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CONTENTS

IV.
LERA/ISA JOINT SESSION—THE EVOLVING HEALTHCARE LANDSCAPE: HOW EMPLOYEES, ORGANIZATIONS, AND INSTITUTIONS ARE ADAPTING AND INNOVATING—LERA RESEARCH VOLUME 2016

Timothy Vogus, Presiding

V.
LERA BEST POSTERS

Ariel Avgar and Ryan Lamare, Presiding

VI.
OCCCUPATIONAL REGULATION IN THE AGE OF UBER

Robert J. Thornton, Presiding

VII.

DISTRACTION OR CATALYST? TRADE AGREEMENTS AND LABOR STANDARDS

Anil Verma, Presiding

VIII.
$15 MINIMUM WAGES: WHAT CAN THE RESEARCH TELL US?

Ken Jacobs, Presiding

IX.
WORK CHALLENGES IN FIRST NATIONS COMMUNITIES

John W. Budd, Presiding

X.
LERA BEST PAPERS I

Aaron J. Sojourner, Presiding

XI.
LERA BEST PAPERS II

Kenneth May, Presiding

XII.
LERA ANNUAL REPORTS

I. Whatever Happened to Incomes Policy? In Honor of the Late Lloyd Ulman

Neocorporatism and Incomes Policy in Europe: Past, Present, and Future

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There exists a standard narrative about the role of labor markets and incomes policy in post-World War II Europe, or so I like to think.[1] The question I ask in this paper is how much of that standard narrative still applies in the 21st century.

The standard narrative goes roughly as follows. The European economy grew rapidly for a quarter of a century after World War II because it possessed a set of labor market institutions, which were in turn embedded in a larger matrix of social and political institutions that were well suited to the economic imperatives of the day. The problem in Europe then, similar to the problem in China and other emerging markets now, was to capitalize on the scope for catch-up growth. Europe was well inside the technological frontier, defined by the modern mass-production, high-speed-throughput methods pioneered by the United States. But the continent also possessed the capabilities needed to catch up in the Abramovitzian sense.[2] It had a relatively high level of human capital accumulated via education and training. It, or at least its western half, had relatively strong rule of law and contract enforcement. It had long experience with the market.

In order to grow, Europe then, like emerging markets today, needed to maintain a relatively high level of investment, capital being the vehicle through which frontier technology was transferred from abroad. It needed wage moderation for the profitability of that investment and to ensure that firms had the resources to finance capital formation. It needed a high level of solidarity—similar levels of compensation and job security for workers in different sectors and activities so that all parties to the bargain could see that the benefits of growth were widely shared.[3]

But workers would be willing to defer gratification in this way—to restrain the push for higher wages—only if they were confident that owners and managers would plow their profits back into investment rather than paying them out as dividends and managerial salaries. Workers would restrain their wage demands and invest in the training—making for faster growth and higher incomes in the future only if employment security was sufficient to ensure them that they would still be on the job when those higher incomes materialized and, if they were not, that they would be compensated by the welfare state. Wage restraint would be attractive for workers in a particular sector, moreover, only if they knew that workers in other sectors would exercise similar restraint.

These commitment and coordination problems were solved by the institutions of the European mixed economy, a system known to social scientists as "neocorporatism." Labor market institutions and incomes policies were integral to the operation of that system. These institutions included strong trade unions engaged in solidaristic bargaining that limited pay differentials for different classes of workers and whose agreements extended to the non-unionized segment of the economy. They included works councils and the German system of codetermination, in which workers occupied seats on corporate supervisory boards, enabling them to monitor the investment, dividend, and compensation practices of their employers. It included a role for government, which promulgated investment-friendly tax codes while penalizing dividends and conspicuous consumption, supplementing private investment with the necessary public infrastructure, and coordinating investments across sectors of the economy through policies of

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indicative planning. In this way, government cast a watchful eye over both unions and employer associations, strengthening their incentive to adhere to the terms of their bargain. The result was high levels of investment, favorable productivity growth, and a stable labor share of GDP.

This simple story is far too simple, of course. Why, for example, should Europe have gotten a set of institutions ideally suited to economic imperatives of the day? Here it is important to resist the obvious functionalist logic: that Europe developed this institutional configuration because it was the most efficient solution to the economic challenges at hand. More accurately, the continent's institutional matrix was a fortuitous inheritance from the past. Or to mix metaphors, it was born of a painful period of labor. Union movements, socialist parties, and Catholic organizations (both religious and political) developed over long periods of time, coming to espouse an ethic of solidarity and ideology of corporatism. The neocorporatist arrangements of the post-World War II period were rooted in these earlier developments, as well as in 1930s experiments such as the Saltsjobaden agreement in Sweden and Popular Front policies in France and in less savory experiences with corporatism under Hitler and Mussolini. They built on the expanded role of the state in organizing the economy during World War II. This inheritance was fortuitously well suited and therefore readily adapted to the circumstances of the post-World War II era.

Then there is a question of how much weight, in explaining European economic growth, should be attached to these institutions, and in particular to centralized and concerted bargaining that limited pay differentials and encouraged wage restraint, as opposed to other factors, such as favorable demography, an ample supply of underemployed rural labor, and a buoyant external environment. The answer to this second question is "Surely, we don't know." Fortunately, all that is needed for the present formulation is for the institutions of neocorporatism, in the labor market and elsewhere, to have played some role.

Then came the slowdown in output and productivity growth in the final quarter of the 20th century. While this may have reflected the draining of the pool of underemployed rural labor and a less favorable external environment, it also reflected the growing mismatch between Europe's socioeconomic institutions and its growth problem. As the economy approached the technological frontier, incentives to innovate became increasingly important. As technical skills became more integral to the production process, the pressure for significant skill premiums intensified, coming into conflict with European societies' tradition of solidarity. Where such premiums were not forthcoming, skilled workers grew more militant, and unskilled workers were pushed off into the service sector. As the pool of rural labor was drained and unemployment fell to low levels, voluntary wage restraint became harder, leading European governments to supplement it with some form of incomes policy. Rising capital mobility, meanwhile, attenuated the link between domestic wage restraint and domestic investment. The result, by the 1980s, was not just slower growth but also rising unemployment, accelerating inflation, and increasingly heavy public debt burden.

All of these developments required Europe to grope toward a different model. Writing in 1999, Torben Iversen and I described this as a model of "limited decentralization" (alternatively, we might have called it a system of "fragmented neocorporatism"). By allowing limited wage differentials, greater labor market decentralization and differentiation promised to accommodate the demand for skilled workers generated by post-Fordist technologies. Where more wage and employment flexibility was needed, it was achieved by introducing flexible, part-time, fixed-term contracts for new (generally younger) workers, while continuing to protect the status and security of established union members, a corollary of which was rising wage dispersion.

Since continuous consultation between peak associations and the government could no longer be relied on for wage restraint, it was essential to develop another anchor for inflation expectations. In particular, it was important to signal that monetary policy would be nonaccommodating so that it was understood that excessive wage demands meant additional unemployment and not inflation. The new anchor was found in adopting an exchange rate commitment and giving the Central Bank the independence to pursue it.[4] In this way, the seed was planted for Europe's fatal decision to create the euro.

So matters stood at the dawn of the new century. How, finally, I now want to ask, should this story be updated in light of subsequent events? A first important observation highlighted by subsequent experience is that a hard commitment to nonaccommodating monetary policies is an inadequate substitute for the strong unions and corporatist cooperation that prevailed in Europe in the third quarter of the 20th century—and equally for the decentralized labor markets of the United States where the discipline of competition delivers wage restraint. There may have been no question about the commitment of the European Central Bank to nonaccommodating policies,

but this did not prevent Greece, Spain, Portugal, and other countries from pushing wages far above sustainable levels in the first decade of the euro.[5] The subsequent readjustment, made necessary by the crisis, has been excruciatingly painful, although it would have been somewhat less painful with better crisis-management policies.

Second, German experience post-1999 casts additional light on prospects for European labor markets. The shock to the German economy from reunification had enduring effects. Workers in the less productive eastern *lander*, finding themselves unable to compete with more productive workers in the German west, abandoned the countrywide industrial agreements that governed their wages and terms of employment, agreements that had had the effect of pricing them out of jobs. The share of workers covered by collective agreements fell sharply with their defection. Chronic problems of unemployment and inadequate competitiveness in the first post-reunification decade then led Germany to move further in the direction of a decentralized labor market, reducing worker protections and creating new low-paid, short-term "mini jobs."

The culmination of this process was the so-called Hartz II reforms of the Social Democratic government of Gerhard Schroder in 2003-2005.[6] Restrictions on temporary employment agencies, temporary contracts, and working hours were relaxed. The entitlement period for unemployment benefits was shortened to 12 months.[7] In an echo of the post-World War II settlement, unions agreed to restrain their wage demands in order to go for growth and obtain higher incomes in the future. Employers for their part augmented productive capacity, in capital-goods-producing sectors in particular. Union–employer collaboration continued to focus on apprenticeship and other on-the-job training, equipping the German labor force with post-Fordist skills. Public employment offices were reorganized to better match workers with openings. Unlike the period of strong solidarity after World War II, however, the result was also growing pay differentiation and inequality.[8] Aided and abetted by strong demand from China and other emerging markets for German transport equipment and capital goods, the result was a more efficient, competitive, and profitable export sector, a "new German economic miracle," as it was sometimes portrayed.

The ultimate test of this new model was the 2008-2009 downturn. Outcomes were relatively benign: unemployment in Germany rose only modestly (from 7.4% to 7.9% between 2008 and 2009, after which it resumed its fall). The explanation for this favorable headline outcome is disputed, however.[9] One view is that Germany had moved further than other European countries in the American direction, decentralizing the labor market and eliminating rigidities.[10] This allowed wages and hours to be adjusted, maintaining something approaching full employment. The other view, toward which I am more inclined, is that institutions of solidarity remained sufficiently strong that unions, firms, and government were able to agree on exceptional measures to maintain employment in the crisis. Unions and employers negotiated flexible agreements for work sharing, while the government introduced a subsidy for short-time working hours.[11] There was extensive cooperation among firms and their works councils. In these so-called "alliances for jobs," workers agreed to wage restraints or even, in exceptional cases, to wage cuts, in exchange for which they were offered job stability.[12]

Finally, strong growth in the pre-crisis period created a shortage of workers in a variety of skill categories—workers that firms sought to hoard by limiting layoffs in the downturn.[13] In this interpretation, Germany did not simply move in the direction of more flexible U.S.-style labor markets, although it did decentralize and otherwise move some way in that direction. In addition, it also built importantly on the legacy of neocorporatism.

It is controversial to argue that German labor market arrangements point the way forward and should be emulated by other European countries. Germany's policies of wage restraint added to the difficulties of its neighbors both in the run-up to the crisis when low wage inflation aggravated competitiveness problems in southern Europe, and then after the crisis struck and Germany refused to match wage cuts in southern Europe with wage increases at home as a corrective of intra-EU imbalances. Germany had special advantages and an unusually strong incentive to trade modest amounts of wage restraint and flexibility for strong employment growth as a result of a favorable external environment (strong Chinese demand for its machinery exports—something not also enjoyed by southern European economies).

That said, German experience since 2003 points to institutions and structures conducive to growth during expansions and to stability during contractions in this new 21st-century world. The postwar bargain of wage restraint in exchange for capacity expansion, in its 21st-century incarnation, makes for a strong supply side. Greater wage differentiation than in the third quarter of the 20th century makes the social solidarity supporting this bargain more

difficult to maintain, but work-sharing arrangements can offset this, to some extent, by contributing to the sense of collective responsibility. An additional benefit of this greater wage differentiation is an increased supply of skilled workers and technicians, who are needed by both large and middle-sized German firms using post-Fordist technologies. The downside of the model is excessive reliance on short-term contracts, leading to the emergence of a two-tier labor market and creating problems that the country will have to rectify as it looks to the future.

It will not be easy for other European countries, lacking Germany's strong neocorporatist tradition and favorable product mix and with social compacts frayed by the pressure of the crisis, to emulate this example. But then, no one said it would be. And no one was right.

Endnotes

[1] That narrative as I describe it here draws on Eichengreen (2007) and Eichengreen and Iversen (1999), which in turn draw on the influential work of Flanagan, Soskice, and Ulman (1983).

[2] See Abramovitz (1986).

[3] And so that no one, therefore, had an incentive to renege on the agreement.

[4] The British case is proof by counterexample: it was the one European country where strong unions were broken; competitive pressure could therefore be relied on to produce restraint, and the anchor of a fixed exchange rate was therefore rejected.

[5] See Bourgeot (2013).

[6] Followed by Hartz III, which I do not distinguish in what follows.

[7] With the exception of older workers.

[8] See Card, Heining, and Kline (2013).

[9] A review of the debate is found in Moeller (2010).

[10] See, for example, Boysen-Hogrefe and Grolle (2010).

[11] So-called "working hours accounts," put in place before the crisis, were designed to allow employers to ask workers to work longer hours than provided for under their collective agreements in return for working shorter hours thereafter, satisfying employers' need for flexibility but also labor's desire for shorter hours. In the downturn, they were used to shorten hours and share the work while pointing to the prospect of longer work weeks once the economy recovered.

[12] The bargain was not unlike that in the Nordic countries, where it was known as "flexicurity." See Masden (2006) for an overview of their experience.

[13] There may have also been a tendency on the part of German employers to under-hire in the preceding expansion (doubting that it would persist), bequeathing a shortage of employed workers in the downturn (Burda and Hunt 2011).

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I. Whatever Happened to Incomes Policy? In Honor of the Late Lloyd Ulman

Whatever Happened to U.S. Incomes Policy?

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In the decades following WWII, incomes policies—rules intended to guide the evolution of wages and prices over time—became a standard element of macroeconomic policy packages in most advanced countries. Viewed internationally, the United States was a latecomer to peacetime incomes policy and one of the few countries to introduce an incomes policy *before* inflation was a problem, hoping to forestall inflation as the economy moved out of a recession. There has been no mention of using incomes policy for this or any other U.S. policy objective over the past 33 years. This paper briefly reviews the nature of U.S. postwar incomes policies and explores the reasons for their short life in the macroeconomic policy arsenal.

The Kennedy/Johnson Administration Policy: The Wage-Price Guideposts

In the final pages of its January 1962 annual report, President Kennedy's Council of Economic Advisers (CEA) described a set of "guideposts for noninflationary wage and price behavior"—what turned out to be a stealth approach to an incomes policy for the United States (U.S. President 1962: 185-90). The guideposts were not announced as policy but rather were "suggested here as aids to public understanding" (U.S. President 1962: 186) and as standards by which the public could assess individual wage and price changes. No further monitoring mechanisms or compliance incentives accompanied the guideposts.

At the time, inflation was not an imminent threat: With the unemployment rate averaging 6.7%, the CPI increased by only 0.7% in 1961. But the CEA expressed the view that concentrations of power in labor and product markets could raise wages and prices before full employment was restored and hoped that the guideposts would thwart those increases as demand increased in labor and product markets. The Kennedy Administration CEA hoped the policy would improve what was then perceived as a long-term trade-off between inflation and unemployment.

In devising the wage–price guideposts, the CEA also strove to avoid a rigid set of rules that would interfere with the relative wage and price adjustments that induce the reallocation of resources from less productive to more productive employments. As a result, a set of exceptions accompanied the guideposts. The basic principles were quite simple: The average rate of compensation should increase at the average rate of productivity. Since adherence to this rule would produce no increase in unit labor costs, the general price guideline was zero. However, the exceptions permitted higher wage increases in sectors where it was difficult to attract labor or where workers had a weak bargaining position and lower wage increases in industries with relatively high unemployment or significant bargaining power. In product markets, prices could rise more rapidly than zero in industries that experienced increases in nonlabor costs or had trouble attracting capital. Conversely, they could rise more slowly than zero in where "the relation of productive capacity to full employment demand shows the desirability of an outflow of capital" (U.S. President 1962: 189).

In their next three annual reports, the CEA simply restated the guideposts and exceptions with their rationale. By 1965, the unemployment rate had dropped to 4.5%, and annual inflation rose to 1.9%. In their January 1966

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report, the CEA acknowledged official attempts at persuasion ("jawboning") in individual situations and recommended a general wage guidepost of 3.2% a year—the trend rate of growth of productivity (U.S. President 1966: 88-92). As markets tightened, the exceptions received less and less emphasis in CEA annual reports.

The Nixon Administration Policy

The 1970 annual report of President Nixon's council offered the following summary of the Kennedy/Johnson experience with incomes policy:

> As originally put forth the guideposts were to serve a general educational function of encouraging voluntary patterns of behavior that would be noninflationary. There was no suggestion that the Government would apply them in particular cases or try to enforce them. But it was natural to question whether actions in particular cases conformed to the guideposts, and the Government felt it necessary to comment on the justification for these actions. Once this threshold had been crossed, the Government also became involved in attempting to insure compliance in particular cases where it was considered necessary. … With the upsurge of inflation and inflationary pressure after mid-1965, the difficulty of reconciling the guideposts with market forces became more intense. (U.S. President 1970: 24)

But the new administration confronted a significant annual inflation rate (5.6% in 1970) and faced a different policy challenge: How to *unwind an existing inflation* that in some degree persisted because of expectations of future inflation. President Nixon responded in August 1971 with a 90-day freeze on prices, rents, wages, and salaries followed by a mandatory system of wage and price regulations.

Discussing the policy in their January 1973 report, the CEA claimed the policy had been successful but added: "Nevertheless, by the end of the year it was plain that although continuing controls could make a further contribution to economic stabilization, the system would have to be modified." (U.S. President 1973: 51). By now the program confronted significant supply shocks—initially food price increases and later oil price increases resulting from actions of the OPEC cartel. In its 1974 annual report, the CEA stated that "… the effect of the controls program on the rate of inflation in 1973 cannot be known with certainty either today or ever." (U.S. President 1974: 108)

A year later, with an inflation rate of 12.3% and unemployment at 5.6%, the CEA was even more specific.

> [A]lthough inflation might have been more rapid in the absence of controls, in the light of the actual experience both before and after their termination, it is difficult to accept that thesis. The lack of widespread support for extension of the controls program, not only in Congress but among business and labor representatives and the general public, suggests broad acceptance of this judgment. … [T]he net benefit of the controls system, however evaluated, had become extremely small by the beginning of 1974. …" (U.S. President 1975: 229)

In 1976, for the first time since the 1962 annual report, there was no discussion of incomes policy.

The Carter Administration Policy

The Carter Administration also faced the problem of how to unwind an existing and at times accelerating inflation and included incomes policy in its arsenal of anti-inflation weapons. Concerned with the limited achievements of incomes policies at home and abroad (Ulman and Flanagan 1971), several U.S. economists inside and outside of government noted that most incomes policies lacked strong incentives to comply. As a remedy, they proposed using the tax system to reward compliance and/or punish noncompliance and designed various tax-incentive plans (TIPs), which subsequently were reviewed by the Carter CEA (U.S. President 1981: 60-68.)

The Carter Administration initially requested each company to keep wage and price increases below the average for the prior two years. When that program proved ineffective, however, the administration proposed an incomes policy with specific maximum targets for wage and price increases, accompanied by a proposal for "real wage insurance" intended to insure workers against losses in real and relative wages that could occur because of the noncompliance of other workers. Congress never acted on the real wage insurance proposal, and TIP incentives

disappeared from the landscape of U.S. incomes policy. Compliance rested on the force of public opinion and a threat that federal government contracts would be denied to noncomplying organizations. The policy continued to encounter significant supply-side shocks that it was never designed to cope with—from increase in the prices of food and energy to a decline in productivity. By the end of the Carter Administration, the CEA estimated that the policy had reduced annual pay and price increases by 1% to 1.5% in 1979 (U.S. President 1980: 36).

Incomes policy completely disappeared from U.S. macroeconomic policy with the arrival of the Reagan Administration, whose CEA bluntly asserted that prior incomes policies had not stopped inflation, and "[i]nflation is essentially a monetary phenomenon. … [P]ersistent inflation can[not] be explained by nonmonetary factors." (U.S. President 1982: 54). Over the subsequent 34 years, incomes policy has not reappeared on the American scene. This development cannot be attributed solely to the macroeconomic perspective of the Reagan CEA, for neither subsequent Democratic nor Republican administrations have proposed such policies. The rest of this paper considers why incomes policy fell from favor.

Accounting for the Demise: Underlying Theory

The use of incomes policies to thwart *prospective* inflation lacked a secure theoretical foundation. The motivation for the guideposts, for example, stressed that concentrations of economic power could lead to wage and price decisions that were not in the public interest. But the degree of monopoly power in labor or product markets produces a once-and-for-all increase in wages or prices—not ongoing inflationary pressure—unless those increases are accommodated by monetary policy. Absent Central Bank accommodation, only ongoing increases in market power could, by themselves, produce continual upward pressure on wages and prices.

In the face of declining unionization, however, it simply became increasingly difficult to connect pay inflation to the exercise of bargaining power. Union strength (measured by membership) in the United States had peaked in the mid-1950s—several years before the announcement of the wage-price guideposts. When the guideposts were announced in the early 1960s, private sector union density had already begun a long decline from roughly 30% of private wage and salary employment to 6.6% in 2014 (U.S. Bureau of Labor Statistics 2015). Competition from the growing non-union sector and foreign countries limited both the ability of unions to dominate pay setting and the ability of large companies to pass cost increases on into prices to the extent that an alleged connection between collective bargaining and general pay movements during the most recent U.S. recovery would have been fanciful.

In the 1962 guideposts, the CEA also expressed concern with restraining possible pay spillovers from the union to the non-union sector. Pattern bargaining had been an important feature of wage determination within the unionized sector during the early postwar period, but in 1962, little was known about the extent of spillovers to the non-union sector, which if accommodated by monetary policy could produce upward pressure on pay and prices. Later research found no evidence of significant spillovers (Flanagan 1976). The main growth sector of union organization, the public sector, had no significant bargaining over pay when U.S. incomes policies were in their heyday and do not set patterns for private sector wages today. In short, the connection between bargaining power and inflation had weak theoretical roots and little empirical traction.

A second theoretical difficulty with early U.S. incomes policies was the belief that the Phillips curve could be shifted. The distinction between the short-run and long-run Phillips curves was not clarified until the late 1960s and was not widely accepted for several more years. As the notion of an equilibrium rate of unemployment (Friedman's "natural rate" or in modern parlance, the NAIRU—nonaccelerating inflation rate of unemployment) became accepted, the role of incomes policy in restraining outbreaks of inflation became less obvious. Any rate of inflation was consistent with the NAIRU; the actual inflation rate rested on the expectations of future inflation generated by a country's history. But with expectations increasingly driven by foreign supply decisions (notably OPEC) rather than the behavior of domestic institutions, the role for a U.S. incomes policy to moderate inflationary expectations became less and less convincing.

