontraditional" employees, if defined as those in temporary and part-time jobs. Reported density for these jobs is 27 and 24 percent, respectively (Statistics Canada 2003*b*, 75-76).

A more fundamental explanation has been economic and labour market conditions. These conditions, as aggravated by harsh monetary policies, trade liberalization, and weakened labour market and social programs (especially unemployment insurance), have over the past two decades played a major part in weakening union power, intimidating workers, and creating an ideological environment hostile to labour unions (Godard 1997; Arthurs 1996). This has likely had important implications not only for union growth, but also for the economic and political clout of the labour movement, as reflected in the recent weakening of labour laws in Ontario and British Columbia and the rather weak reforms in Manitoba.

Even more fundamentally, however, are limitations to Canada's labour policy model. Under this model, a union must be legally certified as the agent of workers in a given bargaining unit before it can attain any legal representation rights, and for this to occur, it must be able to demonstrate majority support, either through card certification (in the six jurisdictions that provide for this) or through a ballot. This creates two possible problems. First, as Roy Adams (1993, 1995) has argued, it creates an unduly hostile environment for unions, one in which a union organizing drive is seen as an attack on the employer and employees are hesitant to join out of a sense of either fear or loyalty to their employer. This would appear to be borne out by a 2003 survey of 450 employed Canadians, in which half of the non-union respondents (n=280) indicated that they thought that management would respond negatively if they "actively encouraged others to join a union," and another one-quarter indicated that they were unsure what management would do (Godard 2003*b*). Second, the majority requirement means that workers who would like union representation are unable to attain it. A 1996 Angus Reid survey of 1500 Canadians revealed that close to one-third of all non-union workers fall into this category (Lipset and Meltz 1998; also see Canadian Labour Congress 2003).

A further problem with the existing policy model is the limited rights it affords workers once a union has been certified. These rights are largely procedural, limited to the right to engage in collective bargaining and to pursue grievances. Under the doctrine of residual rights, any subsequent rights must be negotiated away from management, leaving unions in largely reactive positions. In recent years, this doctrine may have been eroded somewhat by arbitral jurisprudence and by various employment laws. But the ability of labour unions to provide

effective rights and protections for their members continues to be in considerable measure conditional on their ability to negotiate restrictions on the exercise of management authority, both limiting their effectiveness and fostering unduly adversarial relations with employers.

In addition, although much has been made of the "voice" role of unions (Freeman 1976; Freeman and Medoff 1979, 1984), the success with which this role has been achieved is questionable. Unions do provide workers with voice in the determination of the terms and conditions of employment and in the expression of discontent, but this voice tends to be narrowly defined and limited to the formal negotiation and contract administration processes. Unions have generally failed to achieve meaningful co-decision, consultation, or even information-sharing rights on a whole host of issues directly or indirectly affecting their members, even though such rights are now becoming the norm in advanced democracies, especially in Europe.[5] The mandate of unions is thus unduly constrained, preventing them from developing a broader and perhaps less adversarial role.

In the decades immediately following the Second World War, these limitations may not have been seen as important. Yet the conditions of the past two decades, and the government policies associated with them, have made it increasingly difficult for unions to serve their traditional role under the law. They have also likely made workers increasingly fearful of joining a union, and employers increasingly resistant to reforms that might strengthen unions or make it easier to organize for purposes of collective bargaining. Although a shift in government economic policies could help to ameliorate these conditions, such a shift seems unlikely. Even if such a shift did occur, however, it is likely that a sizeable portion of the labour force would remain without union representation and the potential benefits it brings.

In view of the role traditionally played by labour unions in both the workplace and the political process, these circumstances can be viewed as a failure of public policy as much as of the labour movement per se, one that has had very real consequences for workers. For example, those in the bottom half of the income hierarchy have seen their pay stagnate over the past two decades, while those in the upper half have seen substantial gains (Statistics Canada 1999, 2000, 2003*a*). As of 2000, roughly one in seven employed Canadians could be categorized under the Statistics Canada low income cut off (LICO) as in "low pay" jobs, which can be seen as harmful to dignity and personal freedom regardless of overall household income (Godard 2001*c*).[6] Survey evidence (see Godard 2003*b*) suggests that two-thirds or more of Canadian workers find themselves subject to often coercive and stressful conditions of employment, and that as many as a third experience insecurity in their jobs and have little confidence that much could be done if they were subject to various forms of unfair treatment in the workplace. As many as half believe that they and their co-workers lack any meaningful voice in what happens to them at work. Although these and other problems may be attributed to a number of factors, they suggest both a failure of the current regime and a strong case for improved democratic rights and protections at work.