Accounting for the Demise: Evidence of Effectiveness

Finally, U.S. experience with incomes policies provided little basis for returning to them. As we have seen, various CEAs struggled to find convincing evidence of their effectiveness, and all who tried to administer the policies came

away impressed by the difficulties encountered in translating seemingly simple rules for wage and price behavior into practice in the thousands of union contracts and company human resource management systems that condition a modern labor market. Doubts presented by the U.S. evidence were reinforced by the lack of demonstrable long-term influence in the many versions of incomes policies tried abroad (Flanagan, Soskice, and Ulman 1983).

To this point, one must add the fact that (with the exception of the early 1960s) inflation has been lower since the demise of U.S. incomes policies (see Table 1, which shows inflation and unemployment rates by presidential administration). Good fortune played a role—the food and energy inflation record shows the diminished role of supply shocks since 1980, for example. But politicians and voters may have concluded that the classic tools of fiscal and monetary policies can produce a more reliable containment of inflation than incomes policies.

TABLE 1
Inflation and Unemployment Rates by Presidential Term

Annual Average Percent Change in CPI					
Term		All minus			Unemployment
	All items	food & energy	Food	Energy	Rate
1967-64	1.2	1.4	2.0	0.8	5.8
1965-68	3.3	3.4	3.3	1.7	3.9
1969-72	4.9	4.7	4.6	3.4	5.0
1973-76	8.2	7.2	9.8	14.3	6.7
1977-80	10.4	9.6	10.1	17.6	6.5
1981-84	5.1	5.9	3.5	3.2	8.6
1985-88	3.4	4.2	3.8	-9.2	6.5
1989-92	4.2	4.3	3.6	4.4	6.3
1993-96	2.8	2.8	3.5	2.0	6.0
1997-2000	2.4	2.3	2.1	3.8	4.4
2001-04	2.3	2.0	2.6	8.3	5.5
2005-08	2.5	2.2	3.8	4.0	5.0
2009-12	2.2	1.7	1.9	8.2	9.0

Source: Bureau of Labor Statistics.

In short, while the goals and mechanisms of peacetime incomes policies in the United States changed over time, none of the formulations produced lasting results. This evidence—along with a moderation of inflation in recent decades—reduced the political incentive to take direct regulatory action to address wage and price movements and limited these policies to a 20-year run in the United States.

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I. Whatever Happened to Incomes Policy? In Honor of the Late Lloyd Ulman

Incomes Policy in Germany and Partial Decentralization of Collective Bargaining

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Introduction

This paper first analyzes the decline of collective bargaining and the onset of decentralized wage bargaining. Second, it explores the political and economic factors for establishment of an official incomes policy, its principal objectives, and the economic approaches that differed between unions and employers' associations—as well as its ultimate failure. Third, it is emphasized that after the demise of official incomes policy, the decentralization of wage determination proceeded, and flexible wage bargaining at the level of establishment—incorporating elements of the former official incomes policy—strongly expanded. Empirical results of this institutional turning point, including severe shortcoming, are highlighted.

Decline in Collective Bargaining and the Onset of Decentralization

Subject to some data restrictions, trends are presented for periods from the last decade of the 2000s through the second decade of the 21st century.

Net union density (not counting retiree members) of the DGB unions (unions affiliated with the German Federation of Unions) declined from 27.3% (1980) to 17.2% (2000) to 12.9% (2011). Union density in Germany was one of the lowest of the EU countries in 2010 (Ebbinghaus and Göbel 2014: 216, 230).

A similar trend is detectable in the German Employers' Associations (BDA and subgroups), especially with small and medium-sized firms withdrawing from or not joining the associations. In the Metal Employers' Associations of West Germany, for example, the percentage of membership firms declined from approximately 56 (1984) to 41 (1994) to 18 (2011) (Schroeder and Sylvia 2014: 354).

The coverage of sectoral bargaining fell from 68% (43%) of all private sector employees in West (East) Germany in 1996 to 60% (39%) in 2000 to 47% (29%) in 2014 (Ellguth and Kohaut 2015: 293).

The sectoral spread of collective bargaining coverage in 2010 varies widely, ranging from 69% in chemicals to 15% in IT services. Twenty percent of workers in small companies (i.e., companies with 10-49 employees) are covered by collective contracts, in contrast with 86% of workers in companies with more than 1,000 employees (Statistisches Bundesamt 2013). Average wages are highest in firms with sectoral contracts, followed by companies with an orientation toward sectoral collective wages and finally by their nonoriented counterparts (Addison 2012).

From 1996 to 2014, works councils existed in about 10% of firms, with no detectable trend. However, the percentage of all employees in firms with a works council and a sectoral collective agreement in West (East) Germany declined from 41% (29%) in 1996 to 37% (25%) in 2000 to 28% (15%) in 2014 (Ellguth and Kohaut 2015: 296). The percentages are substantially higher for companies with more than 500 employees (Ellguth 2004: 166).

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The basic trends of an erosion of collective bargaining were already quite striking before 1998, the year of the introduction of the second version of incomes policy in Germany, and the erosion proceeded unabatedly after the turn of the century.

In addition, this development was accompanied by steps toward a partial decentralization of collective bargaining. The high and persistent unemployment in West Germany the metal workers' union (IGM) in 1984 was accompanied by a long national strike for a reduction of weekly working time from 40 to 35 hours with full income compensation in order to redistribute working hours across more employees and thus reduce unemployment (Giersch, Paqué, and Schmieding 1992: 215). Finally, a compromise incorporated two elements: a gradual introduction of a working week of 35 hours and "opening clauses for working time" (OC–WT) for flexibility at the company level to be negotiated by the employer and the works council. After 1992, in a very severe recession, large companies negotiated cost-cutting measures with works councils and the consent of trade unions; these measures included steps such as working-time reductions without wage compensation, and employment guarantees (Rehder 2003: 116).

In this period, the government and the two bargaining partners agreed to transfer the basic labor market institutions to the eastern part of the country, and the unions specified rapid annual wage increases to attain western wages. Unemployment reached unsustainable levels, and the gap between wages and labor productivity increased. Employers demanded "opening clauses for employment and competitiveness" (OC–EC) in collective contracts in the east that would allow *firms, with the consent of their employees or the works council,* to pay wages below the standards of the collective wage agreement, increasing the likelihood of the survival of firms and stabilizing employment. Reluctantly, the unions gave in, fearing that this new type of opening clause might spill over to the west.

Second Version of Incomes Policy: Alliance for Employment, Training, and Competitiveness (1998–2003)

Twenty-one years after the termination of the Concerted Action (1967-1977), which brought the first version of an incomes policy in Germany (Ulman and Flanagan 1971; Flanagan, Soskice, and Ulman 1983), a second version was established by the newly elected coalition government of the Social Democratic and Green Parties (Center/Green) in a period of high rates of unemployment. Several factors might have contributed to this decision.

First, against the background of stagnating and declining employment, IGM and DGB launched an initiative in 1995 for an improvement in employment. The issues were discussed in a forum for nonbinding discussions among the government, unions, and employers' associations (Bispinck and Schulten 2000: 6). After the Center/Right coalition enacted fiscal spending cuts in the area of social policy, the unions terminated their participation.

Second, the idea of a social pact at the national level was adopted by the Social Democratic Party and was strongly supported by unions in the election campaign.

Third, the major components of the German system of industrial relations—works councils (co-determination), collective agreements, unions, and employers' associations have been declining. The decline, however, is much less pronounced in large companies. These relations are characterized by stable union density rates and high rates of coverage by collective agreements and works councils, and they try to use wage cuts by reducing voluntary bonuses (Hassel 1999: 502). Because large companies play important roles in employers' associations, they have an incentive to participate in an alliance that might lead to more moderate wage hikes and reduced unemployment.

The alliance was chaired by the chancellor and consisted of the major business organizations and most important sectoral unions. After the first meeting of the alliance, a joint consensual statement declared the reduction of high unemployment as the most serious challenge requiring permanent cooperation among the state, unions, and employers (Arlt and Nehls 1999: 262-264). Subsequently, unions (DGB) and employers' associations agreed on the preferred use of productivity increases for employment expansion, the reduction of working time for additional jobs, and an extension of working-time accounts (OC–WTs).

Despite this compromise, the main focuses of unions and employers' associations differed. Unions generally preferred working-time reductions in order to redistribute the available volume of work without income cuts and/or an extension of early retirement, while the employers' associations opted strongly for wage settlements below

productivity increases. However, in the bargaining round for 2000 and 2001, the chemical workers union (IGBCE), referring explicitly to the alliance's employment-oriented collective bargaining policy, took the wage-leader function and settled for moderate wage increases. The public reaction to the chemical agreement was very positive; it influenced the negotiations of IGM and led to moderate wage increases in that sector (Bispinck and Schulten 2000: 20).

During this bargaining round, unemployment declined and wages rose moderately. With the onset of recession in 2002, the still high unemployment rate stagnated and then began to rise again. The results of collective bargaining were criticized by IGM members, who began a series of short strikes and initiated a harsh debate about the Alliance and the participation of unions in the tripartite institution. The ensuing contractual wage increases for 2003 and 2004 were generally regarded as excessive. Apparently, for the strategy and actions of German unions, fairness and equity are more important tenets than a reduction of unemployment (Ulman, Gerlach, and Giuliano 2005: 9).

With collective bargaining policy as a taboo topic for unions, a gradual phasing out of the alliance was unavoidable. After the reelection of the Center/Green coalition in 2002, the chancellor dissolved the alliance and abrogated the second German attempt for an official incomes policy.

Decentralization of Wage Determination

The main indicators of collective bargaining—net union density, membership in employers' associations, coverage by sectoral collective wage agreements, the proportion of employees in firms with a works council, and a sectoral collective wage agreement—continued to decline after the turn of the century, as discussed previously. The decline was very severe in East Germany and in general did not affect large companies.

After the demise of the alliance and with high and rising unemployment rates, "opening clauses for employment and competitiveness" (OC–EC) were established in West Germany. In a very important treaty negotiated for the engineering industry in 2004, IGM and the employers' association agreed on regulated firm-level bargaining between management and the works council with initially stringent supervisory rights of unions and employers' associations. On the one hand, this treaty debilitated the institutional governance of the labor market by the traditional bargaining partners, exposing it more strongly to market forces. On the other hand, and especially in the core of the German economy, the bargaining partners—management and works councils—reach a compromise: workers accepted pay cuts, extended working time and more flexible working arrangements, while management promised investments, guaranteed production at the location of the firm and employment, and abstained from dismissals.

In 2011, 28% of employees with a collective contract in the private sector were employed in establishments with an OC–WT, and 16% had an OC–EC. The percentages increased with plant size, and the two versions of these arrangements coexisted in many firms (Ellguth and Kohaut 2014: 442).

In the first decade of the 21st century, six independent occupational unions were founded with about 200,000 members (Lesch 2008: 146). These occupational unions organized qualified employees and competed with unions of the DGB. Their threats and frequent strikes were very successful in attaining higher wages, counteracting the flat wage structure in collective wage agreements (Schroeder, Kalass, and Greef 2011: 92). The debut of occupational unions led to an additional decentralization and fragmentation of the German system of collective wage contracts.

Reforms of the supply side of the labor market accelerated fragmentation and the partial erosion of collective bargaining. The basic proposals of the Hartz Commission were implemented between 2003 and 2005, directly after and as a response to the failure of the alliance. The Hartz activation policy tightened the rules for the unemployed to accept job offers. The Hartz welfare reforms cut the duration of unemployment insurance benefits (UB I). The merger of social assistance with assistance for long-term unemployment into a single flat rate and means-tested benefit generated a general minimum income with strong activation requests (UB II). These policy changes augmented labor supply for low-wage jobs.

In the course of the Hartz reforms, various types of atypical employment were deregulated. Fixed-term contracts were generally available to firms for up to two years. Agency (temporary) work was completely deregulated. In the core economy especially, works councils and management welcomed the flexibility provided by

agency workers because they supported job stability for core workers. Finally, the Hartz reforms adopted, modified, and improved the appeal of marginal employment (mini-jobs).

In summary, these developments led to an increasing fragmentation and heterogeneity of the labor market and the labor force. Wage setting at the individual level became much more widespread. Due to the increasing availability and use of opening clauses, the role of firm-level works councils in bargaining was strengthened relative to unions (Carlin, Hassel, Martin, and Soskice 2015: 83; Dustmann, Fitzenberger, Schönberg, and Spitz-Oener 2014). The activation policy for labor supply and the partial deregulation of atypical forms of labor contributed to the acceptance of low-wage jobs. In addition, the fiscal deficit rules of the "Stability and Growth Pact" in the eurozone limit the application of fiscal policy, whereas the monetary policy of the ECB regulates the inflation rate in the entire eurozone, not just in Germany. While these institutional changes further weakened the case for official incomes policies, they simultaneously supported the transfer and imitation of some of their elements, such as bargaining over wages and employment, to the microeconomic level.

Flexible Lower-Level Bargaining: Empirical Results

The prior argument raises two issues. First, why is the core of the German economy—which is composed of larger and middle-sized firms in manufacturing, banking, finance, insurance, and energy with sectoral collective bargaining and works councils, although benefitting from partial decentralization—reluctant to advocate a cancellation of the system of sectoral collective bargaining (Thelen 2000)? Freeman and Lazear (1995: 49) show that "works councils are most likely to improve enterprise surplus when they have limited but definite power in the enterprise." This encourages works councils to focus first and foremost on improving the operation of the workplace, on enhancing productivity, and on reducing resignations and dismissals. A high proportion of the wage bundle is determined by sectoral collective contracts, and larger firms, in accordance with works councils, usually raise the remuneration. In periods requiring employment stabilization and an improvement of competitiveness, firms can still use sectoral collective wages as a benchmark and bargain with works councils over reductions of extra pay and within the framework of opening clauses of undercutting the benchmark. Empirical results for Germany support this analysis. The impact of works councils on wages is less strong in covered plants than in noncovered ones, and their productivity-enhancing effects are more likely to be seen in establishments with a collective wage contract (Hübler and Jirjahn 2003).

The second issue concerns the economic effects of opening clauses. OC–WTs are a compromise between management and works councils. They increase productivity and lead to a reduced fluctuation of workers. Wages and profits do not fall (Bellmann and Hübler 2015).

Slightly more than 50% of OC–ECs are used in economically critical phases of an establishment, whereas the remaining OC–ECs are intended to strengthen the future competitiveness of their plants starting from their still satisfactory economic condition (Hübler 2005, 2006a, 2006b; Bellmann, Gerlach, and Meyer 2008). The probability of a stable or rising employment is on average significantly higher in plants introducing these agreements during an acceptable economic condition with the goal of improving competitiveness than in establishments in an already critical phase. Trusting relationships between the bargaining partners are a significant ingredient of success.

In addition, a recent study of the effects of OC–ECs on employment in the severe economic crisis of 2008-2009 shows that in establishments affected by the crisis, the existence of an OC–EC supported the stabilization of employment (Bellmann and Gerner 2012).

In summary and with some caveats, the current empirical results show that opening clauses stabilize and stimulate employment, sometimes with wage moderation and particularly in larger companies.

The new institutional setup is correlated with an extreme increase of wage inequality. Germany now belongs to the group with the most pronounced earnings inequality in Europe (Rhein 2013). The increase of real mean wages was very modest in the period after 1995, whereas wage inequality rose very strongly. Real wages at the 15th percentile declined dramatically, at the median they started to fall after 2000, and at the 85 percentile, they continued to rise after 1995. The decline of union coverage and the decentralization of collective agreements as important elements of the remarkable change of wage inequality, however, vary between the studies (Antonczyk, Fitzenberger, and Sommerfeld 2010; Card, Heining, and Kline 2013; Dustmann, Ludsteck, and Schönberg 2009).

Conclusion

After 2004, with modestly rising real wages, the development of employment and labor productivity was more advantageous in Germany than in most other countries of the eurozone (Dustmann, Fitzenberger, Schönberg, and Spitz-Oehner 2014: 170; Thimann 2015: 145). The ongoing decentralization of wage determination and flexible lower-level bargaining were the principal driving forces of this process. A large part of total employment is relegated to competitive labor markets. Opening clauses (OCs) are important elements of the new focus of collective bargaining, mimicking to some degree past incomes policies. The case for official incomes policy became much weaker. However, the stability and future prospects of this development are at risk because works councils tend to foster the stabilization and growth of employment in conjunction with a sectoral collective wage contract. This side condition is weakening.

This paper is intended to show the significant role of works councils in the resurgence of the German economy. Works councilors are not necessarily union members, although many are. They have a margin of independence from the unions and often act for the benefits of firms. Because workers generally desire more voice and influence in firms and the workplace (Addison 2014: 8), these insights might be of some importance for the United States.

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II. Down But Not Out: Global Perspectives on Labor Unions

State-Sponsored Unionization: The Development of Enterprise Unions in China

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The existing research asserts that enterprise unions are inherently weak due to their dependence on enterprise and state. This paper suggests that this structure-centric view cannot explain the diversity of enterprise unions at the firm level. This paper argues that union efficacy is determined by an enterprise's perception of state-sponsored unionization and a union chairperson's ability to make a union work. When enterprises perceive state-sponsored unionization as a resource, enterprise unions that are led by capable union leaders are more likely to develop specialized union functions and engage in effective collective action that promotes employees' economic interests. This paper is based on eight months of fieldwork in the southern China city of Shenzhen, where more than 50 interviews were conducted with enterprise unions, official unions, labor NGOs, and workers.

Introduction

Since the 1980s, when neoliberalism began to erode union movement in industrial democracies, unionism in East Asia has been on the rise. In South Korea, early entry into industrialization and the presence of an urban working class propelled independent union movements to join a prodemocracy resistance; this pressured the government to accept democratic transition. In countries such as China and Vietnam, which embarked on industrialization in the late 1970s and 1980s, the state not only leads industrialization, it continuously molds the formation and development of industrial relations. In these countries with a Leninist political tradition, union organizing is an important social and political task for the ruling parties because state-led unionization is employed by both party-states as a means to curb instability, in the form of either institutionalized labor disputes such as arbitrations and litigations or labor agitations such as wildcat strikes.

Focusing on China's state-sponsored unionization, this research explores the diversity of unionization outcomes in China. Transitioning from the early reform era (1970s-2000s) to the post-reform era (2008 to present), the state has become increasingly aware of the urgent need to balance growth and equity. Since the 2000s, a series of laws and supplementary regulations that address labor relations have been enacted to promote workplace stability and equity, to reduce labor-capital conflict, and to bring socially combustible labor protests into formal institutions that are promoted by the state. Two landmark legislations were passed during the 2000s: the Trade Union Law in 2001 and the Labor Contract Law in 2008. Both acts seek to increase the predictability of employment relations in favor of employees. The 2001 Trade Union Law, in particular, aims to enhance firm-level labor institutions to nullify labor disputes the workplace. This law expects enterprise unions to become a representative institution of employees and the primary conciliator of labor disputes at the firm level. This law also obligates enterprise unions to integrate the interests of employees and enterprises. By restricting union organizing at the firm level, the state attempts to simultaneously control labor organizations and monitor industrial relations at workplaces. The implementation of this law was assisted by the state-sponsored unionization soon afterward. Primarily targeting the private sector, the campaign that was implemented by official unions has significantly increased the number of enterprise unions. As Figure 1 demonstrates, the number of grassroots unions, mostly enterprise unions, had reached 2.6 million by 2012.

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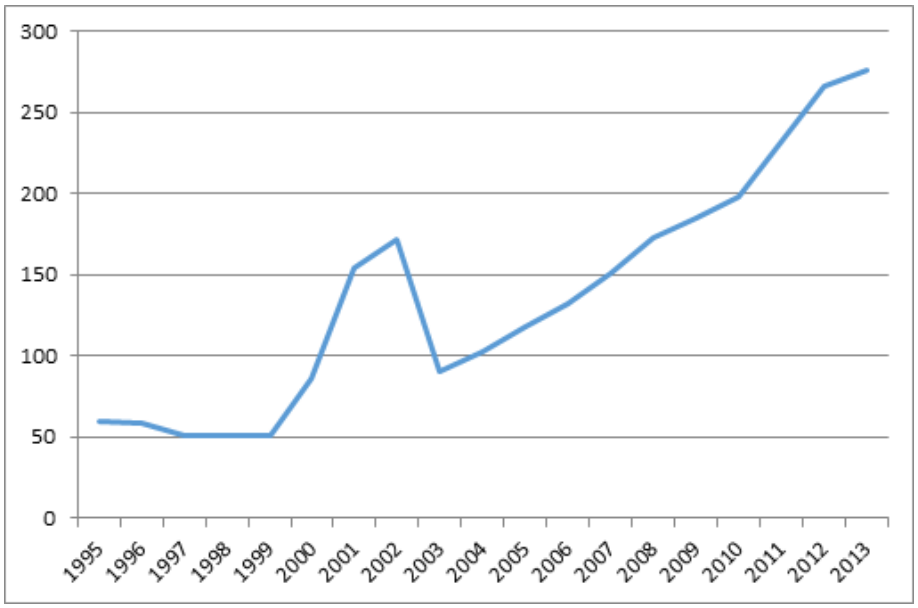
However, a quantitative leap in the number of unions is far from indicative of the strength of organized labor because enterprise unions are registered by enterprises. Some scholars thereby suggest that the unionization campaign is merely a matter of formalism (Liu 2009), which serves to fulfill unionization quotas that are set by the official unions. However, it is clear that consent from enterprises is not possible if the state does not concede to them. Enterprises determine how unions operate and function to a large extent, despite intermittent guidance from official unions. Knowledge about how trade unions grow within this institutional constraint will complement the current research, which focuses primarily on unionism in developed countries. This research demonstrates how enterprises and the state interact to shape enterprise unions and the agent that they dispatch in order to make enterprise unions become what they expect to be.

FIGURE 1
Number of Grassroots Trade Unions (10,000 Units)



Literature Review

The research on unionism in China is derived from a structure-deterministic point of view, which perceives enterprise unions as dominated either by the state or the capital. The existing research can be divided into three primary approaches: union as a state instrument, union marginalization, and dual cooptation. The union as a state instrument approach is applied to explain unionism under state socialism. The union marginalization approach suggests that the market reform and the decline of the public sector led to an irreversible trend of union decline and marginalization. Finally, the dual cooptation approach argues that state-sponsored unionization leads to a cooptation of enterprise union by the capital and the state, which drives a hollowing-out of labor institution at the firm level.

Union as a State Instrument

Inspired by literature on totalitarianism, this approach suggests that the dominance of the Leninist party-state diminishes union autonomy. The Leninist state intends to maintain close control of social organizations and garner their obedience and support in the fulfillment of its collective social tasks (Linz 2000; Lenin 1921, cited in Feng 2006). In return for labor loyalty, state workers were guaranteed lifelong employment. With the absence of class conflict, the role of enterprise union was reduced to promote productivity, counter bureaucratism (Lenin 1921, cited in Feng 2006), and convey employees' opinions to the enterprise.

The dependence of unions on the state led to the decline of unions. Since the 1990s, the party-state has embarked on the reform of the public sector, which subjects state-owned enterprises (SOEs) to market pressure in order to spur the efficiency of this ill-performing sector. Furthermore, SOE managers have been given full authority to discipline and dismiss workers (Lee 1999). Although veteran state workers resisted vehemently (Lee 2007), their mobilization was thwarted due to their own fragmentation, and suppression from the enterprise and the government (Cai 2006). Ironically, when the public sector reform threatened the foundation of union organization and the livelihood of union members, enterprise unions in SOEs were ordered to assist the reform. Therefore, unions in the public sector are solely transmission belts. Their function is confined to conveying and implementing economic and ideological policies of the state, rather than representing and defending the working class with respect to economic restructuring.

Union Marginalization

With the rise of the private sector, the union marginalization approach argues that the reform has largely severed state control of the economy, allowing the private sector to create its own domain of dominance. Local governments were given full autonomy to promote economic growth by every means possible, including attracting foreign direct investment and encouraging local entrepreneurship. The literature on the local developmentalist state highlights the symbiotic relationship between local governments and enterprises (Walder 1995; Oi 1995; Wank 2001). These studies suggest that the state-capital collusion has led to a prioritization of economic growth over economic and workplace safety (Gallagher 2005; Lee 2006).

Although the central government managed to close legislative loopholes by enacting pro-labor legislation, its legislative thrust was largely blunted by law-evasion practices that are prevalent in the private sector; this has been acquiesced by governments at low levels. Enterprises, particularly those with no prior experience in unionization, tend to ignore the Trade Union Law. Even when a union is registered, it is prone to be marginalized. Gallagher (2005) explains that the prevalence of weak enterprise unions is due to managerial autonomy and a lack of will on the part of local governments to enforce the law:

> The state's withdrawal from its previous role as administrator of labor allocation and employment has granted enterprises a great degree of power in setting their labor practices. Attempt[s] to balance this withdrawal with greater attention to laws and regulations as a means of regulating managerial power have been mostly unsuccessful. Developmentalist local governments have neither the capacity nor the will to implement constraints on capital. The strengthening of worker organizations as a means to mitigate the unequal relationship between firms and individual workers has also not been achieved. (p. 96)

Dual Cooptation

The dual cooptation approach argues that unions are largely co-opted by the state and the capital in a marketizing economy. This approach argues that the state appears ambiguous with respect to the rising labor conflicts. The Leninist state has no intention of empowering independent unions to defend labor interests. Yet, the state-sponsored unionization attempts to create a firm-level labor institution under state control. The dilemma lies in how far the state allows the union reform to proceed, without allowing it to deviate from its primary goals of economic growth and social control.

Certain studies emphasize the role of official unions rather than enterprise unions (Chen 2003; Han 2010). In reality, official unions handle labor disputes on behalf of enterprise unions due to the latter's lack of authority and legitimacy in the eyes of employers and employees. Other research suggests that the capital is the co-determinant of union efficacy at the firm level, which significantly mitigates the impact of official unions on enterprise unions. Therefore, union registration and functioning are dependent on negotiation between the enterprise and official unions (He and Xie 2011; Liu, Li, and Kim 2013).

Recent research uses managerial Industrial Relation (IR) ideology to explain unionization outcomes. Liu and Li (2014) identified three types of managerial IR ideologies and their influence on the outcomes of unionization and union efficacy. They found that unionized enterprises tend to perceive state-led unionization as a political necessity or operational input. An enterprise allows a union to become established when it is imperative to cooperate with the

ruling party's policy, or when the enterprise believes that enhancing employee involvement in corporate governance will be beneficial to the company's operation. However, Liu and Li (2014) primarily explore the conditions under which enterprises accept unionization, not the diversity of enterprise unions.

Gap in the Literature

After 30 years of economic reform, the state-centric approach must be re-examined because the state no longer controls the economy. In the field, I constantly encountered complaints from union cadres on the tremendous difficulty of persuading enterprises to comply with the Trade Union Law. Official unions provide guidance to enterprise unions about how to operate a union, how to prepare union paperwork, how to make regular reports of union activities to the supervising official union, and many other issues pertaining to union functioning. However, the extent to which the expectation of official unions can be met is dependent on the enterprise's continuing cooperation with them. Enterprises appoint a union chairperson, fund union operations, and provide personnel and logistical support to enterprise unions. While union registration has become a norm, union dues meet strong resistance. Therefore, the state influences primary unions in an indirect way, in the form of persuasion rather than coercion. While the managerial IR ideology, as applied in Liu and Li (2014), offers a fresh perspective on the role of management, this approach shows an inferential gap by assuming union efficacy is causally related to management's perception of the state-led unionization campaign. Enterprise unions are led and staffed by managerial personnel. All union chairpersons and committee members are managerial personnel or individuals with a managerial background. Union efficacy varies not with whether or not managerial personnel lead the union, but with how union leaders, who are usually managerial personnel, operate unions.

Therefore, this paper attempts to bridge the inferential gap between managerial IR ideology and union efficacy by introducing the agency of a union chairperson. The agent of enterprise union, the person who runs the union on a regular basis, is missing. The existing research displays a strong tendency to ignore the initiative of union leaders. The logic lies in the fact that because the enterprise has the right to appoint union leaders or to appoint union candidates to slate, the role of the union chairperson is relegated to the management's agent and is not counted as an explanatory variable. Based on my fieldwork, I argue that the initiative of a union chairperson is decisive in mobilizing resources and personnel in organizing union activities and collective actions. The position confers a sense of responsibility. Employees who are appointed to union leaderships are usually popular figures among their fellows. In SOEs, for example, union chairpersons are appointed from senior employees who are well respected. A similar pattern is observed in enterprise unions in the private sector, where employees who are seen as considerate, reliable, and responsible among colleagues are often appointed or elected as union chairpersons. Hence, my research focuses on union chairpersons as the primary explanation of union efficacy at the firm level.

Diversity at the Firm Level

The research identifies three types of enterprise unions—paperwork unions, managerial unions, and proto-economic unions, which demonstrate the variation of union efficacy. Paperwork unions represent a failed attempt of the state to install functioning unions in enterprises that are hostile to the state-led unionization. This happens when management prohibits unions from performimg substantial functions in order to avoid interference from managerial authority. Managerial unions are enterprise unions that play a limited role in performing traditional welfare functions, such as organizing recreational activities and distributing gifts during festivals. Their primary task is to assist the enterprise or other functional departments such as the human resource department to manage employees rather than to represent employees' interests solely. Nevertheless, this categorization does not lead to an underestimation of internal diversity. Managerial unions perform tasks that range from providing auxiliary services to an enterprise and organizing recreational activities for employees, to managing union welfare. An enterprise union is categorized as a proto-economic union when one of the following two conditions is satisfied: 1) the enterprise union is capable of engaging in wage bargaining with management, or 2) the enterprise union is directly involved in organizing or coordinating collective actions in order to maximize the economic interest of the employees. Proto-economic unions aggregate employees' interests in collective actions. Yet, the efficacy of proto-economic unions is determined by the extent to which union leaders can control collective action process.

Explaining Union Efficacy: The Enterprise's Perception and the Initiative of a Union Chairperson

Table 1 outlines the explanatory framework, in which the two explanatory variables are enterprises' perceptions of the state-sponsored unionization (IV-E) and the initiative of the union chairperson (IV-C). The value of IV-E varies between extraction and resource. The enterprise's perception of the state-sponsored unionization is a prerequisite for a union to function at the firm level. On the one hand, when enterprises primarily see the unionization campaign as a form of extraction, the operational space of the union will be largely diminished. In this case, management will likely appoint its loyal agent to serve concurrently as the union chairperson, which ensures total subordination of the union. On the other hand, perceiving unionization as a resource creates an incentive for enterprises to provide the union with operational space. Thereafter, the union chairperson can take the initiative. When the union chairperson acts as an agent of management, enterprise unions become managerial unions that assist enterprises with the management of employees. When the union chairperson acts as an agent of employees, the enterprise union evolves into a proto-economic union that can organize or coordinate collective action to promote the economic interests of the employees.

TABLE 1
Explanatory Framework of Union Efficacy: Enterprise's Perception and Union Agency

		Initiative of union chairperson	
		Act as the agent of management	**Act as the agent of employees**
Enterprise's perception	**Extraction**	Paperwork union (N = 3)	N/A
	Resource	Managerial union (N = 13)	Proto-economic union (N = 4)

What differentiates managerial unions from proto-economic unions is whether a union is capable of bargaining for substantial economic interest on behalf of employees, by organizing or coordinating collective actions. A union leader who has the ability to control collective action processes that bring parties with conflicting interests to the bargaining table is the litmus test of proto-economic unions. As a union leader's ability to control collective action increases, enterprise unions are more likely to wrestle concession from the capital and win recognition from the state. When a union leader is incapable of establishing a reputation among employees and is unable to control collective action processes, enterprise unions are unlikely to gain recognition from the capital and the state. Under these conditions, collective action carries a higher risk of failure. The following sections detail the explanatory process by explaining the role of the union chairperson and its impact on union efficacy.

Paperwork Unions

Paperwork unions represent the capital's determination to compromise state-sponsored unionization. Enterprises acquire union registration only to display ostensible compliance with the law and cease cooperation with the state after the registration. Paperwork unions develop under two conditions. First, the enterprise perceives state-sponsored unionization as an extraction and minimizes its harmful impact. Concomitantly, the union chairperson is appointed as a loyal agent by management to ensure the union's subordination to managerial authority. The enterprise union is thereafter prohibited from performing any function as stipulated in the law. LH's paperwork union is illustrative of how hostile enterprises that are determined to compromise state-sponsored unionization and use the appointment of union chairperson to effectively marginalize enterprise unions.

Unionization as State Extraction

LH, a Japanese-invested enterprise, acquired union registration in 2006 after being persuaded by the local official union. Since the registration, the firm has used every means possible to avoid union publicity. The most significant of these measures is the appointment of production and life team[1] members to double-sit on the union committee. The team leader is appointed as the union chairperson. The firm's hostility toward the union stems from a concern about union dues. Both the chairperson and the human resource manager regard union dues as a form of state extraction. For the enterprise, union dues are heavy burdens imposed by the state and a sign of government corruption. The human resource manager complained to me:

> Why [do] union dues have to be paid to the government (the official union)? The government is so corrupt. Nobody knows where the money would go. The wage bill of our firm is around 3 million. Paying 2% of 3 million as union dues means that we have to pay 160 thousand RMB per month and 720 thousand RMB per year. How could that be possible?

The union chairperson shared the same concern: "Fifty percent of … union due[s] will be refunded to the enterprise, but what about the other half? It will be confiscated by the state."

The Union Chairperson as an Agent of Management

The union chairperson then described the union as "being registered." Involuntary union registration is an implicit agreement between the firm and the official union. According to the chairperson, the firm is willing to cooperate with the government, as long as the cooperation does not affect the company's core interest. The enterprise is willing to have a paperwork union, as long as the unionization campaign imposes no real cost to the firm. The union chairperson then provided two reasons for why the firm maintains superficial cooperation with the official union. First, the firm does not want to leave an impression on employees that the company has a union. If employees know of the existence of the union, then they will use it as a vehicle to make more economic demands, such as bargaining for wage increases. For the union chairperson, these demands are excessive and will make management more difficult. Second, the union chairperson regards the union as a duplicated and redundant institution. For him, the union is similar to the production and life team of the enterprise. The two organizations have duplicate functions in terms of handling employees' complaints. Therefore, formalization of the union is not a worthy investment because the firm has an internal organization that specializes in these matters.

Managerial Unions

When firms see unionization as a resource rather than an extraction, enterprise unions are more likely to develop a formal structure and obtain limited recognition within the enterprises. Managerial unions operate in accordance with an enterprises' administration policy. The enterprise tends to see the managerial union as a supplementary department for addressing employees' trivial complaints, maintaining regular communication between management and employees, and handling logistical issues that fall outside of the duties of other departments.

Unionization as a Resource

Minimum compliance with the Trade Union Law provides firms with access to state resources. After balancing cost and benefit, these firms are willing to establish enterprise unions as an institution to receive state resources because of the corporatist nature of China's union system. The union system resembles an administrative pyramid of the government. By law, all unions must affiliate with the national peak labor organization—the All-China Federation of Trade Unions (ACFTU). The ACFTU legally represents all official unions and primary unions at the national level. Moving down the pyramid, every province has one provincial level union federation, as does each city. Union federations at the subdistrict level are further down the pyramid; these federations were created in 2006 as part of the downward penetration of the state. At a lower level, community-level union federations are established in areas with a high industry and working population. Enterprise unions lie at the lowest rung of this pyramid and constitute the overwhelming majority of primary unions.

Although the institutional design reflects the Leninist state's intention to control labor organizations, the market reform empowers actors in the private sector to effectively compromise this ostensible hierarchy. By law,

enterprise unions must answer to the official unions that are one level above them. In reality, official unions have no legal or administrative authority to enforce the Trade Union Law on primary unions. Instead, official unions must rely on economic means to encourage enterprises to cooperate. One way for the official unions to induce cooperation is to distribute resources through the union system to unionized enterprises. The prerequisite for receiving resources is to establish an enterprise union. A number of enterprises acquire union registration in order to gain access to beneficial state resources.

SJB, an enterprise in the jewelry industry, established an enterprise union in 2010. "Amiable" is the word that was used by the union chairperson to describe their relation with the subdistrict union federation, which is supposed to be its supervising union. In her eyes, the official union is different from other state organs. The subdistrict union brings various benefits to the firm, including but not limited to recreational activities and vocational training funds. Vocational training on workplace safety and human resource management are in great demand by many enterprises that are eager to improve the quality of their workforce. Enterprises are reluctant to fund vocational training of employees out of their own pockets due to the relatively high cost of training sessions and the high turnover rate among employees. Nevertheless, with union registration, enterprises have access to a variety of these important resources at low or zero cost.

The state helps enterprises form a positive image of the unionization campaign. Sharing a similar view, the union's vice chairperson of FM, a Singaporean-invested enterprise in the electronic manufacturing industry, told me that the municipal union federation manages an amount of union funds that is worthy of a dozen million RMBs, specifically for vocational training. The official union makes annual plans for how to distribute these funds to enterprises. Last year, FM's union applied for subsidies from the official union in order to fund five employees to attend vocational training sessions on human resource management. When discussing union welfare, the vice chairperson beamed with delight: "The official union has done a good job. So far, what we need to do is to enjoy the welfare." The above cases suggest that enterprises are more likely to develop a positive attitude about unionization when they perceive the state campaign as a resource. Short of paying union dues, union registration channels a considerable amount of resources to enterprises at low or zero cost.

The Union Chairperson as an Agent of Management

In general, a managerial union has limited functions. The enterprise unions of SJB and FM primarily provide auxiliary services to enterprises or employees to smooth corporate governance. Managerial unions rarely fulfill their other obligations that are stipulated in the Trade Union Law. They have no bargaining power, nor are they eligible to participate in corporate decision-making, which could substantially affect employees' economic interests. In managerial unions, union chairpersons take the identity of a manager. For them, a union is necessary because it is either a legal requirement or a natural development of corporate structure. Nevertheless, a managerial union could become more effective at improving employees' welfare. A union chairperson's initiative largely determines the extent to which a managerial union can balance the interest among employees in managing and distributing union welfare.

In order to triangulate the explanatory framework in Table 1, a within-case analysis of managerial unions is employed to illustrate the role of a union chairperson in expanding the scope of union functions. Table 2 includes two more cases in order to strengthen the proposed causal inference of the impact of a union chairperson's initiative on union efficacy. A union chairperson, who is committed to union work, makes a union more effective at promoting union welfare. When a union chairperson has a weak initiative, the union tends to develop little specialization—performing only auxiliary functions.

TABLE 2
A Within-Case Analysis of Managerial Union

	Ownership	Enterprise's perception of the state-led unionization	Union chairperson's union ideology	Union chairperson's initiative	Relation with official union	Union efficacy (union welfare)
BM	State-holding	Guidance/ political necessity. Union dues are paid on a regular basis (the tradition of state-owned enterprises).	Union is to protect employees by supervising the enterprise to abide the law.	Weak initiative. Appointed by the enterprise.	Infrequent contact.	Weak/no specialization: provided logistical support to recreational activities organized by the enterprise.
FM	Foreign	Mixed: union welfare as a resource; union dues as state extraction. Management does not yet pay union dues.	Union is not much different from corporate management.	Strong initiative. Recommended by the ex-chairperson.	Infrequent contact.	Weak-medium/assist corporate governance—e.g., union suggestion box. Assertiveness: persuaded the boss to pay union dues a couple of times.
SJB	Domestic	Resource/guidance. Union dues are a burden.	Unionization is a "necessary trend." Union is a bridge that communicates employees to the company.	Weak initiative. Elected.	Infrequent but amiable.	Weak/no specialization: organized recreational activities.
YN	Foreign	Mixed: unionization as a means to improve employee loyalty; union dues as state extraction. Nevertheless, the enterprise pays union dues on a regular basis.	Union shall show solicitude to employees.	Full-time appointment. Strong initiative. Appointed by the senior manager.	Infrequent contact.	Strong/specialization: equalization of the distribution of union welfare. Institutional innovation: establishment of union groups in a chain store. Plan for the distribution and usage of union dues.

Case Study 1: Weak Initiative, Little Specialization

Previously a state-owned enterprise, BM is a publicly held company and a leading producer in the glass industry in China. Following the tradition of a state-owned enterprise, BM has had an enterprise union since the 1990s. The company's employment practice strictly abides by the Labor Contract Law and the Trade Union Law. The union elects union chairpersons and union committee members on a regular basis. In 2006, a new regulation of union organization was implemented, which banned the deputy director from sitting as the union chairperson. The firm immediately complied and removed the deputy director. BM's enterprise union, however, has not articulated a representative voice on behalf of employees. The union does not have a particular role to play in corporate governance, other than to organize some recreational activities. The union chairperson told me:

> The responsibility of union, as I understand it, is to protect employees. Enterprise unions shall stand behind employees when the enterprise violates the law. As an established firm with a law-abiding tradition, the enterprise has basically eliminated labor dispute from its root[s]. Now, the union barely needs to do anything. So long as there is no labor dispute, the union pretty much fulfills its mission.

This union chairperson's view reflects a narrowly defined role of a managerial union. Enterprise unions must supervise enterprises to ensure that they comply with the law, but they cannot go beyond the minimum legal requirements. When employees make economic demands on the enterprise above what the law stipulates, the union chairperson handles the claim in favor of the enterprise. The company had disputes about severance pay with senior

employees, who worked for the firm for more than a decade. According to the Labor Contract Law, the compensation for one-year of employment is one month's average salary. Some senior employees demanded a larger amount of severance pay, given their long-term services. However, most of them lost their cases because the firm had provided compensation that was strictly in accordance with the law, and in some cases, higher than the amount prescribed by the law. During the entire dispute process, the union chairperson stood firmly in line with the enterprise's decision, rather than bargaining for a higher amount of severance pay on behalf of the employees.

Case Study 2: Strong Initiative, Increasing Specialization

When a union chairperson is willing to take the initiative to expand union welfare or innovate union organization, the managerial union becomes more effective in terms of developing a functional specialization, within the operational space allowed by the enterprise. YN is a catering company that owns more than 30 chain stores in its headquarters city. The enterprise union was registered in 2012, six years after the company was established. In the first two years, the enterprise union was only a paperwork union. The turning point came in 2014, when the general manager, one of the shareholders, decided to activate the union to substantiate the union functions. He appointed Ms. Tong (pseudonym) as the full-time chairperson. Ms. Tong told me that behind this decisive move was the general manager's concern about the high turnover rate of the employees, which resulted from, as he believes, the enterprise's excessive focus on profitability rather than cultivating employees' loyalty. The general manager expected the union and its full-time chairperson to specialize in handling employees' welfare, training, and career development.

Ms. Tong, previously an experienced operations manager at one of the chain stores, is committed to union work. A standard enterprise union has one chairperson, one vice chairperson, and five to six union committee members who are in charge of a particular aspect of union function. Soon after assuming the position, she began to innovate the union organization by creating a union team in each of the chain stores. The innovation was neither prescribed in the law nor initiated by the official union. Rather, it was an innovation conceived by the chairperson after consulting with the manager, in order to stimulate chain store employees' enthusiasm about participating in corporate social responsibility activities and to strengthen information exchange between the headquarters and its 38 chain stores.

Another significant move of Ms. Tong was to equalize the distribution of union welfare between headquarters employees and chain store employees. The distribution of union welfare has created much tension between some headquarters managers and Ms. Tong. The source of tension is the union dues paid by the enterprise. According to the Trade Union Law, a unionized enterprise pays an amount that is equivalent to 2% of its wage bill to the official union as union dues every month. In practice, in order to obtain support from an enterprise for unionization, the official unions must negotiate terms with employers to settle the acceptable amount of union dues paid by the enterprise. Despite employing more than 1,000 people, YN pays 2% of the wage bill of only 100 employees, who are mostly at the headquarters, as union dues. Subsequently, when Ms. Tong proposed to extend union welfare to chain store employees, her plan was immediately objected by certain headquarters managers who claimed that only those who have paid are entitled to the welfare. Despite the pressure from these managers, Ms. Tong insisted that the profit of the company is by contributed to by all employees rather than a small number of headquarters staff. Therefore, all employees are entitled to union welfare.

Proto-Economic Union

Proto-economic union represents the most effective enterprise union in the Leninist state. The term indicates an approximation of economic union/business union in the Anglo-American context, where trade unions fight for their members' economic interests by engaging in collective bargaining or economic strikes against employers. Table 3 compiles three cases of proto-economic unions to illustrate the causal connection between a union chairperson's ability to lead and control collective action processes and union efficacy in union-led collective actions.

TABLE 3
A Within-Case Analysis of Proto-Economic Union

	Ownership	**Enterprise's perception of the state-led unionization**	**Union chairperson's union ideology**	**Union chairperson's initiative (control of collective action process)**	**Relation with official union**	**Union efficacy (collective action)**
ZS	Foreign	Guidance/legal obligation. Union dues are paid on a regular basis before 2015.	The middleman: aggregation of employee opinion.	Effective. Elected. Consult, collect, and aggregate employees' opinions on wage increase.	Infrequent but informative.	Effective. Union has the priority to initiate wage bargaining, which is recognized by management.
ME	Previously domestic; now foreign	Legal obligation. Union dues have been paid on a regular basis since 2009.	Union is to protect employees.	Effective. Elected. Consult, collect and aggregate employees' demands and effectively control the collective action process.	Frequent. Maintained close contact with the official union throughout the collective action process.	Success. The enterprise made additional compensation to the employees, apart from the N+2 severance package.
SPG	Previously foreign; now joint venture.	Unknown. But the union was largely a managerial union before the strike. Union dues are not paid.	Union is a formal organization, which plays a key role in handling labor disputes.	Weak. Elected. Unable to aggregate employee's demands and unable to control the collective action process.	The official union does not recognize the elected vice chairperson.	Failure. The enterprise refused to offer severance pay to the employees. The union chairperson was subjected to administrative detention. Workers who participated the collective actions were dismissed.