In addition, failure to reform the current regime may be to underestimate the potential implications of conflicts between the interests of "capital" and those of "labour" at the level of state policy development as well as in the workplace. Regardless of how these conflicts may appear at a point in time, public policies that have not adequately recognized and managed them could prove fragile over the long run, especially in view of the tendency of capitalist economies to undergo periods of economic instability and institutional change that can bring these conflicts to the fore (Kelly 1998; Fligstein 2001; Hirsch and Schumacher 2001). Policies that ensure basic levels of dignity, fairness, and voice at work may be important to avoiding such a circumstance. But even in the absence of such a possibility, the case can be made that such policies are essential to achieve an

advanced democracy and hence represent an important public good.

The problems experienced by Canadian workers, coupled with recent polls suggesting a shift in Canadian values toward quality of life issues (Anderssen and Valpy 2003), suggest a potential for broad public support for such policies. Recent survey evidence also reveals that two-thirds of Canadians continue to support labour unions (Lipset and Meltz 1998), and that over six in ten agree that, "even if a union doesn't get employees higher pay, it is worthwhile belonging to a union to get advice and information about pay, benefits, pensions, safety, and rights at work (CLC 2003). This suggests that a substantial portion of the public might be sympathetic to a central role for unions in the implementation and enforcement of improved rights and protections.

There is also a growing consensus that, although states may now face stronger constraints than in the past, they continue to have opportunity for institutional choice (e.g., Garrett 1998; Fligstein 2001, 213-20). It does not appear that a US-style liberal market economy is necessarily superior to alternative models (see Freeman 2000, Hall and Soskice 2001), especially when social outcomes are considered along with economic performance (Godard 2000, 442-66). Moreover, international convergence toward such a model appears to have been limited at best, at least among developed nations (Whitley 1999: Hirst and Thompson 1999; Fligstein 2001). Thus, the imperatives associated with globalization may not be as strong as many pundits have believed.

It follows that the problem may be one of politics more than of economics per se. There is thus need to focus and mobilize public support while at the same time minimizing potential opposition from the employer community. This dual task undoubtedly presents a number of difficulties, but a key element in any such attempt is the development of a clear policy paradigm, one that can be seen to advance ideals that can be considered fundamental to an advanced democracy. For present purposes, three such ideals can be identified: (i) dignity and freedom, (ii) fair and equal treatment, and (iii) meaningful representation and voice at work. Although these ideals should be viewed as public goods and therefore ends to be sought in and of themselves, their attainment is likely to win support and overcome opposition to the extent that they can be achieved at minimum economic cost. Accordingly the remainder of this paper addresses the prospects for such a paradigm.

## In Search of a Policy Paradigm

### The Orthodox Pluralist Policy Paradigm

Orthodox pluralism has traditionally represented the basis for industrial relations policy in Canada (Woods 1973; Sims, Blouin and Knopf 1995) and still forms the basis for the current regime. This paradigm holds that employers and their employees have important conflicts of interest with regard to the terms and conditions of employment and that employees as individuals can find themselves at a disadvantage in this conflict. As such, there is need of public policies supporting the ability of employees to organize unions and engage in "free" collective bargaining (Kochan 1980). Although these policies should be complemented by laws ensuring that minimum employment standards are met, unions and collective bargaining represent the primary means through which workers are able to obtain terms and conditions of employment conducive to dignity and freedom, protections against unfair or arbitrary treatment, and some modicum of representation and voice at work. They also provide an important mechanism for the effective resolution of conflict (Woods 1973, 118-25; Sims, Blouin and Knopf 1995, 33), and enable the parties to negotiate their own solutions to this conflict, thus allowing for more flexibility than do conventional government regulations (Ibid., 36).

In Canada, the policy framework associated with this paradigm includes legal certification by labour

relations boards where unions are able to demonstrate majority support, with substantial protections against employer interference in the organizing process, coupled with legal "good faith" bargaining rights on the one hand, yet extensive restrictions on the right to strike on the other. Though largely based on the Wagner model developed in the United States, it has arguably proven more conducive to the Canadian context, where there is a stronger tradition of government involvement and administrative law (Taras 1997). Yet the analysis of this paper suggests that its effectiveness has still been limited and that unions have become increasingly marginalized under it over the past few decades.

It can be argued that the problem may lie with the current legal framework more than the pluralist paradigm per se, and that there is need of "conventional" labour law reforms, or reforms designed to enhance the current regime's effectiveness (e.g., card certification in all jurisdictions and sectoral bargaining). Support for such reforms might be bolstered by combining established justifications for collective bargaining with the argument that collective bargaining represents a basic human right in and of itself. This argument has in recent years been embraced by a number of international bodies (e.g., see Human Rights Watch 2000), and was reaffirmed in 1998 as part of the International Labour Organization's (ILO) Declaration on Fundamental Principles and Rights at Work (see Adams 1999, 2000). It has become central to arguments for labour law reform, especially in the United States.[7]

The problem is that such reforms cannot only generate massive resistance from the employer community, they are also susceptible to the claim that they are intended to serve the "special" interests of labour unions, not workers in general. As such, they can be politically costly and difficult to sell to the public, even if advocated on human rights grounds. As discussed earlier, it is also unclear how they could address the many limitations to the current policy regime. Although this regime remains critical to assuring fundamental rights to collective bargaining, these limitations substantially restrict the opportunities for union growth and the rights and protections afforded workers in general.

## The "High Performance" Alternative

In the search for an alternative, many have come to favour a more managerialist policy paradigm, one that encourages diffusion of new work and human resource management practices associated with the "high performance" model (e.g., Kochan and Osterman 1994; Pfeffer 1994), including autonomous work teams; extensive information sharing processes; high levels of training in both social and technical skills; values-based selection; job security pledges; low status differentials; and other practices typically adopted in the context of a broader quality improvement, flexible production, or workplace re-engineering program (e.g., see Pfeffer 1994, 1998). Proponents of this paradigm have argued that it yields important performance gains for employers. Yet it is also considered by many to yield important gains for workers and their unions, engendering high quality jobs for the former, and a new, "partnership" role for the latter (Guest and Peccei 2001), all of which could further the three ideals of concern here. Thus, it is seen by some to yield "mutual gains," promising a positive sum solution to a number of dilemmas that have plagued policymakers and academics alike. What makes it especially promising is that it requires little direct state intervention. Rather the state's role is typically facilitative and involves few if any restrictions on employers (e.g., Kochan and Osterman 1994).

The high performance model was also developed primarily in the United States and may reflect in part conditions unique to that country (Godard and Delaney 2000). But the available evidence suggests that, even in that country, it is not as widely diffused as proponents had hoped (Ellwood *et al.* 2000, 74-77), and that it may not have the universally positive performance effects assumed for it (Wood 1999; Cappelli and Neumark 2001; Godard 2004). Its implications for both workers and unions are also uncertain at best, although some components of it —

most notably, information sharing and consultation, do appear to have positive implications for workers (Godard 2001*b*, 2004). Part of the problem may be that it tends to be implemented at management's behest and on management's terms, and hence its effectiveness tends to be undermined by problems of trust. But in addition, and partly as a result, the payoffs associated with this paradigm likely vary, and in many workplaces simply may not be sufficient to justify the costs and uncertainties associated with it (Godard 2004). At best, its implementation has been uneven, as have its implications for workers and unions. It thus fails to provide a satisfactory policy alternative.

### The Human Capital Paradigm

A third paradigm, and the one that now seems to be popular in some policy circles in Canada (as evidenced by the roundtable noted earlier), essentially argues for a focus on the development of human capital, in the belief that this is critical to productivity and (in theory) allows for the creation of higher quality jobs (see Courchene 2002; Chaykowski 2002). But it allows little role for unions, beyond possibly some level of participation in occupational training programs, and does not address the need for labour standards or workplace rights. It is possible to argue that, under a human capital strategy, all workers will develop skills that are of sufficient value and scarcity that they will have little need for collective representation or statutory rights and protections and will be able to switch employers at little cost if discontent. But although some might be able to imagine a utopia in which this is the case, to believe that this utopia will be achieved or even approximated by a human capital strategy would be naive at best. Thus, although elements of this strategy, especially the development of a more effective training regime, may be of merit, it holds only limited promise for ensuring that Canadians are able to achieve meaningful rights and protections at work and hence the three ideals identified earlier.

### European Alternatives

Much may be learned from Europe (see Adams 1995). For example, under the German "social partnership" paradigm, industry level bargaining is pervasive, workers have extensive representation on supervisory boards, and works councils are given extensive information sharing, consultation, and co-decision rights. There are also extensive labour standards governing working time, layoffs, employment status, and related concerns. Although these rights have been blamed by some for Germany's recent economic malaise, they demonstrate the sorts of policy alternatives that remain possible. Yet they also exist within a broader "co-ordinated" market economy (e.g., Hall and Soskice 2001; Streeck 1997), in which unions and employers are considered to be social partners in a variety of labour market and social programs, including Germany's highly regarded vocational training system. Moreover, firms tend to be viewed as "social" institutions, and bank control plays a much greater role than stock market control, making for a longer term, "stakeholder" orientation among managers (Vitols 2001). Finally, the German model reflects an institutional trajectory that can be traced to the nineteenth century and has been underpinned by a "traditionalist," quality of life orientation, accompanied by strongly democratic values (Streeck 1997, 39-40; Dore 2000).[8] Thus, it is unlikely that its industrial relations policies or the paradigm underpinning them could be readily transferred to Canada, at least without much more massive (and unlikely) changes.