Wage Negotiation

ZS is a small firm that specializes in original equipment manufacturer (OEM) watch manufacturing and employs 100 people. The firm is a subsidiary of the Montrichard Group, a global supplier for multinational corporations (MNCs), such as Disney and Avon. The enterprise union was established in 2011. The union chairperson, Mr. Xu (pseudonym), who was re-elected last year, is a veteran and a member of the Chinese Communist Party. When commenting on the primary achievement of the union, Mr. Xu emphasized that the union established a collective wage bargaining mechanism with management on behalf of assembly line workers. In 2014, the statutory minimum wage was increased to 1,800 RMB per month. Although at that time the base salary that ZS offered to its employees was significantly higher than minimum wage, Mr. Xu began to hear complaints from the employees. He then convened a meeting with assembly line workers and line leaders to obtain their opinions on the amount for a wage increase. Skilled workers demanded an increase of 350 RMB on top of their base salary, while general workers demanded 200 to 250 RMB. After an investigation into wage standards of the industry in the surrounding area, the union proposed an increase of 350 RMB for skilled workers and 250 RMB for general workers. The proposal was then written into a report, which was sent to the finance manager and then to the enterprise owner.

The enterprise owner soon sent a delegate to negotiate with the union, who then put forward the following two inquiries: Why is there a demand for a wage increase? And what are the reasons for the proposed amounts? Mr. Xu responded that the proposal accounts for three factors that affect employees' livelihood—a wage comparison with adjacent factories, the living expenses in the area, and the employees' demands. The union stressed the necessity of a living wage as the basis of the wage increase, suggesting that the delegate accept a wage increase at the level of a living wage. A living wage means that the employees would be paid sufficiently to support not only themselves but also their families. Management later conducted its own investigation and finally came to the same conclusion as the union.

Mr. Xu told me that a remarkable difference that the union brought is the transformation of individual claims into a collective claim. Prior to the establishment of the union, the company had no collective mechanism for wage negotiation. No one could effectively aggregate and convey employees' complaints and opinions to management. Employees had to resort to individual negotiations with a manager. When these individual demands were not met, workers engaged in stoppages or strikes to express their frustration. Now, the union has transformed the employees' unorganized and sporadic demands for higher wages into a coordinated collective action, which has significantly reduced incidents of stoppage and strikes.

Collective Action for Severance Pay

In the aftermath of 2008's financial crisis, there was a build-up of pressure on the export-driven manufacturing sector and a steady increase in the statutory minimum wage. The decline of export demand forced the state to revise its developmental strategy, which for a long time had relied on the labor-intensive and export-driven manufacturing industry. Local governments accelerated industrial upgrades by urging labor-intensive industries to relocate to less-developed regions or countries and revising foreign direct investment (FDI) policy in favor of capital-intensive and high-tech entrepreneurship. The years that followed saw a great decline in labor-intensive industries in the Pearl River Delta, the region where traditional manufacturing enterprises were once concentrated. Factories were closed. Production lines were removed. The demand for assembly line workforce decreased. The relocation of labor-intensive industry triggered a tide of labor disputes. Further aggravating the situation was the enactment of the 2008 Labor Contract Law, which significantly raised the cost of industrial upgrades for employers. This law stipulates that an enterprise is liable for severance pay when it lays off 20 employees, or 10% of its workforce when it employs fewer than 20 people. Employers then are liable to compensate one average month's salary to employees for each year of employment.

The role of enterprise unions in handling severance pay is rarely explored in existing research. This is due to the political taboo that any nonstate actor's participation and organization of collective actions will be either heavily restricted or punished by the Leninist state. Therefore, the existing research does not treat enterprise unions as relevant actors in analyzing the process and outcome of collective action. My fieldwork suggests that the enterprise union is capable of leading, organizing, and controlling the collective action process, provided that union chairpersons can control collective action processes to yield concession from the capital and win the recognition of the Leninist state.

Effective Union Leadership and the Success of Collective Action

ME, a subsidiary of TE Connectivity, specializes in designing and manufacturing telecommunication devices. The enterprise union was established in 1998. In 2009, the union held its first democratic election. Mr. Cao (pseudonym), an engineer from the Research and Development Department, was elected as the union chairperson. The following events suggest that the union chairperson played a crucial role in leading the union's collective action toward its success. Since 2010, ME began to lose its market share in China due to its inability to compete with native firms. In 2013, the company's annual sales suffered a constant decline, with an estimated deficit reaching eight million USD. In order to minimize the loss, the parent company announced its decision to dismantle the subsidiary's manufacturing and production lines. On September 10, ME announced its layoff contingency plan, which aimed to cut 500 out of 667 employees. The severance package proposed by the firm was N+2, meaning that ME would pay two extra months' salaries in addition to the amount calculated by the length of service.

Since the announcement of the plan, the union, led by Mr. Cao, undertook a series of measures to maximize the severance package. Initially, Mr. Cao collected information from other subsidiaries of the parent company in order to determine the maximum amount that the parent company was willing to offer for severance packages. He found out that the employees of one subsidiary, which will soon be relocated to another city, were offered 2N packages. Based on the information, the enterprise union demanded ME to offer a severance package of the same standard. But management rejected the union's first proposal immediately on the basis that the two subsidiaries are different. The union then proposed N+3 packages for employees who had worked for a minimum of five years and N+4 packages for those who had worked for over seven years. Again, the second proposal was rejected. The firm insisted on the original N+2 scheme. Knowing the management's firm stance, employees became restive and decided to launch a labor petition to the subdistrict government. This time, the employees demanded a negotiation with the representative of the parent company instead of the management of the subsidiary.

A labor petition carries a high risk in the Leninist state because the interests of the local state and enterprises are often intertwined, and collective actions often invite state suppression. Local government has a high stake in maintaining social stability and demonstrating a propensity to clamp down collective action of any sort. The successful leadership of Mr. Cao was the key to maintaining organizational discipline of the petition, which dissipates the government's anxiety and obtains its recognition of union legitimacy. On the morning of November 22, 200 employees marched toward the government building of the subdistrict after the enterprise refused to negotiate with them at the industrial park where the firm was located. The petition was well organized. The union chairperson demanded that all union committee members must use every means to maintain order among the employees with whom they are familiar. The marching crowd followed the union's order closely. After meeting with the government official, the union and the employees demanded that the representative of the parent company sit at the negotiation table. With the pressure from the government, the parent company finally decided to send a group of four delegates to negotiate with the union, the employees' representatives, and the local government.

On November 27, the two parties engaged in three rounds of intense bargaining. The primary contention was over the legality of the original N+2 scheme offered by ME. The delegates insisted that the N+2 package is strictly legal and that there would be no substantial concession that the enterprise could make. Mr. Cao refuted the claim. He told the delegates: "Abiding the law is the basic obligation of an enterprise. We, as senior employees who worked here for more than a decade, demand fair and reasonable compensation." Pressurized by the union's insistence and the strong claim made by the chairperson, the delegates finally came to an agreement with the union to increase the amount of compensation by adding an extra bonus that was calculated by the length of service. By the end of the bargaining, the parent company agreed to offer an extra 1 million RMBs to the employees as part of the severance package.

Weak Union Leadership and the Failure of Collective Action

When the union chairperson is neither capable of aggregating employees' interests nor able to control collective action processes, union mobilization may lead to its own defeat. The failed collective action of SPG highlights the necessity of union chairpersons to control collective action processes in a precarious social and political environment.

SPG is a process trade enterprise in the footwear sector. Previously an Australian-invested enterprise, its ownership was transferred to a Hong Kong investor in 2010. In 2013, after the second transfer of ownership, it became a joint-venture enterprise. Subsequently, the legal representatives of the firm were changed. The series of ownership transfer was triggered by a change in the local government's FDI policy, which now favors capital-intensive and high-tech entrepreneurship. In 2008, the provincial government issued a document that urged all process trade companies similar to SPG to undertake industrial upgrades. The third transfer of ownership was thus the compliance with the new FDI policy. On May 19, 2015, SPG formally announced to its employees that the enterprise had completed the ownership transfer. The firm promised to maintain the same level of salary and welfare of the employees, and, most important, the length of service would be continued after the transfer.

Most employees did not trust management. Their suspicion stemmed from the fact that the latest transfer had completely severed the tie between SPG and its parent company, an MNC listed in Australia, making SPG an independent firm with few fixed assets. Many of them regarded management's promise as a bounced check. The

union's vice-chairperson, Mr. Niu (pseudonym), explained this anxiety to me: "The firm promises us that the salary and welfare will be maintained. But what do workers worry about? Now, the firm is just like a shell. It has no asset to guarantee the life of our employees." Mr. Niu's remarks reflected the worries of a large number of affected employees, who were soon motivated to demand severance pay. The severance pay later became not only a source of friction between employees and management but also a source of cleavage between the union and employees. SPG refused to offer severance pay to frustrated employees. Management insisted that the transfer does not affect the employees' financial interest, nor does the firm have any plans for relocation. Because the enterprise's plan of industrial upgrade completely abides by the law and the regulations of industrial upgrade, the employees' demands for severance pay were not reasonable. In response to the refusal, some workers petitioned the local government but were soon dispersed by the police. Others blocked the factory gate in order to pressure management into offering severance packages. Most others joined production stoppage.

The collective actions, however, were fragmented and lacked a centripetal force. Workers employed their own means of pressuring management with the hope of maximizing their respective gains, sometimes by creating chaos. In the process, no individual or organization, including the enterprise union, was able to effectively coordinate and aggregate the employees' demands and transform them into a collective voice. Two weeks after the outbreak of the stoppage, the enterprise union held a factory-wide democratic election, where Mr. Niu was elected the vice chairperson of the union. As a senior employee who had worked at SPG for over a decade, he had a positive reputation among his colleagues. Nevertheless, Mr. Niu could not control the collective action process. He and the union could do nothing to restrain the employees from demanding severance compensation. He told me:

> Severance compensation was not among the union's demand. We just talked about the guarantee. The company has no intention of relocation or layoff anyway. It is impossible to ask for a severance package, right? However, some employees are naïve. They are hoping to get the enterprise to make compensations before resigning the employment contract with them. We've told them again and again that compensation is unrealistic.

The union's suggestion, however, fell on deaf ears. In the first month of the stoppage, a large number of employees insisted on severance pay as a prerequisite for resuming assembly line production. Others engaged in more confrontational actions, including but not limited to occupying the office building of SPG. In spite of the enormous pressure that the workers tried to inflict on the enterprise, the enterprise did not yield or attempt to negotiate with the angry crowd. After the two-month protracted standoff between frustrated employees and management, the local police were involved to restore order in the factory; this ended the uncoordinated collective actions. In the end, management did not yield to the pressure of the employees. Many employees were dismissed during and after the stoppage. Many others resumed production. Some employees who were active participants of the occupations were put under administrative detention, and one of them was Mr. Niu. He was accused of instigating the workers to participate in illegal collective actions, which caused severe losses to the enterprise and undermined social stability.

The existing research has a strong tendency to disassociate collective action from enterprise unions created by the state-led unionization (Chen 2003; Chen 2010). This logic asserts that the Leninist state has crippled the ability of labor to organize and to mobilize autonomously by imposing unionization on enterprises. Enterprise unions are co-opted by management and are unable to demonstrate labor militancy. My fieldwork suggests that enterprise unions can be mobilized to organize or coordinate collective actions. There is a possibility that discontent employees use formal institutions to legitimize their confrontation with management. However, the success of collective action is highly dependent on the ability of a union chairperson to control collective action processes. Well-organized collective actions led by competent union leaders are not only capable of forcing concessions from the capital but also of gaining recognition from the state. By contrast, a poorly organized collective action with no center of leadership drains the patience of the Leninist state, leading to its own defeat.

Conclusion

This article explains union efficacy from an actor-centric perspective. Because state primary unions in the Leninist state are organized at the firm level, the structure-centric arguments about the state and the capital are not sufficient

to explain the diversity of enterprise unions. This research contributes to an in-depth multiple-case study of enterprise unions, thus enabling us to evaluate the influence of firm-specific factors that shape the outcomes of state-sponsored unionization.

Endnote

[1] According to LH's union chairperson, the production and life team is an institution in many Japanese firms. The team that handles employees' complaints can be seen as part of the enterprise culture of Japanese enterprises.

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III. Confronting Global Wage Stagnation

Older Workers and Wage Stagnation: Will 7.2 Million Older Workers Lower Your Wages?

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Introduction

Between 2014 and 2024, an extra 7.2 million older people are expected to enter the labor market because the numbers of older people will increase and their work effort is expected to rise. The first wave of 75 million baby boomers—born between 1946 and 1963—began to turn 65 in 2009, and an additional 10,000 baby boomers will turn 65 every day until about 2029 (Wyden and Ryan 2011). Boomers' labor force participation rates for the population over age 55 is predicted to rise from 45.9% to 50.7 % with the greatest rise for those between ages 65–69, from 31.7% to 39.5% 2024.

The unprecedented and large increase in the supply of older workers may continue to suppress the wages of the boomer cohort and may suppress or decrease wages of younger workers beyond what wage increases would have been expected. We use previous methods of estimating the effect of large labor supply cohorts on wages, which is estimating the elasticities of substitution of younger workers with respect to older workers. If older workers are substitutes for incumbent younger workers, their wages will fall. On the other hand, if older workers complement younger labor an increase in the supply of older labor will increase the demand for younger labor and increase their wages. Using a translog production function, we estimate how older workers may affect the wages of each other and younger workers as members of the baby boomer cohort age and continue to work more than in the past.

7.2 Million More Older Workers Will Work Between 2014–2024

The share of the labor force over age 55 is growing rapidly not only because of population aging but because the labor force participation rates of older workers are increasing. People in the labor force over age 55 grew by 10 million between 2004 and 2014, while people in the labor force under 55 fell by over 4.6 million. The number of people aged 55–74 is predicted to increase 14% between 2014 and 2024 (BLS 2015). Labor force participation rates for older workers have been rising since the 1980s. Between 1985 and 2013, the labor force participation rates for women ages 55 and older increased from 22% to over 35%; older men's participation rate rose from 41% to nearly 47% (BLS 2016).

Experts agree that the labor force is aging, but the predictions about how many older workers will enter or stay in the labor market vary. The variation is due to different predictions about future labor force participation rates of older workers. If the older-worker labor force participation rates do not change, the number of older workers will increase by 3.2 million between 2014 and 2024. The Bureau of Labor Statistics predicts a modest increase in the work effort of workers age 55–74 from 64% to 66% between 2014 and 2024, leading to a projection of 6.2 million more older workers in ten years (see appendix).

In contrast, Brookings economist Gary Burtless predicts that an additional 7.2 million people over age 65 will work. He predicts some combination of policy changes and changes in social norms and customs and preferences

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for work will increase older workers' labor supply beyond mere population increases. We compute the change in wages in both scenarios, although we believe Burtless has a better forecast than the BLS for a number of reasons.

Burtless' projections seem more likely than the BLS projection because the erosion of retirement income will likely induce more intensive and extensive labor supply among older workers). The labor supply of older workers is more sensitive to changes in the availability of unearned income than for younger workers; Cesarini et al. (2015) find a notable decrease in hours worked by lottery winners in Sweden, which persisted more than ten years—especially among older workers. California teachers aged 55 to 75 were found to be 2% to 3% less likely to work an additional year per $100,000 of accrued pension wealth. An unexpected increase in pension generosity was also associated with decreased work effort in this age group (Brown 2013).[1]

Employment Policy and the National Research Council

The National Research Council formed a study commission in 2012 motivated in part by a concern that the American economy would lose a vital supply of labor if everyone over 65 retired as boomers aged. The commission's report—"Aging and the Macroeconomy"—concluded that older workers were complements, not substitutes for younger workers. That conclusion was based on a 25-year old study by economists Phil Levine and Olivia Mitchell (Levine and Mitchell 1988). This paper updates their study and shows there was little support for the NRC's claim.

Levine and Mitchell use data from 1954 and 1984 to predict how increases in the share of older workers will affect the 2020 labor market in terms of the gender pay gap, job prospects for teenage workers, and wages of prime-age and young workers. Levine and Mitchell (1988) predicted the wages of various age and sex groups in the year 2020 based on projections about the age and sex composition of the workforce. They conclude older men's share in the labor force increase is associated with a fall in wages for most workers, especially females aged 16–19 and raise the wages of men aged 20–34. In contrast, they predict the increase in the share of older female workers would not decrease the wages of any sex/age group. They find support that older females (over age 55) significantly complement each other—an increase in the labor supply of older females raises the wages of older females.

Levine and Mitchell (1988) project the impact of an increase in the labor supply of baby boomers on wages for sex/age groups based on Bureau of Economic Analysis (BEA) and Social Security Administration (SSA) estimates for labor supply changes for those groups and their calculated elasticities of complementarity. Their estimates of labor supply elasticity may be marred by the BEA and SSA underestimating the actual growth labor supply from older workers. The BEA's growth rate for older workers' labor supply missed by over two-thirds, and the SSA's by almost one-half.

These prediction errors may explain why Levine and Mitchell (1988) overestimated wage growth among all groups except older workers. Increases in labor supply among younger groups were not met with a corresponding increase in demand, whereas older workers entered the labor market in larger numbers at a time when demand for them grew rapidly. Earnings for young workers decreased by 4.2% between 1985 and 2015 (Table 1), whereas Levine and Mitchell (1988) projected a 4.4–7.8% increase (Table 2). Moreover, mature workers' earnings increased 1.8%, compared to a projected 5.7–6.1% increase. Levine and Mitchell (1988) did not conclusively project older workers' earnings, with the SSA-based estimate projecting a 1.5% increase and the BEA-based estimate projecting a 24.3% increase. Older workers' earnings actually rose 8.3% in 30 years.

TABLE 1
BEA and SSA Projected Changes in Labor Supply
by Age and Sex 1985–2020 vs. Actual 1985–2015

	BEA	SSA	Actual (BLS 2016)
Female Teen (16–19)	21.5%	19.5%	–33.4%
Female Young (20–34)	3.8%	4.1%	5.3%
Female Mature (35–54)	32.4%	47.3%	63.3%
Female Old (55+)	54.5%	92.0%	167.5%
Male Teen (16–19)	16.5%	18.4%	–43.4%
Male Young (20–34)	–9.9%	–4.7%	–1.0%
Male Mature (35–54)	23.5%	32.7%	45.4%
Male Old (55+)	46.1%	81.2%	109.6%

TABLE 2
Levine and Mitchell (LM) Real Earnings Growth Projections
1985–2020 vs. Actual 1985–2015 (Levine and Mitchell 1988)

	LM with BEA Population Projection	LM with SSA Population Projection	Actual (BLS 2016)
Teen (16–19)	5.6%	1.2%	0.5%
Young (20–34)	7.8%	4.4%	–4.2%
Mature (35–54)	6.1%	5.7%	1.8%
Older (55+)	24.3%	1.5%	8.3%
Female Workers	–10.3%	–7.9%	19.4%
Male Workers	12.2%	8.6%	–0.2%

The paper was occasionally referenced in the academic community, but it reached a high level of importance in 2013 because it was cited by an important National Research Council report supporting policies to increase older-worker labor market efforts. The National Research Council formed a study commission in 2012 motivated by the concern that the American economy would lose a vital and productive labor supply if everyone over 65 retired as boomers aged. Levine and Mitchell (1988) was the only paper footnoted to support the NRC's claim that older workers complemented younger workers. An updating of the study does not support the NRC's use of it as supporting evidence for the claim that older workers will not lower the wages of each other or younger workers.

Methods

This section updates Levine and Mitchell (1988) to challenge the NRC's conclusion that older workers working longer will not lower younger workers' wages. We follow the methodology used by Levine and Mitchell (1988) to reproduce their results using updated data.

> Hypothesis 1: If older workers are substitutes for incumbent younger workers, then the estimated cross-price elasticity will be negative—implying that younger workers' wages will fall as older workers enter the labor force.

> Hypothesis 2: If older workers complement younger labor, then the estimated cross-price elasticity will be positive—implying that an increase in the supply of older labor will increase the demand for younger labor and increase their wages.

We use a translog production function in order to estimate the share of each factor of production in the total production cost, assuming that the output share of each factor will be equal to its cost. We run a system of seemingly related regressions using the factor share equations to estimate the coefficients, by imposing symmetry and homogeneity as constraints.

Instead of dividing labor by age into four categories (as in Levine and Mitchell 1988), we classify workers in three categories of young (34 years and younger), mature (35 to 55 years old), and old workers (55 to 74 years old). These groups are further divided by gender into six groups. The main reason for combining teen and young workers is the very small number of employed teenagers since the 1970s, mostly as a result of increasing years of schooling.

The quantity of each labor input, measured in hours worked, and estimations for hourly wages required for calculating the cost shares are obtained using CPS-ASEC (Annual Social and Economic Supplement) for years 1962 to 2014. Macroeconomic variables (GDP, wage share, and capital share) are obtained from BEA annual national accounts tables. We also use BEA's measure of "fixed assets" as a proxy of capital stock.

Similar to Levine and Mitchell (1988), the standard deviations and significance of estimated elasticities are calculated by using delta method.

The projected values for output and factor inputs in 2024 are from BLS labor force projections. The number of older workers, however, is adjusted according to the projections from Burtless. Average hours worked are held constant for the 2014–2024 period. The forecasted changes in wages for different age/sex groups are calculated directly by applying the estimated output share of each group to the projected GDP and labor quantities.

Results

Table 3 shows the elasticities of complementarity between workers in age/sex groups between 1962 and 2014. Because the changes are relative, a 1% increase in one category means a 1% decrease in the other one, and therefore elasticities are symmetric. Pairs including older male or female workers, which are of particular interest to the present study, are bolded. The diagonal depicts the effect of an increase in the share of an age/sex group on its own wages.