Of greater possible relevance in view of its institutional similarities to Canada may be Britain's "third way" policy reforms, as adopted under the Blair government. Since its election in 1997, the Blair government has implemented a comprehensive minimum wage policy (United Kingdom. Low Pay Commission 2001), new union recognition laws (Wood and Godard 1999), information and consultation requirements on training and layoffs, universal grievance rights, and a strengthened employment tribunal system. It has recently proposed legislation to substantially extend information sharing and consultation rights to matters involving employer strategy and workplace change (United Kingdom.

Department of Trade and Industry 2003). These policies largely reflect European Union regulations and may be driven more by pragmatics than by any underlying paradigm (Howell 2002). To the extent that such a paradigm can be said to exist, however, it would appear to be a largely neo-managerialist one, under which it is assumed that there are certain practices that provide workers with democratic rights and protections while at the same time enhancing performance, but that legal reforms are necessary to overcome market or institutional barriers to their adoption (e.g., United Kingdom. Department of Trade and Industry 1998, 3, 13; Collins 2001).

The potential implications of the Blair reforms for Canadian policy are not entirely clear. Although it is too early to make a final judgment, they have been criticized as unduly weak and failing to make much of a difference to date (Howell 2002; Smith and Morton 2001). Of particular concern in view of Canadian traditions may be the Blair labour law reforms, which allow substantial opportunity for employer involvement and interference prior to the holding of a recognition vote, and under which the rights obtained upon recognition are weak (Wood and Godard 1999). Although designed to encourage voluntary union recognition and hence avoid the problems associated with the certification process in North America, these provisions would likely be disastrous for labour if adopted in the current Canadian context.

The UK also differs in important ways in its industrial relations traditions. Where Canada has an orthodox pluralist tradition, emphasizing legal rights, the UK has historically relied much less on such rights with regards to both employment and labour laws (Hyman 1995). Unions have been "voluntarily" recognized by employers (Adams and Markey 1997; Pencavel 2003), and there has been much greater informality in union-employer relations at the workplace level (Hyman 1995; Jacoby 1991). In addition, the British labour movement was severely weakened by the reforms of neoliberal governments in the 1980s and 1990s, to a far greater extent than has been the case in Canada (Pencavel 2003; Brown *et al.* 2000).

These differences may help to explain apparent weaknesses in the Blair reforms and the paradigm underlying them, as well as limiting their transferability to Canada. Yet, paradoxically, Canada's stronger tradition of legal intervention may be conducive to somewhat stronger reforms than in the UK, and hence reforms that are more likely to "bite." Moreover, Canada's stronger labour movement means that unions may be better placed to provide the kind of institutional back-up needed to ensure that these reforms are effectively implemented and enforced. Below, I advance a "good practice" paradigm that recognizes and builds on these differences, at the same time drawing on the other paradigms considered to this point.

## Toward a Good Practice Paradigm

The paradigm advanced here is referred to as the "good practice" paradigm because it advocates practices that have always been in varying degrees considered to represent "good" management practices, including terms and conditions of employment that meet basic standards of dignity and freedom; rules and procedures that ensure fair and equitable treatment; and employee representation and voice systems. However, in contrast to the management literature, the practices associated with these principles are treated as basic rights to be enshrined in law rather than as matters for employer choice. As such, they are advanced not on the grounds that they are necessarily in employer interests but rather on the grounds that they are consistent with basic democratic ideals.

The good practice paradigm proceeds from the recognition that the employment relation is at law a relation of subordination under conditions of interest conflict (Godard 1998). When individuals enter into an employment relation, they subordinate themselves to the authority of those who own or control the

organization. Their status becomes that of a "human" resource, but a resource nonetheless, to be employed as an instrument for the attainment of employer ends. Other things equal, employees can thus find themselves subject not only to unfavourable terms of employment, but also to the arbitrary exercise of employer authority, and lacking any legal representation or voice rights. Thus, all three principles may be violated.

Within the current policy regime, the extent to which these problems arise can vary considerably. To the extent that a union is present and has adequate bargaining power, to the extent that employers view it as in their interests to adopt progressive or "good" employment practices, and to the extent that workers possess human capital, the principles of dignity, fairness, and even voice are more likely to be met. Yet, under the good practice paradigm, the attainment of these principles should not be contingent on collective bargaining, as pluralists suppose, or on employer interests and volition, as high performance proponents suppose, or on individual characteristics, as human capital proponents suppose. Rather, these principles represent basic rights that are, ideally, to be attained universally. Moreover, employers may for any number of reasons fail to adopt good practices even where it could be in their interests to do so (e.g., Ichniowski *et al.* 1996, 324-29), or at least not contrary to these interests.

There is a need, therefore, to establish policies that promote these practices and the universal attainment of the principles associated with them, ideally without unduly negative efficiency implications. In this regard, the good practice paradigm does not assume it necessary to balance "equity" (i.e., dignity, fairness, and voice) against "efficiency" concerns, nor does it assume that there is some natural harmony between equity and efficiency if we only search hard enough. But it does assume that it is possible to achieve basic levels of each of the three principles without unduly negative efficiency implications. Although the attainment of these principles may have costs for employers, their violation can result in employee deprivation, resentment, and distrust (respectively), all of which may have negative efficiency implications. These implications may not be sufficient to induce many or even most employers to voluntarily adopt "good" practices. But they mean that public policies can likely be designed that achieve the three principles without *undue* costs to employers and that such policies can foster efficiency gains — even if these gains may in some or even many cases be smaller than their costs to employers.

There are a number of ways in which governments could promote good practice, including attempting to change employer norms, adopting policies that enhance employee power in the labour market, strengthening traditional labour laws, altering corporate governance structures in ways that foster a longer term "stakeholder" orientation, and even altering the way in which the employment relation is constituted (see Godard 2002). Yet because basic levels of dignity, fairness, and voice are viewed as rights, statutory reforms to employment rights and standards would be critical.

A problem is that statutory reforms can foster efficiency-harming rigidities on the one hand, yet can be difficult and unduly costly for governments to enforce on the other. In an era in which flexibility has become a major concern of employers, and government budgets an increasing concern of politicians, traditional regulatory processes are thus likely to prove unacceptable. Moreover, workers themselves are often not well informed about their rights or how to exercise them (see Freeman and Rogers 1999, 118-20).

It is in this respect that unions would play a major role, a role that would extend to workplaces where they are not certified for collective bargaining purposes (also see Summers 1990). Unions could not only provide the institutional backup needed to ensure that workers have the expertise and protection for the effective assertion of their rights, thus serving as the primary means of ensuring that these rights are realized, they could also be instrumental

in the establishment of a regime of more flexible "framework" rights and protections that allow for a high degree of discretion provided that they are jointly agreed on, implemented, and monitored (e.g., Ozaki 1999, 55-60).

With regard to the terms and conditions of employment, the good practice paradigm is perhaps best illustrated by the minimum wage. It can be argued that, regardless of whether it can effectively reduce poverty, minimum wage levels in Canada violate the principle of dignity and possibly that of fairness (Godard 2001*c*). The available research (see Brown 1999), coupled with the experience with the new minimum wage policy in the UK (United Kingdom. Low Pay Commission 2001), also suggests that substantial increases may be possible, especially if they are implemented over time and there is a lower minimum for groups otherwise most likely to suffer disemployment effects and in the least need.[9] Perhaps the major problem is that minimum wage laws suffer from substantial enforcement problems (e.g., Adams 1987), and these could be expected to increase under a higher minimum. But under the good practice paradigm, unions could be given the right to represent members in both certified and uncertifed workplaces in the event of apparent abuses, taking any unresolved or repeated abuses to a government agency or tribunal of last resort. Thus, they could play a major role in lessening such problems and the costs associated with them. They could also be empowered to negotiate some form of alternative arrangement with employers in economic distress, possibly providing such employers with an incentive to invite a union in.

A similar approach could be taken for other employment standards, particularly those pertaining to working time, dismissal and layoff rights, and health and safety. Although the Canadian labour movement has always played an important role in the advocacy of such rights for both union and non-union workers, its role in their implementation and enforcement has been limited to certified workplaces. But under the good practice paradigm, workers in uncertified workplaces would be provided with a statutory right to collective representation with regard to the enforcement of these standards, a right that may already be supported by the recent Supreme Court of Canada decision in Dunmore vs. Ontario if optimistic interpretations of this decision are correct (see Adams n.d.). Union certification for purposes of collective bargaining would not be required. Although this might open the door to non-union representation systems, unions would likely provide superior resources and expertise. Thus, workers might have an incentive to join a union even in the absence of collective bargaining, especially if dues were lowered to reflect the lower costs that could be expected in such workplaces. Employers might in turn view it as in their interests to work with union officials if there were allowances for flexible implementation where workers have independent representation.