TABLE 3
Elasticities of Factor Complementarity 1962–2014

	FY	FP	FO	MY	MP	MO	K
FY	–5.74*** (1.32)						
FP	2.47*** (0.72)	–0.67 (0.66)					
FO	**0.03 (2.09)**	**2.50 (1.71)**	**–6.98 (7.23)**				
MY	2.95*** (0.85)	–3.78*** (0.47)	**–3.65*** (1.44)**	–1.41*** (0.57)			
MP	–1.01*** (0.40)	0.99*** (0.31)	**–2.45*** (0.79)**	1.07*** (0.26)	–1.19*** (0.17)		
MO	**–1.43** (0.85)**	**–0.96 (0.76)**	**5.79*** (2.87)**	**0.20 (0.57)**	**–0.20 (0.35)**	**–5.67*** (1.28)**	
K	0.39*** (0.17)	0.63*** (0.19)	2.03*** (0.52)	0.73*** (0.12)	0.76*** (0.09)	1.85*** (0.22)	–2.13*** (0.15)

Notes:
FY: Female Young (16–34) MY: Male Young (16–34) K: Capital
FP: Female Prime, Age (35–54) MP: Male Prime, Age (35–54) **p < .05
FO: Female Older (55–74) MO: Male Older (55–74) ***p < .01

Overall, out of 15 estimated elasticities between different labor groups, we find that four pairs are substitutes and five are complements. In contrast, Levine and Mitchell (1988) reported 13 significant coefficients out of 28 possible intergroup pairs, nine of which were substituting pairs and five of which were complementing pairs.

Wage Projections by Age and Sex

Table 4 displays two projections for wage growth for each age/sex group between 2014 and 2024. Both projections assume the same labor force participation rates for workers under age 55 throughout the period, as well as the same projected population by age and sex group (provided by the Census Bureau).

Using the BLS projections, we find that the real wages of young and old females, and prime-age and old males, will slightly increase over ten years. The wages of prime-age females will remain stagnant, and young male wages will decrease substantially. Burtless projects much larger increases in labor force participation among older workers than the BLS does. According to his projections, the wage loss and stagnation is more intense, and old males have a projected increase of 2.8% instead of the 8.0% increase using the BLS projections because they will compete with each other.

TABLE 4

Projected Percentage Change in Real Wages 2014–2024

	BLS	Burtless
Young Female	7.6%	4.3%
Prime-Age Female	0.5%	–0.5%
Old Female	3.7%	3.9%
Young Male	–5.3%	–6.7%
Prime-Age Male	8.4%	7.2%
Old Male	8.0%	2.8%

Notes: Young: 16–34, Prime-Age: 35–54, Old: 55+.

Hamermesh and Grant (1979) reviewed the literature on estimation methods used to address similar questions, including the methodology used in this paper. All of these methods use different production functions to derive quantity or cost functions, assuming the wages are determined in a competitive labor market with full employment, where the wages are equal to marginal cost of factors and their productivity. This is not an acceptable assumption when our aim is to estimate wages that may change according to the labor's bargaining power, which varies by unemployment level. Using a model that takes such frictions in the labor market into account can solve this issue, but it makes the estimation itself more difficult and even unfeasible. This is a useful area for future research.

Similar to Levine and Mitchell (1988), we interpret the results as if elasticity estimation does not imply any causation. A negative coefficient should be interpreted as a wage decrease associated with an increase in the relative supply of the other group. Because these elasticities are symmetric, practical interpretation requires determining which group is actually driving the change. We provide justification in our Introduction for determining that older workers will predominantly drive the changes in younger workers' wages and not vice versa.

Another underlying assumption is that labor supply changes are exogenous, and wages react to labor supply without any feedback effects. This is an acceptable assumption when we use time-series data rather than cross-sectional data. Cross-section data is prone to change in labor supply due to migration across geographical boundaries due to wage differences. On the other hand, using time-series data requires us to assume that elasticities of complementarity are fixed from 1962 to 2024.

But, as a result of a change in technology and structure of industries in the period and changes in the nature of jobs that can be fulfilled by old and young men and women, this assumption is not likely to be true. For instance, employment in health care and social assistance, where older women are more likely to find work, is predicted to

grow 1.9% a year from 2014 to 2024 (BLS 2015). Assuming these changes are exogenous may lead to weak and invalid estimations. The labor productivity of each sex and age group has changed during the time period, and we can only take the change into account using a dynamic model.

This problem is also related to factor classification. We divide the labor force by gender and age because we believe there is a meaningful difference between the groups, and not within a specific group, during the period of study. However, educational attainment for all groups has increased drastically. Older workers and women are more educated in 2020 than they were in the 1960s, especially relative to prime-age workers. It's fair to assume that the "new" older workers are now able to compete with educated prime-age workers for jobs, whereas the previous generations didn't have the necessary education and skill to do so. Dividing the factors into smaller groups based on education would make more sense and could also limit the amount of change in relative productivity of factors (see Grant 1979 for an example). If we were to break down each group by education, such problems would disappear. However, the small sample size does not allow a doubling of the number of factors. It is possible, however, to expand the study using the same sample by including measures of human capital of each age and gender group instead of the simple supply of labor. This goes beyond the scope of this study.

As a result of problems mentioned above, mainly the changes in factor productivity over time, in addition to our small sample size, elasticities of complementary are sensitive to the sample choice. Running the regression over smaller subsamples shows that the estimations, especially those for the earlier years, can be volatile, though it is hard to know if the problems are only caused by the even smaller size of the subsample.

Discussion

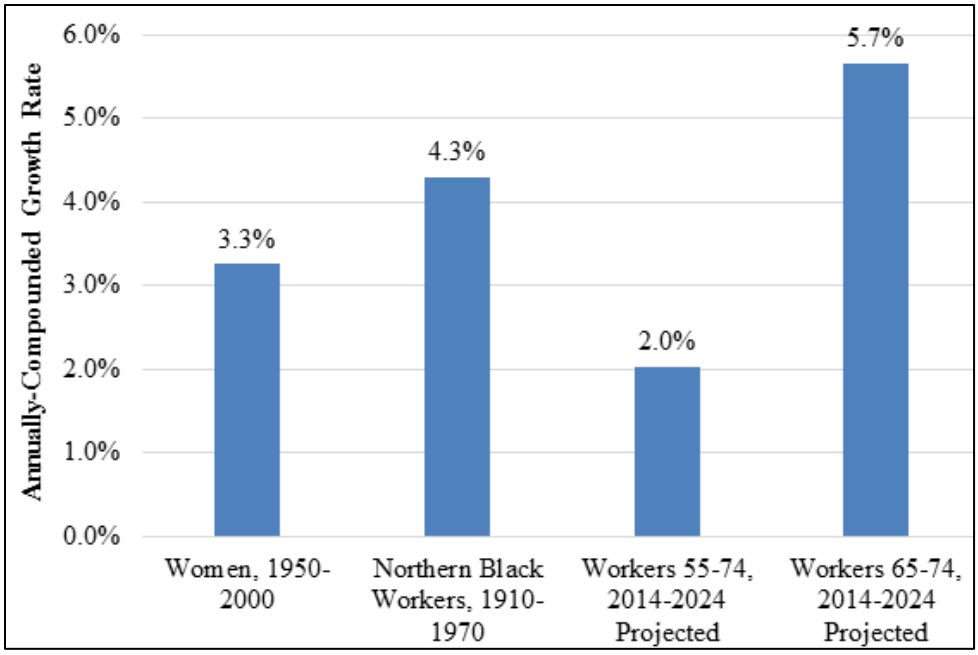
Burtless and Aaron (2013) describe the two ways of increasing labor supply—raising wages and improving working conditions, or reducing nonlabor income to induce more work—by categorizing pro-work policies for older people as either "mugging" and "bribing" policies. Mugging policies aim to reduce nonlabor income, including reducing Social Security benefits by raising the Social Security full retirement age and Medicare eligibility to age 70. Bribing policies range from the SSA emphasizing the rewards from delaying collecting benefits to age 70 to raising the after-tax wage by reducing taxes for older workers.

The increase in expected retirement age is consistent with the prediction that pension insecurity will increase the work effort of older Americans. The expected retirement age has been rising since 1991 when 11% of workers polled expected to retire after age 65. In 2015, the highest percentage of workers ever polled—36%—said they will retire after age 65 since the EBRI began the Retirement Confidence Survey in 1980 (Helman et al. 2015).

The negative wage effects of older workers entering the labor market are confirmed by the evidence that immigrants can lower the wages for some groups they directly compete with in the short term. Most economists agree that immigration has distributional effects (Chassamboulli and Palivos 2014). Immigrants lower wages and working conditions for native workers who have jobs that immigrants can easily fill such as those that require less language fluency or training in the short run (Dustmann et al. 2013; Liu 2013; Smith 2012).

Wages are stagnating across all age groups, and the increase in the labor supply of older workers may be a reason. In the next seven years, 7.2 million older workers, an increase in the overall labor force of almost 5%, are predicted to migrate from a planned or hoped-for retirement into the U.S. labor market. The magnitude of this surge of "domestic migrants" compares to that of other periods in American history when large increases in the labor supply reduced workers' bargaining power to achieve wage growth or improvements in working conditions.

FIGURE 1
Older Workers' Labor Supply Is Similar to Historic Episodes of Labor Shocks



Sources: Census Bureau (1910, 1950, 1970, 2000).

Using the Burtless predictions, we expect the labor supply of people aged 55 to 74 to grow 2.0% each year and that of workers aged 65 to 74 to grow 5.8% each year between 2014 and 2024. This compares to the historic increases in the supply of black and women workers. The number of black workers in the North grew by an average of 4.3% each year between 1910 and 1970. The pre-WWII wave of the Great Migration from the American South to the North was found to have lowered northern black wages by about 3% (Boustan 2009). Furthermore, the labor supply of women grew 3.3% each year between 1950 and 2000. Pryor and Schaeffer (2000) found that increasing supply of educated white women workers after 1950 lowered the wages of less educated men. Many researchers have documented negative cohort effects, especially regarding the baby boom generation, to conclude boomer wages would have been higher if the cohort had been smaller (McMillan and Baesel 1990; Sapozhnikov and Treist 2007).

Evidence for less bargaining power of older workers is already showing up in wages, long-term unemployed, and decrease in job quality. Older workers make up a larger share of the long-term unemployed than ever before, workers over 55 earn substantially less than people in their late forties (Guvenen et al. 2015), and quality of jobs older people hold has stopped improving. The share of older workers who say they have very physically demanding jobs is increasing and the share of jobs reported as easy is falling. The incidence of requirements for stooping, bending, and using keen eyesight and intense concentration is increasing (Bonen 2013).

The true effect of migrants is measured by what conditions would be like if they had not come. Danish economists directly tested the wage effects of immigrants on native worker wages and working conditions. Denmark is far away, but Denmark is a good source for US labor market hypotheses because the Danish data match workers to employers, which allows direct observation of firms hiring immigrant workers. Incumbent workers are paid lower wages than they would otherwise in firms that hire immigrant workers (Malchow-Moller et al. 2012).

An Immigrant Bonus?

Alicia Munnell and April Yanyuan Wu (2012) argue that the theory new workers will lower wages, hours, and working conditions is a "lump of labor fallacy." Indeed the argument dates to 1851 when groups advocated for shorter weekdays—essentially Sunday off—by arguing that fewer hours would create more jobs. In modern terms, it

is a fallacy to believe if older workers retired more jobs would be available for younger workers. They argue in particular that "there's no evidence to support that increased employment by older people is going to hurt younger people in any way. … It's not going to reduce their wages, it's not going to reduce their hours, it's not going to do anything bad to them."

Munnell and Wu can draw support from David Card's study of the immediate effects of the Mariel boatlift on incumbent Cuban-American workers. In 1980 over 125,000 Cuban refugees, former prisoners, and mental health patients increased the supply of mostly unskilled labor in the Miami labor market by 7% in just two months, and Card (1990) argues this had no effect on wages. However, Borjas (2015) found that the "absolute wage of high school dropouts in Miami dropped dramatically implying an elasticity of wages with respect to the number of workers between –0.5 and –1.5."

Regardless, a major contrast between immigrants entering a labor market and older "domestic migrants" is the state of the labor market they are entering. An influx of immigrants is associated with buoyant labor markets because migrants tend to come when conditions are good. We argue that older workers will not necessarily be entering the labor market because it is good, rather they will be coerced into the labor market, regardless of its state, due to their inability to afford retirement. Doubtless, the increase in labor supply will lead to economic growth and an absolute increase in the number of jobs available. The paper argues that without the increase in labor supply, wages, hours, and working conditions would be improved for all workers.

We are not committing a lump of labor fallacy. An increase in the number of older workers might increase the number of jobs available by bringing down wages. We argue that solving the retirement crisis will mitigate a 7.2 million worker labor supply shock.

Conclusion

The increase of 7.2 million workers over a ten-year period will affect labor markets, but will the effect be large enough to make a difference in the wages of younger workers? The answer is most certainly yes.

The macroeconomic case for policies to increase the labor supply of older workers may have ignored the negative microeconomic impact on the labor market for all workers. The NRC's 2012 report concluded that increasing the labor supply of older workers would not decrease the wages of younger workers. The report cited a 1988 paper to make the claim. This study updates Levine and Mitchell's (1988) mbitious study of the elasticities of complementarity with respect to the supply of workers by age and sex categories to confirm some of their findings and find new ones. In many cases, older workers significantly substitute for younger workers and with each other, resulting in lower wage growth for younger workers than would have otherwise occurred. Increasing the security and adequacy of American workers' pensions will reduce the labor supply of older workers and help make the wages of prime-age workers grow.

Endnote

[1] Increases in the net-of-tax wage through the Earned Income Tax Credit increases intensive work effort of Americans and British workers particularly among those over age 65 (Blundell et al. 2013). And older workers are more sensitive to temporary net-of-tax wage changes (so-called Frisch elasticities) than are younger workers (Reichling and Whalen 2012).

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Appendix A

Three scenarios regarding the potential increase in the labor supply of older workers are estimated below.

TABLE A.1
Increase in Labor Supply by Age If There Are No Changes
in Labor Force Participation Rates in Any Age Category

	Projected LFP, 2024		Labor Force (1000s)	
Age	**2024**	**+/–, 2014**	**2024**	**+/–, 2014**
55–59	71.5%	0.0%	14,516.5	928.86
60–61	63.4%	0.0%	5,453.9	
62–64	50.2%	0.0%	6,460.4	
65–69	31.6%	0.0%	6,280.1	2,539.42
70–74	18.9%	0.0%	3,104.4	
	45.9%	0.0%	35,815.3	3,468.3

TABLE A.2
Increase in Labor Supply Based on Changes in Labor
Force Participation Predicted by the Bureau of Labor Statistics

	Projected LFP, 2024		Labor Force (1000s)	
Age	**2024**	**+/–, 2014**	**2024**	**+/–, 2014**
55–59	74.2%	2.7%	15,069.0	2,190.47
60–61	67.2%	3.7%	5,774.1	
62–64	53.2%	3.0%	6,849.4	
65–69	36.2%	4.6%	7,203.0	4,036.56
70–74	22.4%	3.5%	3,678.5	
	49.4%	3.5%	38,574.0	6,227.0

TABLE A.3
Increase in Labor Supply Based on Increased
Labor Force Persistence Predicted by Burtless (2010)

	Projected LFP, 2024		**Labor Force (1000s)**	
Age	**2024**	**+/–, 2014**	**2024**	**+/–, 2014**
55–59	73.5%	2.0%	14,919.7	2,184.16
60–61	65.0%	1.6%	5,590.9	
62–64	55.8%	5.6%	7,175.6	
65–69	39.3%	7.8%	7,824.2	5,026.47
70–74	24.7%	5.7%	4,047.3	
	50.7%	4.8%	39,557.6	7,210.6

IV. LERA/ISA Joint Session—The Evolving Health Care Landscape: How Employees, Organizations, and Institutions Are Adapting and Innovating—LERA Research Volume 2016

Health Care Providers and Patients in Sync: Antecedents for Optimizing Provider and Patient Outcomes

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Background

November 1999 saw the first definitive movement toward pursuing better health care outcomes with the release of the Institute of Medicine's (IOM) seminal report on health care quality, *To Err Is Human* (IOM 1999). The report focused attention on the estimated number of annual deaths attributable to preventable lapses in safety and served as a catalyst in driving patient safety to the forefront of industry focus. Three salient facts emerged from the IOM (1999) report. First, safety lapses ranked as the 8th leading cause of death in the United States. Second, the estimated cost of these lapses was approximately $29 billion annually. Third, most of these preventable errors derived from systemic errors rather than being the "fault" of a care provider (Gandhi 2015). Since the release of the report, a robust and continually evolving patient safety movement has witnessed the emergence of think tanks and institutions devoted to improving processes and systems in pursuit of error-free patient care.

Simultaneously, the rate of employee injury and illness in the health care sector in the United States rose substantially. Over the past decade, the reported number of work derived illnesses and injuries in health care have been among the highest rates of all industries in the United States. Shockingly, the health care sector accounts for the greatest percentage (20.7%) of private industry nonfatal occupational injuries among all industry sectors (Gomaa et al. 2015). For example, in 2013, nurses and nursing assistants in state/government institutions had occupational injury rates of 13.6 cases and 19.2 cases per 100 workers, respectively, while the national average across all industries was 3.7 per 100 workers (Bureau of Labor Statistics 2013). Given these numbers, it is not surprising a recent United States Department of Labor Secretary identified the health care industry as a major source of all U.S. workplace injuries: "We remain concerned that more workers are injured in the health care and social assistance industry sector than in any other, including construction and manufacturing" (Occupational Safety and Health Administration 2011).

Working within the health care industry has been shown to be inherently dangerous. Despite the staggering rate of injury and illness and its enormous cost to the health care industry, no report about the occupational wellness of the health care workforce has catalyzed an industry response as *To Err Is Human* (1999) did for patient safety. As

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such, the purpose of this paper is to propose an overarching model to integrate research on patient safety and employee safety so that both may be addressed simultaneously.

The Patient Safety Movement

Following the release of the IOM (1999) report, health care organizations were encouraged to develop an organizational environment to support the definition and creation of a culture in which patient safety was a critical organizational priority (Sammer, Lykens, Singh, Mains, and Lackan 2010). This safety movement was further bolstered by government agencies and health care organizations demanding patient safety become a key indicator of health care quality. Leading this initiative, the Joint Commission established the National Patient Safety Goals and promoted systematic tools, such as Failure Mode and Effects Analysis, to foster proactive examinations of systems and processes that contribute to safety failure (Joint Commission Resources 2010). The Agency for Health care Research and Quality (AHRQ) adopted the following definition of patient safety culture, which remains widely used throughout the industry (Sammer et al. 2010):

> The safety culture of an organization is the product of individual and group values, attitudes, perceptions, competencies, and patterns of behavior that determine the commitment to, and the style and proficiency of, an organization's health and safety management. (Health and Safety Commission Advisory Committee on the Safety of Nuclear Installations 1993)

Using this foundational definition, AHRQ developed and instituted the patient safety measurement tool "Hospital Survey on Patient Safety Culture" in 2004. Since its initial launch, AHRQ has continuously adapted the tool in an attempt to measure the "safety culture" within organizations including hospitals, medical offices, ambulatory surgery centers, and nursing homes. The patient safety culture tool measures a variety of sub-areas and serves to help health care organizations better understand their employees' beliefs about the culture of safety and how it interacts with patient care. While there are a number of safety culture tools and components, Sammer and colleagues' (2010) literature review categorizes the general properties that contribute to creating a robust patient safety culture. The categories include leadership, teamwork, evidence-based care practices, communication (e.g., speaking up), learning (the organization's learning capacity), just (errors are recognized as system rather than individual failures), and patient-centered care. These factors are critical to organizations (or units) creating an optimal patient safety culture in which preventable adverse patient safety events are reduced and outcomes are optimized (Sammer et al. 2010).

Employee Safety Climate

Safety in the realm of patient outcomes and care is delineated by the term "safety culture." Safety culture (also referred to in the organizational literature as safety climate; see paragraph below) is meant to describe the values, norms, and assumptions held by employees regarding the safety in an organization (Reiman and Rollenhagen 2014; Sammer et al. 2010). These deeper values are often reflected in and measured by shared perceptions of existing safety policies, procedures, and practices (Flin 2007). That is, safety climate (or culture) is a snapshot in time of employee beliefs about safety, linked to specific and identifiable policies and practices (Flin 2007). Thus, in this paper, we use the term "safety climate" when we refer to facets of both patient safety and employee safety.

Specific to employees' well-being, a climate of safety exists within organizations and reflects employee perceptions of the organizational climate and leadership, as well as experiential factors (e.g. being injured at work). Employee perceptions foster individual opinions of the workplace as potentially harmful or safe for the individual (Carr, Schmidt, Ford, and DeShon 2003; Parker et al. 2003). Referred to as "employee safety climate" in the occupational health and safety literature, it reflects a broad concept encompassing employee perceptions of safety practices, safety knowledge, organizational safety policies, and safety training among other factors (McCaughey DelliFraine, McGhan, and Bruning 2013; Neal, Griffin, and Hart 2000). In keeping with the established norms of the extant occupational health and safety literature, in this paper we use the term employee safety climate when we refer to facets of employee health and safety.

From a holistic perspective, health psychologists argue that employee safety climate is a critical component of "healthy" work environments (Danna and Griffin 1999). Workplaces characterized by high injury risk, violence, high strain, and chronic stress have been linked to adverse health outcomes for the employees such as burnout, high injury rates, and depression (Danna and Griffin 1999; Clarke 2006). Additionally, a workplace-derived injury or illness can shape employee climate perceptions and influence subsequent workplace performance/behavior (Colley, Lincolne, and Neal 2013; McCaughey et al. 2014).

Given the high injury/illness rates of health care workers in the U.S. and the negative effect a poor employee safety climate has on employee and organizational outcomes, it seems intuitive to bring it to the forefront of organizational priorities in health care. Equally deserving focus is a research agenda examining and integrating the factors of patient safety with facets of employee safety thus providing organizations with a synergistic opportunity to optimize safety outcomes for all.

Flin's (2007) review of the health care safety literature identified inconsistencies across safety climate definitions, the interchangeable use of the terms safety climate and safety culture, and the lack of specific theoretical work to delineate antecedents of employee and patient safety. Also identified in the review was a lack of health care specific studies examining patient safety and employee safety climate concurrently and its relationship with negative outcomes for employees and patients. In highlighting industry best safety practices and evaluating them with regard to health care studies, Flin (2007) proposed the Model of Safety Climate and Injury Outcomes. This model attempts to address the limitations noted above while accounting for the duality of employee/patient safety outcomes with Flin's use of the term "safety climate" to encompass the dual ethos of employee safety climate and patient safety climate. The existing safety climate may contribute to motivation (e.g., expectations for outcomes of particular behavior) and unsafe behaviors (e.g., rule breaking and risk taking), potentially resulting in errors leading to patient and/or worker injury (Flin 2007). The frequency and degree of employee and patient injuries necessitate the need for this type of model, allowing for the examination of adverse event pathways and the determination if processes contributing to errors and injury are the same for employees and patients.

Integrating Patient and Employee Safety Climate

Flin's (2007) review of the safety climate literature is one of the first to propose similar antecedent pathways that lead to both patient adverse events (e.g., "never events," which are serious, but largely preventable, clinical events (National Quality Forum 2011) and employee adverse events (e.g., back injury). Here, existing information on safety climate is adapted for the health care environment. The result is the establishment of an antecedent safety climate that is defined by employee perceptions of the prioritization of safety at the organizational level (senior management) and the department/unit level (supervisor). These beliefs may then serve as the primary antecedent for employee safety motivation and subsequent behaviors, which in turn may lead to errors that result in adverse safety events for patients and employees.