Closely related to the provision of stronger employment standards could be the provision of universal grievance and arbitration rights on selected issues, again backed up by the right to legal representation, including union representation, in the exercise of these rights. The most important grievance and arbitration rights would pertain to unjust dismissal, and could be similar to those already established in the UK and some Canadian jurisdictions.[10] But a case could clearly be made for gradually broadening these rights to include additional issues pertaining to unjust treatment, with "good practice" on these issues possibly established through codes of conduct promulgated by governments. Such codes could even be based in part on the practices advocated in the management literature, and it could be possible to allow employers a choice between specific alternatives, something Richard Edwards (1993, 1997) refers to as "choosing rights."

A further possibility that could prove to be especially promising is that of employment contracts (see Ozaki 1999, 60-66). A recent survey suggests that roughly four in ten non-union Canadian employees

may already have some form of signed contract with their employer (Lowe and Schellenberg 2001, 21-30), and some US scholars have suggested that such contracts could be universally required (e.g., Edwards 1993, 1997), a requirement that is already in effect in the UK, where employers are required to provide such contracts in writing within eight weeks of hiring. In Canada, employees in uncertified workplaces might be given the right not only to negotiate a formal employment contract at the time of hiring, but also to renegotiate that contract at subsequent intervals, and to do so through the services of a legal representative of their choice. This contract would be more specific and confer more rights and obligations on the parties than is currently the case under common law. It would thus provide a further potential area for union representation, likely entailing some form of collective bargaining, but perhaps without the right to strike unless the union is the certified representative of all employees in a designated bargaining unit. But even in the absence of such negotiation rights (or their exercise), employees could be given the right to file a grievance and go to arbitration or some form of tribunal if they believed their contract to have been violated.

Finally, workers could be provided with universal communication and participation rights. Such rights would need to be established gradually. To advocate German style works councils, as some have done (e.g., Adams 1995), is unlikely to be taken seriously given Canadian traditions. But universal consultation and information sharing rights on selected issues, such as training and layoffs, might be. Again, these rights are in place in Britain and will be broadened to cover the general economic situation of the employer and workplace change with the implementation of the recent European Union information and consultation directive (see Sisson 2002; Hall *et al.* 2002; United Kingdom. Department of Trade and Industry 2003). In Canada, such rights could also be established gradually (as has been the case in the EU), and, as experience with them grew, possibly extended to co-decision rights over time. Workers would be free to choose their own means of representation in the exercise of these rights, provided that this choice was made independently of the employer. It would thus be up to unions to establish that they were capable of providing the support necessary for their effective exercise. However, in the absence of the institutional backup provided by a union, workers would likely find such rights of limited value. In Germany, for example, unions have played a major role in the exercise of co-decision rights, despite initial concerns that these rights would undermine them (Wever 1994; Addison 1999, 81-82).

In combination, these proposals address the three principles identified above. Improved employment standards could be promoted primarily under the principle of dignity and freedom, grievance and arbitration rights primarily under the principle of fairness and equality, and employment contract and participation rights primarily under the principle of representation and voice. Each, of course, mirrors important functions already served by unions where certified. However, they would both extend these functions and remove the need to negotiate their inclusion in a collective agreement, potentially rendering negotiations less adversarial, employee rights less contingent on negotiations, and collective agreements less cumbersome. They would also (with some possible exemptions) extend to all workplaces, whether certified for purposes of collective bargaining or not. Thus, all workers would have a number of the rights and protections now limited to certified workplaces, including a universal right to independent representation, a right that may already have some support under the Dunmore decision (as noted earlier).

As should be evident, these proposals could portend a substantial change in the role of labour unions and their relationships with employers. Unions could shift their emphasis away from the negotiation of various rights and toward the effective implementation and enforcement of such rights. Moreover, to the extent that they succeeded in signing up members in uncertified workplaces, the hostile relations

associated with existing certification and collective bargaining processes (Adams 1993) could be avoided or at least reduced. Unions and employers would remain adversaries in the sense that they would represent different interests. But unions would no longer be in a narrow, reactive position. Their presence in the workplace also would be less likely to be viewed as an attack on management or a threat to management's competitive position and more likely to be viewed as a means to the effective implementation of established laws. Ideally, this would result in less conflictual relations, instead providing a basis for trust and even "partnership," as appears to be the case in many European nations. Possibly, there would even be an increased inducement for employers to voluntarily recognize unions for purposes of collective bargaining, with results similar to those intended by the recent labour law reforms in the United Kingdom.

One possible problem is that workers who attempted to exercise their rights could be subject to retribution. This would be less likely where a union was established, yet the proposals suggest that, where not certified for collective bargaining, the union (or equivalent) would represent only those workers who were members. Not only could this create traditional "free-rider" problems, it could also result in a circumstance where union members were discriminated against and possibly subject to intimidation if they attempted to exercise their rights. Discrimination and intimidation would be especially likely if doing so was viewed as opening the door to union certification for purposes of traditional collective bargaining. This is perhaps the major potential difficulty associated with the above proposals and could substantially limit their effectiveness in uncertified workplaces.

Adoption of some form of unfair labour practice regime, similar to that already in place for union certification, could help to address this problem. But it might also be necessary to go further and attempt to establish a system that "normalizes" representation. One alternative might be to require that all employers at minimum establish committees comprised of independent representatives in order to ensure that employee rights were realized, much as is the case at present for health and safety regulations. But the likely implications of so doing would need to be carefully considered (also see Osterman *et al.* 2001, 177).

A further possible problem is the possibility of reforms that allowed for union substitutes, potentially serving as employer dominated union avoidance systems. That this may not have been a problem in Europe provides no assurance that it could not happen in Canada. But because unions are able to provide the institutional backup needed to ensure that good practice rights are effectively implemented and enforced, the case could be made that unions should be privileged over such systems under the law. Whether this would prove to be politically feasible is uncertain, although one possibility would be to require all representative organizations to be certified by labour boards, based on established criteria under the law. To do so would not require majority representation and so would not engender the problems associated with current certification processes. It also need not be restricted to traditional unions, although the criteria would be sufficiently stringent to exclude company or "sweetheart" organizations, thus ensuring that only truly independent worker organizations were certified, as is presently the case for independent locals and associations formed for purposes of collective bargaining.

## The Prospects for a Good Practice Policy Regime

These proposals simply extend to the workforce as a whole the ideals traditionally assumed (if not fully attained) under the pluralist justification for collective bargaining rights, including decent conditions of employment, internal "justice" and dispute-resolution mechanisms, and some level of workplace representation and voice. They are also generally

consistent with practices long considered to represent good management practice. Although they have typically been advanced as matters for employer choice rather than as employee rights, they may as such have positive performance effects and, at minimum, are unlikely to have significant negative ones. Sectors in which this is not the case might be given partial exemptions (e.g., based on size). It is also likely, however, that if all such workplaces were subject to "good practice" requirements, few would find themselves at a competitive disadvantage, especially in sectors not subject to significant international competition (e.g., trade, food, and accommodation). Instead, they could find themselves able to invest in higher levels of training and to create higher quality jobs. Indeed, if labour costs were higher, they might be induced to do so in order to increase labour value (as is argued to be the case in Germany: see Streeck 1997). This would be consistent with the human capital paradigm.

Although a strong case may therefore be made for a good practice policy paradigm, adoption of the reforms it suggests would likely meet with considerable resistance from employer circles, especially if their implementation was viewed as a catalyst to union organization for purposes of traditional collective bargaining. There may also be little public support for such a paradigm at present. Yet the former may, in part, reflect institutionalized beliefs that are susceptible to some measure of change (Godard 2002, 257-62). It may also be possible to address this opposition through the combination of a broad normative appeal with adoption of some of the labour law reforms long advocated by employer groups (e.g., allowing open shops in return for minority representation rights).[11] As for the latter, there may, as discussed earlier, be some basis for believing that the Canadian public is ready for a change.

A central task would be to build broad public support for good practice rights and, to the extent possible, effect a change in the cognitive and normative assumptions of policymakers and possibly even employers. Given the existence of these or similar rights in most European nations (see Block *et al.* 2001, 265-68), the case could readily be made that Canada simply needs to catch up if it is to call itself an advanced democracy. This case could be bolstered by pointing to the growing support for workplace rights in international forums, especially as reflected by the International Labour Organization's recent campaign for "decent work" (e.g., ILO 1999). Thus, while union advocacy of conventional labour law reforms is subject to dismissal on the grounds that such reforms are merely self-serving, advocacy of the reforms suggested here could be justified as in the general public interest and simply advancing internationally recognized principles of democracy. The Canadian labour movement's tradition of social unionism (e.g., Robinson 1992, 1994) may mean that it is especially well placed to carry this torch. Doing so could require substantial resources and, as for any campaign involving policy reforms, could prove risky. But it could also have important payoffs, not just for unions, but for Canadian workers in general.