Employees in health care organizations are often faced with difficult choices; when pressed for time should one follow a more time-consuming safety protocol or engage in an action that may be more expeditious but puts the patient and care provider at increased risk for an adverse event or injury? Low commitment to safety procedures results in taking unsafe actions that may be the starting point for an adverse event (Flin 2007). Integrating the model to examine patient and care provider safety provides a framework for health care organizations to influence individual care provider behavior while targeting safety improvement for both members of the safety dyad.

Although Flin's (2007) model highlights the potential for integration, research examining safety climate has been slow to do so. There is, however, a beginning movement by prominent institutions to recognize the synergistic relationship between the outcomes for employees and the patients for whom they provide care. The Joint Commission's monograph, *Improving Patient and Worker Safety* (2012), identifies synergies for addressing safety climate for patients and care providers. Specific to the health care industry, the Occupational Safety and Health Administration (OSHA) has identified organizational safety climate as being the key foundation for linking patient and employee safety programs and outcomes (OSHA, n/d). Finally, the National Patient Safety Foundation has specifically linked the climate and environment of health care organizations to patient and care provider outcomes (Gandhi 2015). These industry leaders may provide the needed catalyst for a call to action regarding care provider safety as *To Err Is Human* (1999) did for patient safety.

Next Steps: Integrating Safety Outcomes

An agent to assist this catalyst is a guiding framework for integrating and identifying mechanisms that minimize adverse safety events for patients and care providers. While instrumental to understanding the individual pathways for employees and patients, Flin's (2007) model does not capture the multiplicity of workplace factors in adverse safety events. Such factors include staffing levels, process training, safety training, team cohesiveness, coworker support, and the environment for safety actions (such as stopping processes and error reporting). To address the complexity of the environment, a framework accounting for organizational influences on employee actions is critical to a research agenda linking patient and care provider safety.

The National Institute for Occupational Safety and Health (NIOSH) framework was developed to capture workforce factors and to identify how organizational practices influence work-life quality and the subsequent effect on employee on-the-job safety and health. NIOSH's framework guides occupational safety and health research by examining the factors contributing to employee illness and injury (Sauter et al. 2002). In this framework, the pathways to employee adverse safety events are posited to be similar to patient adverse safety event pathways. Here, occupational illness/injury occurs as a result of exposure to "psychological stressors" and "physical hazards." Psychological stressors include common work factors such as high demand/low control, role conflict, and fatigue. Physical hazards include ergonomics, exposure to pathogens, over exertion, and workplace violence. Physical and psychological hazards exist in organizations that potentially foster adverse patient safety events in the same manner or pathway they do for employees.

NIOSH's framework offers the underpinning to integrate patient safety and employee safety and has been found to be a valid foundation for occupational health and safety research (McCaughey et al. 2013a; McCaughey, Turner, Kim, DelliFraine, and McGhan 2015). A recent review of the antecedents of health care employee injury validated the framework's pathways for preventing adverse safety events in the health care environment (McCaughey, Kimmel, Lukas, Walsh, Savage, and Halbesleben 2016).

Instances of adverse safety events are influenced by the "organization of work," which includes external forces, organizational practices, and work processes that all guide job design (Sauter et al. 2002). External factors are the economic, legal, and regulatory forces influencing how health care functions at the organizational level. Organizational practices are the structures and processes that lead and direct the organization. Work processes are the local job demands and conditions within a specific workplace. These factors are all aligned with the structures and processes driving improvements in patient safety climate.

Across industries, the emergence of management safety actions/leadership as a dominant dimension of employee safety climate perceptions is well established (Flin Mearns, O'Connor, and Bryden 2000; McCaughey, Halbesleben, Savage, Simons, and McGhan 2013b). Flin and colleagues' (2000) examination of the various safety climate scales utilized across industry sectors found perceptions of management behavior and attitudes toward safety to be the most commonly assessed factor in safety climate studies. A similar review of safety climate scales used specifically in health care also found management to be the most commonly assessed safety climate factor as well as being a significant positive factor in many outcomes (Flin, Burns, Mearns, Yule, and Robertson 2006). Patient safety is also optimized in work environments that value teamwork, have open and honest communication, support a blame-free environment, learn from previous adverse safety events, and utilize evidence-based information to drive best practices in all facets of care provision (Sammer et al. 2010).

Continuing with the NIOSH framework, another antecedent to adverse safety events is "safety and health services and programs." Safety and health services and programs include workplace safety programs, wellness initiatives, occupational training, teamwork efficiency training, conflict resolution training, leadership, and work/life balance initiatives. The organizational and work contexts influence specific job characteristics which may increase employees' exposure to psychological stress and physical hazards ultimately resulting in increased risk for adverse safety events for patients and employees (Sauter et al. 2002). These hazards can potentially be ameliorated by safety and health services and programs, which may moderate the risk and act as a resource allowing employees to deal with psychological stress and physical hazards more effectively. Given its multi-factorial approach, the NIOSH model provides a framework to evaluate, reduce or even prevent adverse safety event antecedents on multiple levels as well as assessing the impact of job design and managerial practices on patient and employee safety climate (McPhaul and Lipscomb 2004; Sauter et al. 2002).

Conclusion

The purpose of this integration of the patient safety and employee safety climate literatures was threefold. The first was to identify the industry impetus for the growing attention to patient safety climate while simultaneously examining the comparative inattention to employee safety climate. The second was to apply Flin's (2007) model as a guide for integrating the antecedents of patient safety climate and employee safety climate to propose a single model of employee behavior pathways that can impact the occurrence of adverse safety events for patients and employees. The final purpose was to apply the NIOSH (2002) framework to an integrated safety climate for health care organizations so optimal safety environments can be developed with the end goal of improving outcomes for patients and employees.

Reducing the excessive rates of adverse events experienced by care providers and patients is a critical need for health care organizations. Organizing safety climate studies around an evidence-based, conceptual framework offers managers and other leaders the opportunity to identify adverse safety event antecedents and address these with relevant safety programs with targeted prevention strategies. These initiatives can present significant challenges when designing and structuring work processes, determining staff and support needs based on unit specific work demands, and training organizational leaders to promote a positive and safe workplace for all. The integration of research on patient and employee safety climate may lead to innovative interventions designed to improve the organizational environment and reduce adverse safety events for care providers and their patients. One promising innovation is examining the dyadic relationship between care providers and patients and how that relationship impacts the safety climate. Synchronous integration of safety antecedents may be one avenue for achieving health care's goal of preventing patient adverse events while fostering a safer work environment for those providing the care.

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V. LERA Best Posters

Changes in the Power of the HR Executive in Japanese Firms 1990–2015

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This research explores how the power of Japanese human resource (HR) executives has changed over the past 25 years. Our original panel data on the board members of Japanese large firms reveals that (1) the proportion of firms with HR executives has greatly decreased, although the proportion of firms with corporate planning (CP) and financial executives remains almost unchanged; (2) the proportions of firms with HR executives doubling as CP or financial executives have increased; and (3) the proportion of firms with corporate administrative executives supervising HR executives has increased. The power of current Japanese HR executives is more vulnerable and dependent on other functional executives than in the past.

Hard or Soft Forms of Conflict: Workers' Perception in the US, the UK, and Canada

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Private sector unions are in decline. Their future is dependent on engaging workers to the point of active participation. Previous research has demonstrated that such participation is preceded by the development of some level of member loyalty. Our study examines key antecedents to union loyalty and identifies a key mechanism through which these factors work. Specifically, we find pro-union attitudes and union instrumentality to be significant predictors of union member loyalty. Additionally, procedural justice perceptions mediate the relationship between antecedents and loyalty. Thus, our findings reflect the view that union socialization may be important in developing member loyalty.

VI. Occupational Regulation in the Age of Uber

Licensure or License[1]: Reconsidering Occupational Regulation

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Introduction

The scope of occupational licensing in the U.S. has grown enormously in recent decades. For example, in the 1950s it was estimated that fewer than 5% of workers in the U.S. needed a license to work at their jobs. But by 2008, this figure was close to 30%. In 2003 CLEAR estimated that more than 800 different occupations were licensed in at least one state, while today more than 1,100 occupations are said to be subject to licensing, certification, or registration requirements,[2] although both the occupations and their numbers vary greatly across the states (Council of State Governments; Kleiner and Krueger 2013; CLEAR).

Until fairly recently, occupational licensing was a subject that was largely ignored—not just by labor economists, but by the general public as well. The pros and cons of requiring a license to practice certain occupations were not much talked about and certainly not subject to much criticism. After all, licensing could be said to protect consumers from incompetent or disreputable practitioners (think doctors here). It could also be said to ensure a high level of quality of service (dieticians and barbers, for example). As of late, though, occupational licensing has begun to attract a growing and increasingly vocal stream of critics. The criticisms reflect a number of concerns. For example, it has been alleged that too many occupations now require a license to practice and that the requirements for attaining a license in terms of costs and length of training are often excessive. Complaints have also been made that higher prices for the services provided by licensed practitioners are too often the result and that the benefits to consumers in terms of higher quality are sometimes nonexistent. Finally, it has been charged that excessive licensing has resulted in adverse effects on employment opportunities and worker mobility, especially for those with lower levels of education.

In light of this new and growing criticism of excessive occupational licensing, what are the prospects for deregulation—or what we shall refer to as "de-licensing"? This is the subject of our paper. In the next section, we discuss in more detail the reasons for the growing concern and criticisms that occupational licensing is facing. We then analyze the efforts that nine states to date have taken in the past four years to deregulate (de-license) certain groups of occupations.

These de-licensing proposals have generally not gone through the usual sunset review process. The sunset review process mandated in many states involves periodic assessments of licensed occupations and licensing boards as well as their possible termination unless continued by the legislature. Finally, we examine whether there are any particular state characteristics—economic, demographic, or political—that seem to increase the likelihood of de-licensing activity or proposals. We know of no theories of de-licensing per se, but there is a small extant literature concerning the various factors that tend to be associated with the *passage* of licensing legislation. Could some of these same factors explain recent attempts to de-license occupations?

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The Growing Outcry Against Occupational Licensing

Although the "case" against occupational licensing was first made popular by Milton Friedman (1962) more than 50 years ago, the hue and cry against it did not gather much popular support until the last decade.[3] The reasons for the turnaround are several. First, licensing has spread into occupations for which the protection of the public hardly seems necessary and, in some cases, where requiring a license to practice seems ludicrous. For example, in a list of what he refers to as the nation's "most outrageous licensing laws," Adam Summers notes that fortune tellers require a license in Maryland, junkyard dealers in Ohio, rainmakers in Arizona, and manure applicators in Iowa (Summers 2007, p. 43). Furthermore, yoga instructors are licensed in more than a dozen states, while eyebrow threaders and art therapists are among some newly licensed occupations.

The long-accepted argument that licensing raises the quality of services provided to the public has not in fact been strongly supported by the evidence. As Morris Kleiner has found, "Overall few studies have shown significant benefits of occupational regulation on the quality of service received by consumers …" (Kleiner 2015, p. 13).

There is a growing realization that, by restricting entry into occupations through the requirement of a license to practice, the result can be fewer employment opportunities (especially for those with lower levels of education) as well as higher prices for goods and services. This has been the motivation for several recent state legislative proposals to deregulate certain occupations.

Finally, calls for licensing—as well as resistance to de-licensing—almost never originate from consumers, but rather from practitioners in the occupation itself, who often see licensing as a means to create economic rents by protecting themselves from competitors. Moreover, in virtually all cases when an occupation is newly licensed, existing practitioners are exempt from the licensing requirements by grandfather clauses.

The recent stream of criticism alluded to earlier has emanated from many channels: economists, the news media, and various state governments. In the case of economists, for example, as Morris Kleiner noted as late as 2000:

> [E]ven though occupational licensing has historically been among the most examined institutions in labor economics [see, for example, Adam Smith] this institution has received relatively little *recent* [present authors' italics] attention, either from academics or the public policy press. An examination of the *American Economic Review*, *Journal of Political Economy* and the Q*uarterly Journal of Economics* found no articles published in these journals on occupational licensing during the past five years. (p. 190)

However, over the 15 years since Kleiner's observation, our search of EconLit has uncovered at least 32 economics articles or books published since then with "occupational licensing" in the title and more than 3,100 text mentions of the term. A search of Google Scholar, which casts a much wider net than EconLit because it searches scholarly literature across all disciplines, reveals 112 published works with "occupational licensing" in the title, and more than 65,000 text mentions of the term since 2000.

The news media have also not been reluctant to unleash criticism of certain licensed occupations and the excessive costs and restrictions that licensing often requires for one to become licensed. For example:

- A 2014 article in *The New Republic* asks, "Does a 'Shampooer' Really Need 70 Days of Training?" (Vinik 2014).
- In "Practicing Unlicensed Geology" (*The Ledger,* December 20, 2007), it was reported that a man at a public hearing in Florida who spoke out against a proposed sand-mining operation was slapped with a "cease and desist" court order for practicing geology without the required license.
- The news article "Court Says State Law Has Teeth" (Barron 2007) related the situation of a *manufacturer* of dentures who was forced to quit his practice because the Wyoming high court ruled he was practicing dentistry without a license.
- "It's Illegal for Monks to Sell Caskets in Louisiana," reported *Bloomberg Business Week* (June 1, 2012). Until recently, only licensed funeral establishments could sell caskets in Louisiana.

- In "Louisiana Prunes Thorny Licensing Law," Tresa Baldas (2010) explains how Louisiana abolished a law that had required aspiring florists to pass a 4-hour-long floral arranging demonstration (exam) before they could be given a mandatory florist license. The demonstration was given before a panel consisting of (guess who?) licensed florists, who were obviously potential competitors.
- "So You Think You Can Be a Hair Braider?" asks a *New York Times* article (Goldstein 2012) that points out that an African hair braider could not practice her profession in Utah without a cosmetology license. The license would have required $16,000 in tuition for about two years of cosmetology school training—training that did not even include African hair braiding.

In light of the growing criticism of excessive occupational licensing, what are the prospects for "de-licensing"? And through what channels could effective de-licensing take place? If history alone is any indication, the prospects for widespread de-licensing would not seem to be very promising. To explain further, our recent research (Thornton and Timmons 2015) on occupational deregulation attempts over the past 40 years has uncovered only eight cases of an occupation licensed at the state level being de-licensed by legislative action (none all that recent). They are:

- Barbers in Alabama (1983)
- Morticians in Colorado (1971)
- Naturopaths in Virginia (1972)
- Private investigators in Colorado (1977)
- Egg candlers in Colorado (1994)
- Interior designers in Alabama (2004)
- Watchmakers in Minnesota (1983) and in Wisconsin (1979).

What is interesting is that in half of these cases attempts to re-license the occupations followed soon afterward (perhaps reminding one of the popular "Whack-a-mole" arcade game?) And in one case, the attempt was successful, with the practice of barbering once again (as of 2014) requiring a license in Alabama.[4]

Furthermore, as noted earlier, most states have a sunset review process that involves periodic reviews (usually called "legislative audits" or "performance audits") of licensing and licensing boards and their possible termination unless continued by the legislature. In theory, the legislature's decision to terminate or continue is based on the sunset review panel's recommendation. But in fact, these audits nearly always recommend the continuation of licensure. And even when recommendations are made to remove licensing, the legislature generally ignores the recommendation. Strong special interests are often very effective in resisting calls to de-regulate a particular licensed occupation. After all, practitioners potentially have much more to lose should their profession be de-licensed than consumers (on an individual basis) have to gain. A good example is the case of cosmetologists, whose professional association (the PBA, Professional Beauty Association) has fought hard against deregulation of their profession. For example, in 2012 a bill was introduced in the Indiana General Assembly that would have eliminated mandatory licensing for cosmetologists, as well as for a number of other occupations. However, only a week after the bill was introduced, it was withdrawn by its sponsor. The reason given was the loud public outcry opposing the bill, coming mainly from cosmetologists. More than many other professional associations, the cosmetologists have been very aggressive in their attempts to ward off de-licensing. On the PBA website, the PBA Director of Government Affairs warns members to "Beware the 'D' word: occupational licensing under attack." The warning further states that if the deregulation of cosmetology were to come about, anyone with no formal training would be able to practice cosmetology, thus putting consumers at risk of injuries, burns, infections, and the spread of diseases, such as hepatitis and methicillin-resistant staphylococcus, due to unsanitary practices. The PBA director also advises members to "Stand up for your profession! You have the knowledge and power to speak out against licensing proponents **[**sic: we presume that she means *opponents***]** and educate legislators in your state about the importance of education and the true risks consumers face without oversight of this hands-on industry…."[5]

Despite these obstacles, new avenues leading to potential deregulation have recently emerged. President Obama has spoken out against excessive licensing as a "job-killer" and in his FY 2016 budget included $15 million in funding at the Department of Labor to "identify, explore, and address areas where licensing requirements create barriers to labor market entry or labor mobility." ("Occupational Licensing: A Framework for Policymakers," p. 41). The problem, however, is that the licensing of occupations in the vast majority of cases is done at the *state* level. The federal government has little control. Nonetheless, in a recent joint report of the Department of the Treasury, the Department of Labor, and the Council of Economic Advisers ("Occupational Licensing: A Framework for Policymakers"), the substantial costs that occupational licensing imposes on workers and consumers were laid out, along with best practice recommendations to help ensure that occupational regulation might continue to protect consumers without "placing unnecessary restrictions on employment, innovation, or access to important goods and services" (p. 3).

Moreover, despite the fact that many professional associations (of which the PBA is only one example)[6] have taken up the hue and cry against occupational de-licensing, there is one institution in particular that has taken aggressive steps to push for occupational de-regulation. The Institute for Justice (IJ), which describes itself as a national law firm for liberty, has served as a pro bono advocate in numerous lawsuits filed by individuals restricted from practicing their trade or profession because of what it deems as overly strict licensing laws (e.g., hair braiders). The IJ has also published several research reports analyzing (and decrying) what it calls excessive occupational regulation, as well as "license creep." The latter refers to the expansion of definitional boundaries of some occupations, as in the case of eyebrow threaders being required to secure cosmetology licenses and horse-teeth filers being required to have veterinary licenses, for example (Carpenter et al., p. 32). The IJ's work has also received much favorable publicity (Bergal 2015).

Finally, and again very recently, attempts have arisen in a number of states to de-license *groups* of occupations rather than rely on the sunset process, which has turned out to be slow, costly, and largely ineffective. This is the subject to which we turn next. Where have such attempts arisen? Have they been successful? Where are such attempts likely to arise?

Recent State Proposals to Collectively De-license Certain Occupations

Since the year 2011, nine states have formulated legislative or administrative proposals dealing with occupational deregulation, including de-licensing. Table 1 contains summary information concerning the states, dates of the proposals, descriptions, and current status (see Thornton and Timmons 2015 for more discussion of these nine proposals). As can be seen from the table, the proposals generally share several common features.

Most of the state proposals (those of Florida, Indiana, Michigan, Missouri, New Hampshire, and Texas) would eliminate the licensing of a number (usually one or two dozen) occupations. The occupations suggested for de-licensing (arguably) do not concern public health or safety, and several (e.g., barbering and cosmetology) are proposed for deregulation in all of the state proposals. Many of the proposals have been predicated on the argument that unnecessary licensing restricts job creation and/ or opportunities for the disadvantaged. In a few cases (e.g., Missouri, Indiana, and Texas), proposals have been offered for stiffening requirements for future licensing.

The most striking observation from Table 1, however, is that the deregulation proposals to date have largely been unsuccessful. In most cases, the bills have either not been acted upon, have died in committee, or have been withdrawn because of political pressure. In most of the nine states (except for Connecticut), follow-up versions of the unsuccessful bills have later been advanced, only to meet similar fates.

TABLE 1
Recent Legislative or Administrative De-Licensing Proposals

State	Date(s)	Proposal	Description	Status
Connecticut	2013	SB324: An act requiring the Commissioner of Consumer Protection to undertake a study of occupational licenses.	Purpose is to recommend elimination of licenses for occupations where public health or safety is not an issue, as well as to eliminate unnecessary regulatory burdens on individuals and small businesses.	Has not been voted upon.
Florida	2011	A 2011 bill was passed by the Florida House that would deregulate 14 licensed occupations.	The occupations proposed for deregulation included auctioneers, athlete agents, hair braiders, interior designers, and fundraising consultants and solicitors. The bill encountered substantial industry opposition.	The bill was not passed by the Florida Senate despite the support of the governor.
Florida	2013	In 2013 bills similar to the 2011 bill (titled Deregulation of Professions and Occupations) were introduced in the Florida House and Senate (HB1189 and SB 720).		Both bills died in committee.
Indiana	2012	HB1006	Would eliminate mandatory licensing of barbers, cosmetologists, dietitians, hearing aid dealers, private investigators, and security guards.	Withdrawn after one week due to loud public outcry.
Indiana	2013	SB520	Would create a committee to "eliminate, reduce, and streamline employee regulation" [aka the "Eraser Committee"] and would eliminate mandatory licensing of 14 occupations over a 5-year period.	Bill failed to receive a hearing in the House.
Indiana	2014	SEA421	Act effectively encouraged occupations seeking new regulations to consider certification rather than licensing.	Act signed into law in March 2014.
Indiana	2014	Report issued by Jobs Creation Committee	Indiana General Assembly established the Jobs Creation Committee to assess licensing effectiveness. Report issued on 7/1/15 recommended de-licensing of several occupations.	No legislative action to date based upon report recommendations.
Michigan	2012	Several bills (including HB4688 Public Act 267 of 2014) that de-licensed dietitians	Michigan Office of Regulatory Reinvention (ORR) recommended the deregulation of 18 occupations (including dietician, forester, oculist, and polygraph examiner). Not all of the 18 occupations are licensed.	Several bills were passed in 2013 and 2014 deregulating occupations. Dietitians were
Minnesota	2012	HF2002, SF1629, "Licensing Relief and Job Creation Act"	Bill would allow a person practicing without a license in an occupation requiring a license to challenge the licensing requirement in court.	Bill was referred to committee and never voted on.

Minnesota	2015	A nearly identical bill (SF784) to the 2012 bill was introduced		Referred to committee: no action taken.
Missouri	2013	HB590	Bill would allow persons to practice the professions of interior design, barbering, and cosmetology without having to secure a license.	Referred to committee.
Missouri	2014	HB1891	Bill similar to HB590 expanded the number of professions mentioned in HB590 to 12, including massage therapists, embalmers, and athletic agents.	Died in committee.
Missouri	2014	HB1824	Bill would restrict the imposition of licensing requirements on occupations that were not regulated as of January 1, 2015. Principles were formulated to guarantee that individuals may engage in occupations of their choice "free from	Bill failed to receive votes to advance to floor.
New Hampshire	2011	HB446 (Repealing the Authority for Regulation of Certain Professional Occupations)	Bill would repeal the licensing of more than a dozen licensed occupations, including barbers, cosmetologists, massage therapists, hunting and fishing guides, and court reporters.	Bill was defeated in 2012.
New Hampshire	2012	HB1265 (Relative to Criteria for the Government Regulation of Occupations and Professions)	Bill would establish criteria for regulation of occupations and professionals by boards and commissions. Bill would also support certification ("volunteering licensing") rather than mandatory licensing.	In 2012, a legislative study committee recommended against advancing the bill to the legislature.
North Carolina	2011	HB587 (An Act to Promote N.C. Job Growth through Regulatory Reform)	Bill would create a study commission on occupational licensing to identify outdated and unnecessary occupational licensing laws that should be repealed as well as to study effective alternatives to occupational licensing laws.	Portions of the bill were incorporated into a Senate bill that was passed, but the provisions related to
Texas	2013	HB86 (Relating to the Criteria for Review by the Sunset Advisory Commission of an Agency That Licenses an Occupation)	Bill was not designed to de-license specific occupations, but rather to provide the Texas Sunset Advisory Commission with a broader set of criteria to be considered in continuing to license an occupation.	Bill was signed into law in September 2013.
Texas	2014	Staff report from Sunset Advisory Commission	Staff report recommended the de-licensing of 6 medical professions (e.g., dieticians, radiologic technologists, and perfusionists).	Final report to Texas state legislative removed the de- licensing recommendations.

As of the time of this writing, in only three states—Indiana, Texas, and Michigan—has there occurred what could be judged to be a limited success in occupational deregulation. In Indiana and Texas, several occupations have been deregulated (hypnotists and environmental health specialists in Indiana and opticians in Texas), but none of

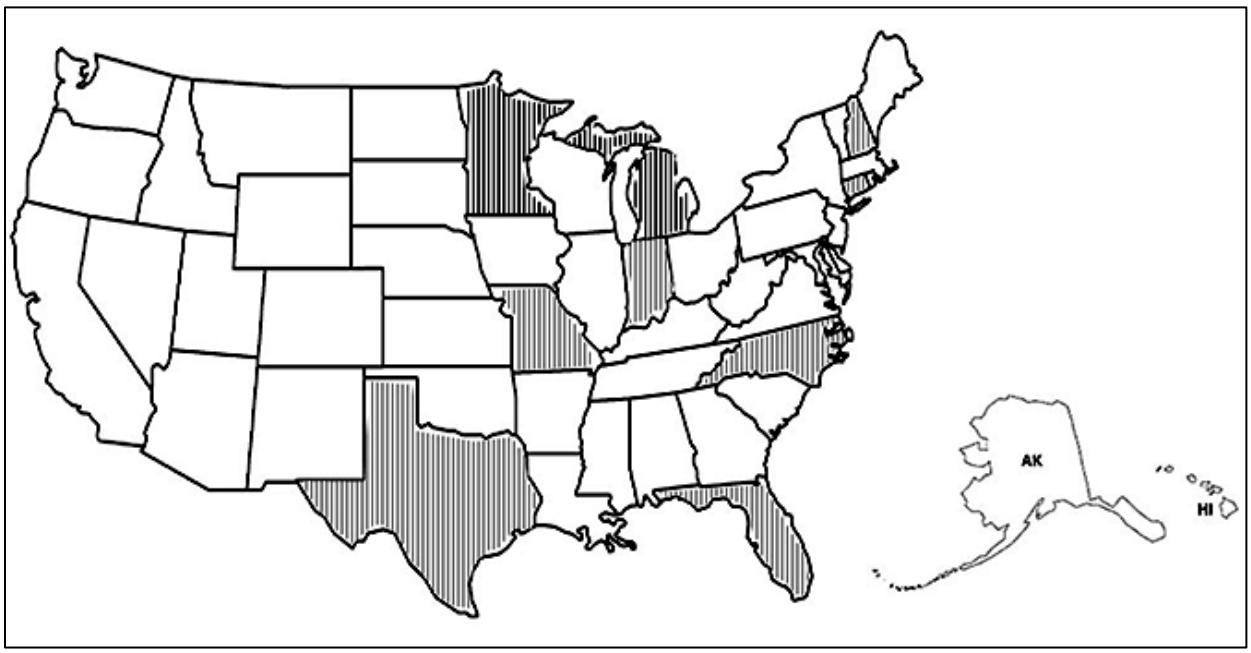
these occupations had previously been licensed. Rather they had been subject to less restrictive forms of regulation—registration or certification. Michigan has enjoyed somewhat more success. In all, seven occupations have been deregulated in Michigan in the last two years—auctioneers, community planners, dieticians/nutritionists, immigration clerical assistants, interior designers, oculists, and proprietary school solicitors. However, only dieticians/nutritionists had previously been licensed. The other six occupations had been subject to registration or certification requirements. Furthermore, another nine occupations (and/or their regulatory boards) have been recommended for deregulation (e.g., acupuncturist, polygraph examiners, occupational therapist, landscape architect), but no legislative action has yet been taken.

Explaining the Emergence of Deregulation Proposals[7]

Do these nine recent statewide attempts at collective de-licensing discussed above share any common characteristics? Other than the fact that most de-licensing attempts have taken place in the eastern United States (see states with shading in Figure 1), are there any other particular state characteristics—economic, demographic, or political—that seem to increase the likelihood of de-licensing activity? To answer this question, it would be useful to have a theory of deregulation or de- licensing. We know of no such theories, but there is a small extant literature that we briefly summarize below concerning the various factors that tend to be associated with the *passage*—the production—of licensing legislation. Could some of these same factors (or their absence) also explain attempts to de-license occupations?

In his classic article "The Theory of Economic Regulation," George Stigler (1971) used occupational licensing as an example of the use of the political process by practitioners of an occupation to benefit the group. He considered several characteristics of an occupation which he argued should affect the ability of the group to gain the necessary political power, including the size of the occupation (the larger the group, the more votes it has) and an urbanization measure. His regressions for a small sample of select occupations show only modest support for his theory, however.

FIGURE 1
States with Recent De-Licensing Proposals (as indicated by shading)



Smith (1982) empirically examined the extent to which changes in state occupational licensing laws reflected various political factors and the structure of state legislatures. Her explanatory variables include party concentration (the percentage of the state legislature belonging to the majority party), the number of constituents per legislator (the more constituents represented, the less costly for a legislator to support special interest legislation), and state per capita income. She finds that these and other factors are important for explaining the emergence of licensing laws over the period studied (1952-68).

Graddy (1991) analyzed changes in the number of states regulating five occupations (geologist, landscape architect, librarian, physician assistant, and psychologist) over the period 1968-1980. Her explanatory variables include various legislative variables (e.g., the proportion of the state legislature held by the majority party), various interest group variables (e.g., the number of professionals who are members of the major professional association), and various public interest variables. Graddy's logit regression results show that all three types of variables may be important in determining whether these occupations are regulated in the various states.

Could the same or similar political and economic variables that have been found to partially explain the passage of licensing legislation be also associated with the emergence of legislative proposals (albeit so far mostly unsuccessful) for de-licensing occupations? To analyze this question, we have estimated several regression equations, with the emergence of a bill to de- license over the years 2011-14 as the dependent variable (1=yes, as for the nine states discussed in the previous section, with some states having multiple attempts at de-licensing in that period). The state-characteristic independent variables that we have utilized are the following:

1. State per capita income
2. The number of low-income occupations that are currently licensed by the state
3. The state unemployment rate
4. The percentage of the state population that is minority
5. The percentage of the state population with a bachelor's degree or higher
6. Union density in the state
7. Whether the state is a right-to-work state
8. The number of constituents per legislator
9. A dummy variable indicating whether there was a Republican majority in the state Senate
10. The percentage of state legislators who are Republican

Table 2 presents summary statistics for each of these variables in the states for 2011–2014. The intuition behind most of the variables above is fairly straightforward: that both political and economic factors may also play a role in attempts to de-license occupations, just as the literature dealing with the determinants of the passage of licensing summarized above shows. For example, we have seen that the rationale offered for several of the state bills has been that excessive licensing laws have inhibited job growth (especially among minorities). Because practitioners of occupations that are licensed by the states are often members of professional associations or even unions (e.g., cosmetologists, nurses, plumbers) we would expect a negative association between de-licensing efforts and union density (with the reverse relationship expected in right-to-work states). For the variable specified as the percentage of low-income occupations that are currently licensed by the state, we have used a measure formulated by Carpenter et al. (2012) to gauge the "burden of licensure" for lower-income workers.

TABLE 2
Summary Statistics

Variable	Obs	Mean	Std. Dev.	Min	Max
Proposed Legislation	200	0.07	0.26	0	1
Right-to-Work State	200	0.47	0.50	0	1
Unemployment Rate	200	6.99	1.83	2.80	13.10
Per Capita Income ($000's)	200	43.48	6.55	32.11	62.47
Pct. Minority Population	200	19.91	12.20	4.53	74.13
Pct. College Degree	200	28.65	4.88	18.50	40.92
Union Density	200	10.46	5.34	1.90	24.60
Pct. Low-Income Occupations Licensed	200	42.63	10.44	23.53	69.61
Constituents per Legislator (000s)	200	43.26	49.31	3.11	323.35
Republican Senate Majority	200	0.57	0.50	0	1
Republican House Majority	200	0.59	0.49	0	1
Overall Pct. Republican	200	52.02	18.78	0	86.67

Data sources: Bureau of Economic Analysis; Institute for Justice; Bureau of Labor Statistics; Bureau of the Census; American Community Survey; Current Population Survey; American Community Survey; National Conference of State Legislatures; Council of State Governments.

Specifically, the variable looks at 102 occupations that are licensed in at least one state and that are recognized by the U.S. Bureau of Labor Statistics as ones in which practitioners' earnings are lower than the national average. The more such occupations that are licensed in a state, arguably the stronger the case that might be made for de-licensing.

To explore further the characteristics of these states, we estimate a probit model using the variables described above, along with time fixed effects and geographic fixed effects (in some cases). The effects of these variables on the likelihood of the proposal of a legislative de-licensing bill (hereafter *Proposal)* are displayed in Table 3. The model results in column 1 include only time fixed effects, column 2 includes time fixed effects and controls for census regions, and column 3 includes time fixed effects and controls for census divisions. Due to the small number of states proposing legislation, using either set of geographic controls causes the loss of some observations when there is no variation in the dependent variables within a given region or division.

In the regression results in columns 1, 2, and 3 respectively, there are statistically significant associations between the *Proposal* variable and the state's unemployment rate (positive), per capita income (positive), percent minority population (negative), and (excluding column 3) percent college degree (positive). The Republican Senate majority and Republican House majority variables are positive and statistically significant across all three versions of the model also. Our results seem to suggest that the composition of the House is more important in predicting the likelihood of a de-licensing proposal. A Republican majority in a state's House is associated with a 25 percentage point increase in the likelihood of a de-licensing proposal with a Republican majority in the Senate increasing the likelihood by as much as 15 percentage points. These results are not surprising, however, in light of the fact that it has been Republican legislators who have proposed most of the de-licensing bills in the nine states analyzed.

TABLE 3
Determinants of State De-Licensing Proposals: Probit Model Estimates

	(1)	(2)	(3)
VARIABLES	**Proposed Legislation**	**Proposed Legislation**	**Proposed Legislation**
Right-to-Work State	0.220 (0.617) [0.0202]	0.333 (0.714) [0.0299]	0.349 (0.681) [0.0366]
Unemployment Rate	0.842*** (0.261) [0.0770]	2.188*** (0.467) [0.195]	2.139*** (0.524) [0.224]
Per Capita Income	0.0982* (0.0509) [0.0090]	0.439*** (0.120) [0.0390]	0.453*** (0.124) [0.0474]
Pct. Minority Population	-0.0786*** (0.0234) [-0.0072]	-0.273*** (0.0657) [-0.0243]	-0.270*** (0.0995) [-0.0282]
Pct. College Degree	0.168** (0.0687) [0.0153]	0.232** (0.104) [0.0206]	0.130 (0.112) [0.0136]
Union Density	-0.0344 (0.0593) [-0.0031]	-0.0148 (0.125) [-0.0013]	0.0755 (0.137) [0.0079]
Pct. Low-Income Occupations Licensed	-4.703** (1.861) [-0.0043]	-15.89*** (4.643) [-0.0141]	-15.79*** (5.553) [-0.0165]
Constituents per Legislator	0.0039 (0.0038) [0.0004]	-0.0133 (0.0083) [-0.0018]	-0.0143 (0.0113) [-0.0015]
Republican Senate Majority	2.281*** (0.822) [0.1331]	1.722** (0.807) [0.109]	2.034** (0.885) [0.147]
Republican House Majority	1.522** (0.634) [0.0983]	5.075*** (1.585) [0.249]	4.678*** (1.738) [0.226]
Overall Pct. Republican	0.274 (2.454) [0.0003]	2.422 (3.861) [0.0022]	2.927 (3.867) [0.0031]
Constant	-15.99*** (4.906)	-34.31*** (7.777)	-32.62*** (7.922)
Census Region Controls	N	Y	N
Census Division Controls	N	N	Y
Observations	200	148	120

Robust standard errors in parentheses.

Marginal effects in brackets.

*** p<0.01, ** p<0.05, * p<0.1

We must emphasize that our analysis is simply a heuristic first look at some possible common characteristics shared by states that have seen legislative de-licensing proposals advanced within the last several years. Our results do not necessarily imply causal relationships between the composition of a State's House and Senate and its likelihood of a *Proposal*, or causal relationships between *Proposal* and other independent variables for that matter.

Conclusion

Where does this leave us? As we have seen, occupational licensing in the U.S. has grown rapidly in the past several decades. Over most of this period, there has been little concern over, and not much attention devoted to, this phenomenon. Most recently, however, concerns have arisen about the extent, the costs, and the job-killing nature associated with the licensing of many occupations. Despite this recent attention, though, the prospects for widespread de-licensing in the immediate future appear to be slim. First of all, past examples of successful de-licensing have been few—a total of nine (counting Michigan's recent de-licensing of dieticians) in the span of 40 years! If any widespread de-licensing is to take place, it will not likely occur through the sunset review process that operates in most states, which has proved to be slow, costly, and ineffective. Instead, such de-licensing is more likely to occur through state initiatives to de-license *groups* of occupations. Such initiatives, as we have seen, are more likely to arise in states with Republican majorities in the state House or Senate, as well as in states with higher unemployment rates, higher per capita incomes, and a higher proportion of college graduates. Still, these attempts have not so far resulted in a large number of occupations being deregulated, much less de-licensed.

Perhaps a recent comment from the executive director of CLEAR (Adam Parfitt) best summarizes the issue. According to Parfitt, "I think the atmosphere [concerning licensing] has changed in tone. Whether that's translating yet into widespread deregulation, I'd say probably not" (CLEAR, November 12, 2015).

Endnotes

[1] "License" 3(a): Freedom that allows or is used with irresponsibility (*Webster's Ninth New Collegiate Dictionary*).

[2] Licensing laws restrict the practice of an occupation to those who hold a license while certification laws restrict the use of the title, but not the practice, to those who are certified. Registration requirements merely stipulate that individuals practicing a certain occupation must list their names on some official register.

[3] In the 1980s and early 1990s, the Federal Trade Commission examined the issue of occupational licensing (e.g., Cox and Foster 1990), and the American Enterprise Institute (Rottenberg 1980) organized a conference on the topic. None of these activities resulted in significant legislative attempts to scale back occupational regulation, however.

[4] The Whack-A-Mole arcade game consists of a flat surface with several round holes. Each hole contains a single plastic mole and the machinery to move it up and down. Once the game starts, the moles keep popping up from their holes at random. The object of the game is to force the individual moles back into their holes by hitting them directly on their heads with a large soft mallet. The analogy to repeated re-licensing attempts is, we think, both apt and humorous.

[4] Myra Irizarry, "Beware the 'D' Word," Professional Beauty Association. The PBA also claims to have conducted a poll of 1,200 American voters in 2012, with the results showing that "more than nine in ten (94%) voters say that they support requiring their stylist, barber, nail technician or esthetician to be licensed."

[6] Respiratory therapist associations in Texas are also advocating against de-licensing of the profession rtfocus.com/signpetition/

[7] These recent statewide collective attempts are not the first to have been tried. In 1977, the Georgia legislature passed a bill ("An Act Providing for the Review, Continuation, Reestablishment, or Termination of Regulatory Agencies") that set termination dates for a number of licensing boards. But what ultimately happened was that, as the termination dates drew near, the legislature passed bills to halt the termination. For example, in 1989 Georgia scheduled the elimination of the licensing board for dieticians to take place in 1995, but the Georgia legislature then halted the elimination the year before it was to occur.

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VII. Distraction or Catalyst? Trade Agreements and Labor Standards

The Meaning of Labor Clauses in Free Trade Agreements

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The current debates on the Trans-Pacific Partnership (TPP) present diametrically opposed views on the impact of liberalizing trade. Union resistance to free trade agreements (FTAs) for the most part focuses on job losses. FTAs per se are not responsible for this; rather, American jobs are lost to lesser-developed countries because wages and working conditions are much lower. Labor clauses have been inserted in FTAs as a sign of the signatories' commitment to worker rights and fair labor standards. But labor clauses in FTAs have not been successful in meeting this concern. Despite being cast as the "highest" labor standards in an FTA, the TPP fails to set forth fundamental worker rights with any specificity and leaves the setting of "appropriate" working conditions to each country to decide. The current text of Chapter 19 of the TPP and in particular its footnotes result in worker rights that have little meaning and place a heavy burden of proof on those seeking to prove a violation. Without a stronger and more specific labor rights clause, there is little basis for worker rights advocates to raise a successful complaint, especially in light of the historically weak and slow dispute resolution process in American FTAs.

Introduction

After a decade of negotiations, the governments of 12 nations[1] signed the Trans-Pacific Partnership (TPP), a free trade agreement (FTA) on February 4, 2016. It now must go through the internal ratification process of each country within two years.[2] The TPP has generated much controversy, particularly during a presidential election year. The amount of controversy in some ways is surprising as the United States already has trade agreements with half of these countries.[3] In part, the criticism of the TPP reflects many Americans' growing frustration with the perceived impact of FTAs on jobs domestically. In part, it reflects the fact that the TPP is viewed as a harbinger of the future. As the Obama administration has already observed, more countries in future may join the TPP, thus raising the likelihood that its importance will be even greater than the impact in the 12 signatory countries. The TPP may also serve as the template for future trade pacts because, as U.S. Trade Representative Michael Froman says, the TPP "will set the rules of the road."[4]

The TPP is also viewed as affecting negotiations on another FTA. At the same time, the United States has been negotiating an FTA with the European Union (EU), called the Transatlantic Trade and Investment Partnership (TTIP) although progress has been slow. The trade ties between the United States and European Union member states are extensive and, in general, there are few disputes. Tariff barriers are already quite low (on average under 3%), such that the main attraction of the TTIP is the removal of non-tariff barriers. For the United States, the TTIP is unusual in that the United States for the first time is negotiating with an entity as large, as advanced and as wealthy as it is. The negotiations have been difficult because powerful companies in a given industry in different countries

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may hold sharply different views on issues such as what are appropriate automobile vehicle safety regulations as opposed to unnecessary regulatory barriers. This difference in opinion on the two sides of the Atlantic arises in other areas. In the European Union, unions are much stronger than in the United States and pro-labor views are advanced by social democratic parties. This has generated another area of tension in the TTIP negotiations since the labor clause in the FTAs the European Union has negotiated with other countries is stronger and more specific than the labor clause in American FTAs in that all EU FTAs expressly link worker rights to the ILO's eight core conventions (Agusti-Panareda, Ebert, and LeClerq 2015). European unions fear the loss of jobs, as more European Union companies may source goods and services from the United States, and in particular from certain states, where the rate of unionization is negligible and where wage costs and social benefits are much lower than in the European Union.

Responding to critics, U.S. Trade Representative Michael Froman has stated that the TPP "raises labor and environmental standards around the world to the highest level ever, and these are fully enforceable standards" (Council on Foreign Relations 2016). Froman may be technically correct in saying that the TPP has the highest level labor standards ever in an American FTA, but that is quite different from its being a "high standard" clause. Moreover, the assertion that it is fully enforceable is highly dubious as crucial rights are not only not defined but the TPP expressly severs the link to international instruments defining these rights. It is difficult to argue that the TPP's labor clause has real meaning because it is impossible to identify definitions of these rights on which the 12 signatory nations agreed.

The Specter of NAFTA

In the United States, the negotiations over the TPP were seen by many to be haunted by the ghost of the North American Free Trade Agreement (NAFTA). The 1993 NAFTA agreement opened a debate in the United States that has never ended; namely, whether that agreement benefitted the U.S. supporters and opponents of NAFTA have very different answers to that question, which may result from the fact that they understand the question differently. Supporters of trade liberalization stress that NAFTA has benefitted both the American and the Mexican economies. Opponents emphasize that the United States lost jobs to Mexico and that the loss of good-paying, middle-class manufacturing jobs has served as a significant restraint on overall wage rates, especially for the lower 40% of the labor force. In 1994, Ross Perot coined an especially memorable phrase—"that giant sucking sound from the south"—to describe the job losses in the United States that would ensue if NAFTA were approved. In contrast, President Clinton promised that NAFTA would create jobs in the United States. NAFTA did create jobs, but overall the number of jobs lost outweighed the number of new jobs.[5] Most obvious to average workers were jobs lost as American companies set up plants in Mexico.

The Impact on Jobs of Trade Liberalization

NAFTA has come to represent something much more than a free trade agreement. Rather, it has become shorthand for the impact of international trade (Scott 2013). The reaction in some quarters against liberalizing international trade stems from the perception that average working people face job losses and gain little as gains accrue elsewhere (Keller and Utar 2016). Job losses are not only visible to the average person but are real although until recently not widely acknowledged. In looking at the impact of trade with China on the United States from 1990–2007, researchers at MIT found that "rising imports cause higher unemployment, lower labor force participation, and reduced wages in local labor markets that house import competing manufacturing industries" (Autor 2013). This study found that import shocks triggered a decline in wages outside of the manufacturing sector, presumably due to the downward pressure on wages in other sectors from the job losses in manufacturing. The authors noted that reductions "in both employment and wage levels lead to a steep drop in the average earnings of households" and concluded that these changes "contributed to rising transfer payments through multiple federal and state programs, revealing an important margin of adjustment to trade that the literature has largely overlooked" (Autor 2013: 2159).