## Conclusions

This paper has argued that, despite relatively stable union density levels, the current labour policy regime both unduly limits the purview of unions and the rights and protections afforded Canadian workers, and that the Canadian labour movement has found itself increasingly marginalized under it. This circumstance is attributable in large part to broader state policies and ultimately politics rather than economic forces alone, underscoring the importance of public policies for labour unions and ultimately workplace rights in Canada. It is thus ultimately with politics rather than economics that the future of both lies. But there is at present little political will to alter the trajectory of industrial relations policy in Canada. To change this, there is need of a policy paradigm that can be used to mobilize public support while at the same time minimizing employer opposition. Particularly promising may be a "good practice" paradigm, under which workers would be

provided with workplace rights that ensure basic levels of dignity, fairness, and voice, and unions with a key role in the implementation and enforcement of these rights regardless of whether or not they are certified for purposes of collective bargaining.

## Notes

An earlier version of this paper was presented at the 2002 joint meetings of the International Industrial Relations Association and the Canadian Industrial Relations Association. I thank Roy Adams, Graham Lowe, Kenneth McKenzie, and two anonymous referees for their comments.

[1]In a recent survey, 16 percent of respondents reported that they were members of a professional or staff association but not a union (Lowe and Schellenberg 2001, 28). But the extent to which this translates into meaningful representation at the workplace level is uncertain. A large portion likely involves professional associations, which typically serve a networking (e.g., HRM associations) or occupational standards (e.g., accountancy associations) function unless certified for purposes of collective bargaining (e.g., teaching, nursing).

[2]This is based on an annual average labour productivity growth rate of approximately 1.2 percent (Statistics Canada 2002*a*).

[3]Of the two recent papers presented as outlining Canada's economic strategy, one such paper, *Achieving Excellence* (Industry Canada 2002), appears to contain no mention at all. The other, *Knowledge Matters* (Canada. HRDC 2002), appears to contain only one brief and very general paragraph (see p. 40). This is not surprising given their emphasis on innovation and skill development, but it reflects just how marginalized the labour movement is under the current policy agenda.

[4]In contrast to the US, Canadian jurisdictions requiring a ballot have formal or informal limitations, ranging from five to ten days, on the time between application for certification and the vote. However, the evidence suggests that, even with such restrictions, union success rates are from 10 to 20 percent lower (Riddell 2001; Godard 2000, 299). Slinn (2003) estimates the effect to be a 22 percent decline in these rates.

[5]In Canada, such rights do exist but are at present highly limited. For example, although the *Manitoba Labour Relations Act* requires employers to consult regularly with union officials, there is no stipulation as to the issues to be addressed, and no consultation right for non-union workers.

[6]In 2000, the hourly pay needed for a single individual working full-time (2000 hours per year) in a medium-sized city (population of 100,000 to 499,999) to meet the 1999 Statistics Canada Low Income Cut-Off ($15,341) after inflation (3 percent) was approximately $7.90. Statistics Canada Labour Force Survey data (obtained by the author) reveal that, on average, 13 percent earned below $7.75, and 16 percent earned below $8.00.

[7]For a discussion of and debate about this approach, see the recent symposium in the *British Journal of Industrial Relations* 39(4):585-606, and 40(1):113-50.

[8]The 1995-96 World Values Survey data set (Inglehart 2000) reveals, for example, that 66 percent of respondents from the US believed that employees should always follow instructions, compared to 20 percent of those from Germany. Canada was not included in the 1995-96 survey, but data from the 1990 survey indicate that Canadians were in the middle (51 percent vs. 61 and 41 percent respectively). In addition, the latter survey revealed that 30 percent of Germans thought greater respect for authority would be a good thing, compared to 77 percent of Americans and 65 percent of Canadians. As for traditionalism/quality of life orientations, only 35 percent of Germans in the 1990-91 survey reported that work was "very important" to their life, compared to 63 percent in the UK and 59 percent in Canada.

[9]A lower minimum could be established for those receiving gratuities and whose tips make up the difference, for trainees, and for those under 18. Such exclusions would not preclude any adults from being able to earn the minimum or its equivalent, yet they would cut the percentage of the labour force affected by an increase in the minimum by half, while targeting those groups that are otherwise most susceptible to disemployment effects (Godard 2001*c*).

[10]In the federal jurisdiction, for example, a nonunion employee who believes she has been dismissed unjustly may request that the Minister of Labour appoint an adjudicator. In the UK she may take her complaint to an employment tribunal. Notably, there has even been an extension of arbitration to non-union workers in the US (Taras 2002, 111), although this extension has typically been on employer terms.

[11]Under the recent New Zealand reforms, registered trade unions are automatically empowered to bargain on behalf of their members. However, any agreements are binding on the employer only with respect to these members. This could be a possibility for Canada, though it raises free-rider and union security issues, especially as individuals may be subject to employer pressures not to join the union.

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