The major difference between 1993 and 2015 is that today the public is aware that there are winners and losers from increasing international trade. Rather than confront that reality, many proponents of liberalizing trade often give reasons to explain job losses that are unpersuasive, most notably that technology is the reason for these job losses. Within any one country, new technology may result in job losses, but technology is not the reason for job

losses in the higher-wage country when a company opens up a production facility (using the same level of machinery and technology) in a lower wage country; for instance, when shoe and garment manufacturers shifted production to low-wage countries in Asia. The attraction was extremely low wages. If proponents of further liberalizing trade often refuse to confront the reality of job losses, opponents exhibit a similar blindness. FTAs per se are not the reason for job losses. The demise of the shoe and garment industries in the United States was not due to an FTA.[6] Rather, it was simply that because it was so much cheaper to produce these labor-intensive products in low-wage Asian countries, it made economic sense for companies to shift production abroad, even in the absence of an FTA and with tariff barriers still in effect.

The Rights in Labor Clauses

The furor during the negotiations over NAFTA about the potential for jobs to move to Mexico because of low labor standards produced an innovation. Decrying low wages and unsafe working conditions, opponents of NAFTA called for fair trade, not simply free trade (Compa 2001). Congress's political response was to include for the first time, a statement in the FTA whereby the three signatory nations agreed to uphold a set of labor standards. This was clearly an afterthought, for this commitment was not expressed in the main body of the agreement. Formally named the North American Agreement on Labor Cooperation (NAALC), it is often (and aptly) labeled the NAFTA "side agreement." The idea of inserting a clause relating to labor in an FTA led logically to the question of what standards or principles should be included. In 1993, there was no obviously correct answer. One could argue in favor of listing general principles, or of referring to specific ILO conventions, or listing standards with reference to national law and practice (but that would then have led to the question of which country's law and practice should govern). Within five years, a ready answer became available.

The device of tying trade privileges to adherence to labor standards failed when proposed in December 1996 at the first World Trade Organization (WTO) Ministerial meeting in Singapore. The position taken by the WTO ministers was that there was a specialized UN body that handled such matters, the International Labour Organization (ILO), and as a result the WTO should not consider them.[7] Despite this setback, the adoption in 1998 at the International Labour Conference of the ILO Declaration on Fundamental Principles and Rights at Work proved over time a to be the vehicle for linking trade to workers' rights. The 1998 ILO Declaration contained a succinct statement of four fundamental principles that had been agreed to and receiving overwhelming tripartite acceptance at the June 1998 International Labour Conference. The 1998 Declaration set out four rights, "the principles concerning the fundamental rights which are the subject of those Conventions," namely:

- freedom of association and the effective recognition of the right to collective bargaining
- the elimination of all forms of forced or compulsory labour
- the effective abolition of child labour
- the elimination of discrimination in respect of employment and occupation

Those drafting an FTA and needing language for a labor clause turned readily to the principles set out in the 1998 ILO Declaration. Similarly, the "Labour" section of the June 2000 UN Global Compact lists four principles and repeats word-for-word the language of the 1998 ILO Declaration. Drafters of labor clauses in FTAs quickly seized upon the non-controversial four fundamental principles found in the 1998 ILO Declaration. All U.S. FTAs after 1998 have utilized them.

More recently, the four fundamental principles in the 1998 ILO Declaration have been cast in another light. In June 2011, the UN Human Rights Council unanimously endorsed the Guiding Principles for the Implementation of the UN "Protect, Respect and Remedy" Framework. This clarifies the meaning of the corporate responsibility to respect human rights. To do so, there had to be clarification of what rights businesses are supposed to respect. The Guiding Principles states that this obligation "refers to internationally recognized human rights" and lists the International Bill of Human Rights and the ILO's 1998 Declaration, and in the commentary expressly states these "coupled with the principles concerning fundamental rights in the eight ILO core conventions as set out in the Declaration of Fundamental Principles and Rights at Work" set the benchmarks for assessing human rights impacts.

From this, it seems evident that the UN Human Rights Council viewed the meaning of the ILO Declaration's four fundamental principles as incorporating the principles flowing from the eight core conventions (Bellace 2014: 184).

Meaning of the ILO Fundamental Principles

The 1998 Declaration expressly links eight core conventions to the four fundamental principles, two for each principle:

- Convention No. 87, Freedom of Association and Protection of the Right to Organise (1948) and Convention No. 98, Right to Organise and Collective Bargaining (1948)
- Convention No. 29, Forced Labour (1930) and Convention No. 105 Abolition of Forced Labour (1957)
- Convention No. 138, Minimum Age (1973) and Convention No. 182, Worst Forms of Child Labour (1999)
- Convention No. 100, Equal Remuneration (1951) and Convention No. 111, Discrimination (Employment and Occupation) (1958)

This linkage, however, is expressed in an elliptical fashion. Since most, but not all ILO member states, had ratified these eight core conventions, the International Labour Conference in 1998 considered the obligations of the non-ratifying states, such as the United States. The Declaration in Section 2 states that "all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership" in the ILO "to promote and to realize ….the principles concerning the fundamental rights which are the subject of those Conventions."

This direction given the member states is so elliptical as to raise questions. Regardless of whether they have ratified the core conventions, the member states are to promote and realize principles concerning rights expressed in the core conventions with each linked to one of the four principles. The question that logically arises is whether there is some difference in content or in specific obligations between a principle and the linked core conventions, and if so, what difference. There is no answer to that question. But the fact that the United States has refrained from linking the core conventions to the ILO principles in U.S. FTAs, whereas the European Union has not, indicates that there is an open question on this issue and opinions vary as to the answer (Bellace 2016).

Equally intriguing is the slight variation on the articulation of these four principles in the TPP[8] (Chapter 19.3), where it states:

> Each Party shall adopt and maintain in its statutes and regulations, and practices thereunder, the following rights as stated in the ILO Declaration: (a) freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labour; (c) the effective abolition of child labour and, for the purposes of this Agreement, a prohibition on the worst forms of child labour; and (d) the elimination of discrimination in respect of employment and occupation.

It is curious that the recital of the four principles is almost word-for-word the same as the recital in the Declaration itself, but with regard to child labor, it adds that there is a prohibition on the worst forms of child labor. Yet in 1999 upon the adoption of ILO Convention No. 182, Worst Forms of Child Labour, that convention was immediately linked to the principle regarding abolition of child labor in the 1998 Declaration (Bellace 2014: 179). For those familiar with the ILO's four fundamental principles, it was clear that the meaning of child labor is set forth in ILO Conventions Nos. 138 and 182. Why then was there a reason to insert the title of Convention No. 182 into the TPP's labor clause? One wonders if this implies that the detailed minimum age convention, No. 138, Minimum Age for Entry into Employment, does not govern the notion of what is child labor. That some country apparently felt a need to specify a particular convention as a way of explaining what one of the four worker rights meant might indicate that some of the signatories did not think that these four rights have specific meanings.

In light of the position taken by the 2011 UN Human Rights Council in its Guidelines on business and human rights, that the four fundamental principles are dependent on the eight core conventions for meaning, the question arises of how the 12 signatory nations view the four worker rights listed in Chapter 19, the labor clause of the TPP, and in particular, whether they are simply general concepts or phrases with specific legal meaning.

The Meaning of the Rights in Labor Clauses

This use of ILO principles in FTA labor clauses at first glance indicates governments' acceptance of these principles. Thus this link between FTA labor clauses and the 1998 ILO Declaration, which expressly refers to eight core conventions, implies a common understanding of what these principles mean. But, as has been noted, "in application, this link runs the risk of implementing inconsistent practices, namely, if the States or bodies established by trade agreements use the ILO instruments, as incorporated in their provisions, under a normative or legal meaning that deviates from that previously provided by the ILO supervisory bodies" (Agusti-Panareda, Ebert, and LeClerq 2014: 6).

Recent events in Cambodia illustrate that this risk is not merely theoretical. In 2001 the United States and Cambodia signed a Bilateral Textile Agreement that set quotas for textile imports into the United States. In extending this agreement in 2002, the U.S. Trade Representative's office stated: "The nine percent increase for 2002 reflects Cambodia's progress towards ensuring that working conditions in its garment sector are in substantial compliance with internationally recognized labor standards and provisions of Cambodia's labor law" and noted that the ILO and the United States had projects underway "assisting Cambodia with the implementation of its labor law."[9] Cambodia has ratified all eight of the ILO's core conventions. Yet in February 2014, at a time of violent labor confrontations in the garment industry, the Cambodian Federation of Employers and Business Associations (CAMFEBA) and the Garment Manufacturers Association in Cambodia (GMAC) ran large advertisements in local media saying the public had been misled over the right to strike. The ads stated: "The right to strike is not provided for in … [the ILO's Convention 87 on Freedom of Association] and was not intended to be. … Is the right to strike therefore a fundamental right? NO. The right to strike is NOT a fundamental right."[10] Called upon to respond, Tim de Meyer, a senior ILO official in Asia stated:

> The claims that the right to strike is not a fundamental right and that C. 87 does not establish a right to strike are not consistent with the position taken by the International Labour Organization and its tripartite constituency as a whole (i.e., governments, employers and workers) over a period of at least the last 60+ years.[11]

Although this statement is factually correct, the CAMFEBA (employers' federation) vice president, Sandra D'Amico, demanded that the ILO retract the statement since the "remarks in *The Phnom Penh Post* do not reflect global developments, tripartite consensus or interpretation of right to strike and convention 87."[12] This pressure from employers in a country dependent on exports (Kolben 2014) led the government to propose curbing workers' freedom of association. This April, the legislature passed a Law on Trade Unions that not only sets numerous conditions on the formation of unions but also severely constrains workers' ability to strike, for instance by required that workers who want to stage a protest receive permission from the factory owner to do so or face arrest (Cheang 2016).

This one example illustrates the problem of using the same language in an FTA's labor clause when the parties do not share a common understanding of a fundamental right. A problem arises concerning compatibility between decentralized systems of labor regulation and the global system based on ILO standards as defined within the ILO. If employers support an FTA with one understanding of what the labor clause means, and workers accept that FTA with another understanding of what the labor clause means, it calls into question whether the labor clause in FTAs has any utility beyond mere political convenience. As FTAs increase, this question of the meaning of the labor clauses in FTAs is likely to become more troubling. For instance, the TPP includes Vietnam, a country that does not permit free trade unions (although because of this glaring inconsistency with the principle of freedom of association, the TPP stipulates a "consistency" plan for Vietnam).

Governments' Commitments Under Labor Clauses

During the negotiating phase of the TPP, it was evident that certain countries fell far short of observing the fundamental principles. To stave off criticism that these countries would be permitted to benefit from this FTA, the United States devised a new approach, labeled a "consistency plan," whereby the United States stipulated certain actions the targeted country must take before the country would benefit from the tariff reductions in the TPP. This approach is unusual for a multi-state FTA in that it appears in a side agreement between the United States and the

country concerned as a bilateral commitment. There are three separate consistency plans, tailored to circumstances in the given country; namely, Vietnam, Malaysia, and Brunei.

Such labor clauses assume the signatories' willingness to guarantee the stipulated rights and to enforce them. Moreover, a labor clause assumes that one country is willing and able to monitor labor rights in another country and to enforce the labor provisions of the FTA if labor rights are violated in that other country. Both assumptions can be questioned. In November 2014, in studying FTAS then in effect the U.S. General Accounting Office (U.S. GAO) identified challenges to worker rights and pointedly noted "weaknesses in the Office of the U.S. Trade Representative's and DOL's monitoring and enforcement of FTA labor provisions," which even with some improvements between 2009 and 2014 still lacked a "strategic approach" and were "inconsistent with labor provisions in the FTAs" (U.S. GAO 2014: 1).

There is ample evidence that labor rights continue to be violated in countries that have entered into bilateral trade agreements with the United States. The resources for bolstering domestic enforcement of labor laws, investigating violations of trade pact labor provisions, and adjudicating complaints are often lacking. In some countries, ratifying the ILO's core conventions seems to have been the price to be paid to gain trading rights. Cambodia is one example where preferential textile trading rights was the goal. There is little indication that the Cambodian government in 2001 was truly committed to reforming its industrial relations and labor law system. As discussed above, the current adversarial and sometimes violent labor situation is indicative of continuing labor struggles as workers seek to gain recognition of their rights.

More troubling is the uneven pattern of U.S. activity in supporting labor rights in other countries, in part due to the priorities of different administrations (governments) and in part due to the perception of the severity of the violation.[13] The International Labor Affairs Bureau (ILAB) of the U.S. Department of Labor is tasked with providing technical assistance to other countries to assist them in improving labor standards and to monitor and regulate workplaces. To accomplish this, ILAB must be funded adequately. A cursory glance at the funding of ILAB since 1990, a period when there has been a great increase in the number of countries under FTAs that need to be monitored and assisted, reveals an erratic funding pattern indicative of lack of sustained political commitment on the part of the United States to undertake its responsibilities under the labor clauses of FTAs (Callaghan 2009). The cost of hiring, training, deploying, and retaining staff sufficiently knowledgeable about international labor standards, industrial relations, and conditions in lesser developed countries to work to assist those countries in improving labor standards is substantial. One must question why the government of a country would, on its own, seek to do this, especially when it is duplicating work already being done by the ILO and when easy alternatives, such as contributing to a special ILO fund to permit it to intensify its efforts in certain countries, are available.[14]

The innovation of consistency plans for those countries failing to comply with the four fundamental rights carries its own problems. The consistency plans are bilateral agreements between the United States and an individual country (Brunei, Malaysia, and Vietnam). Even more problematic is the approach itself, whereby one country goes into another country to assist it in applying international labor standards, an approach that is somewhat redolent of a colonial power telling its colony how to have better administration. There is a danger that the more advanced country providing technical assistance will utilize the meanings attached to specific international standards as generally understood in its own country, not necessarily the same as those understood by the global system. For the United States, this becomes particularly problematic with regard to freedom of association where the United States not only has not ratified Conventions Nos. 87 and 98 but where current law falls very short of assuring the rights guaranteed by those conventions. Particularly anomalous is the fact that United States has ratified only two of the eight core conventions, whereas Malaysia and Vietnam each have ratified five of the eight ILO core conventions, and are subject to oversight by the ILO supervisory bodies.

Other issues arise with this approach, such as which international labor standards the richer country focuses on. For instance, the United States has expended significant effort to reduce child labor in the countries with which it trades but had made much less effort to bolster freedom of association and collective bargaining. This may result from the individual rights perspective of the United States, or simply from the realization that encouraging the formation of unions and the development of collective bargaining might be controversial at home. But it is perplexing that a country can proceed to assist another country with implementing international labor standards without fully committing to do so at home.

Monitoring and Enforcement

Without precise, agreed upon definitions of what the standards in the labor clause mean, it is difficult to monitor compliance. Egregious violations will be noted, such as the murder of union officials or the deaths of workers in a factory fire where the fire escapes were locked. But even in these instances, enforcement may prove problematic as the experience of the United States itself demonstrates. Since 1993, no country that has signed an FTA with the United States has ever been fined or had its trade privileges revoked, even when severe infringements of freedom of association have occurred. The complaints procedure is designed to make enforcement difficult. Aggrieved workers must find another government that is willing to put forward their complaint (as their own government is extremely unlikely to do so). For labor complaints, there is nothing equivalent to the Investor-State Dispute Resolution process in the TPP or any FTA. Even if a complaint is filed, it languishes for years as discussions occur. Only one case has even reached the arbitration stage, that of Guatemala, and after eight years a decision is still pending.

The Undercutting of Any Meaning of the Labor Standards in the TPP

There has been little discussion until recently about the meaning of international labor standards. The Cambodia dispute mentioned above highlights one area that has become controversial; namely, freedom of association and the right to strike. The 1998 ILO Declaration uses the term "freedom of association" but does not expressly include the term "right to strike." Those who see a distinction between accepting the principles of the 1998 ILO Declaration and ratifying the linked core conventions view the principles as something more general, less specific than the conventions. At the 2012 International Labour Conference, major controversy arose when the Employers' Group asserted that Convention No. 87 does not protect the right to strike. This controversy is still simmering, although it is widely acknowledged that it is difficult to comprehend how workers in practice can utilize their freedom of association to form unions and achieve effective collective bargaining without the ability to strike. In light of this controversy over the critical question of what ILO fundamental rights mean, it is startling to find buried in the TPP's labor clause, in footnote 3 of Chapter 19, the statement that "The obligations set out in Article 19.3 (Labour Rights), as they relate to the ILO, refer only to the ILO Declaration." Only the cognoscenti would recognize that this means the four principles found in the ILO's 1998 Declaration have been severed from the eight core conventions. Without being moored to specific meanings, terms such as "freedom of association" mean what any signatory nation thinks it means. This then reveals the hidden agenda in the curious re-phrasing of the four rights in TPP's labor clause, Chapter 19. As noted above, in the recital of child labor, there was added the phrase that the worst forms of child labor are not permitted. Since the prohibition of "child labour" in Chapter 19 is now de-linked from the core conventions mentioned in the 1998 Declaration, we only know that children under 18 should not be permitted to engage in work dangerous to their physical or moral being. We do not know at what age they are permitted to work in a factory (which is stipulated in ILO Convention No. 138).

A further dilution of meaningful standards appears in footnote 4 of Chapter 19, which states: "To establish a violation of an obligation under Article 19.3.1 (Labour Rights) or Article 19.3.2, a Party must demonstrate that the other Party has failed to adopt or maintain a statute, regulation or practice in a manner affecting trade or investment between the Parties." It can be argued that trade and investment between the United States and many countries does not relate to compliance with worker rights or even the enforcement of basic safety standards. Bangladesh would be one such example. Another example is Guatemala where, in the current arbitration hearings, the position has been taken that egregious violence, including the murder of union officials, while conceivably dampening workers' enthusiasm for unions, does not affect trade. If this is correct, then footnote 4 in Chapter 19 would seem to make it extremely difficult to establish a violation of rights that have been stated in the main text of Chapter 19.

Even vaguer is the section on safety and health, Chapter 19.3.2 wherein it states: "Each Party shall adopt and maintain statutes and regulations, and practices thereunder, governing acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health." That this section might have any useful meaning is undercut by footnote 5 in Chapter 19, which states: "For greater certainty, this obligation relates to the establishment by a Party in its statutes, regulations and practices thereunder, of acceptable conditions of work as determined by that Party." In essence then, "the highest standard labor clause" as proclaimed by the U.S. Trade Representative takes the position that acceptable conditions of work are determined by each country, and there is no obligation to meet any agreed upon minimum. As long as a country has not set higher standards for work

conditions, it is difficult to see how any workers in that country who are aggrieved by unsafe and sweatshop conditions of work can complain under the TPP.

Once the text of Chapter 19 is read closely, and in particular, the footnotes are read, one might reasonably conclude that the labor clause in the TPP is essentially meaningless.

Next-Generation Labor Clauses

A truly "high standard" labor clause would specify that signatories are bound to observe, apply and enforce internationally recognized labor standards, and in particular the four fundamental principles set forth in the 1998 ILO Declaration *and* the linked eight core conventions. To avoid confusing and/or conflicting interpretations, such a clause would expressly state that "these rights should be understood in a manner consistent with that expressed by the ILO's supervisory system." Such a statement included in an FTA would lay the basis for a justiciable claim. But more is needed.

Dispute Resolution

Rather than the tortuously slow process for complaints arising under the labor clause of existing FTAs, what is needed is a form of dispute resolution with a long history in American labor relations; namely, arbitration. A speedy dispute resolution process needs to be designed. For instance, parties alleging violations of these rights would go through state-to-state dispute resolution, but only for two years. If at that point the matter was not resolved in a manner satisfactory to the complainants, the complainants (not a state party) could invoke arbitration, with that process to take place within one year. FTAs already include Investor-State Dispute Resolution Mechanisms for non-labor matters that permit foreign corporations to sue governments for what a company sees as unfair treatment. Rather than going to court, investors can compel governments to litigate the matter in a private arbitration system. This mechanism could be adapted to apply to labor matters. Workers in a country alleging that they are affected by unfair competition because of non-compliance with worker rights or labor standards in another signatory country could invoke a Workers–State Dispute Resolution mechanism and take their complaint to a private arbitration panel. Besides speed, another advantage would be that arbitrators would be selected for their knowledge of law (including international labor law) and practice, experience with labor matters, neutrality, and lack of susceptibility to political influence, factors that are not always found among judges in many countries, including the United States (Compa 2016; Kolben 2007: 244).

Whether such provisions would actually result in arbitration hearings is not clear, but the distinct possibility of going to arbitration would most likely have a beneficial effect in moving the offending state to take action (Banks 2011: 95). These provisions would persuade parties to observe labor standards that comport with the meaning generally accorded them in international law, and would likely compel parties to resolve violations promptly thus realizing workers' rights. The TPP as it currently stands is unlikely to produce that result.

Endnotes

[1] The 12 countries currently participating in the TPP are Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States, and Vietnam.

[2] The TPP can come into force if at least six of the original signatories who between them account for 85% of the group's GDP ratify the agreement. That can only occur if both the United States and Japan ratify the TPP since together they account for 80% of the group's GDP.

[3] Canada, Mexico, Singapore, Australia, Peru, and Chile.

[4] This phrase has been used consistently by the office of the U.S. Trade Representative on its website. See, e.g., ustr.gov/sites/default/files/TPP-Strategic-Importance-of-TPP-Fact-Sheet.pdf

[5] Economists disagree as to the exact number, as it is very difficult to disentangle the fact of the free trade agreement from other factors that would have resulted in manufacturing moving to Mexico, such as the devaluation of the peso.

[6] An example is Bangladesh. The Office of the U.S. Trade Representative reported that in 2013 Bangladesh imported $712 million in goods from the United States whereas it exported $5.4 billion in goods to the United States (ustr.gov/countries-regions/south-central-asia/bangladesh). The United States has no FTA with Bangladesh.

[7] Singapore Ministerial Declaration Adopted on 13 December 1996 WT/MIN(96)/DEC, available at www.wto.org/english/thewto_e/minist_e/min96_e/wtodec_e.htm

[8] ustr.gov/trade-agreements/free-trade-agreements/trans-pacific-partnership/tpp-full-text

[9] January 7, 2002, press release available at fordschool.umich.edu/rsie/acit/LaborStandards/LaborInUSCambodiaTextile.pdf

[10] Shane Worrell, "Groups tell ILO to retract 'right to strike' claim." The *Phnom Penh Post*, Feb 6, 2014. www.phnompenhpost.com/national/groups-tell-ilo-retract-%E2%80%98right-strike%E2%80%99-claim

[11] Id.

[12] Id.

[13] The author believes that a majority of people view child labor as particularly abhorrent but the suppression of unions, and even the murder of trade union officers, is not deemed as serious.

[14] The International Programme for the Elimination of Child Labour is one example where several advanced countries did contribute voluntarily to a fund so that the ILO could expand its efforts to eradicate child labor.

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VIII. $15 Minimum Wages: What Can the Research Tell Us?

Nonprofit Government-Funded Human Services and the 2015–2016 New York Minimum Wage Campaigns

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New York State enacted a statewide $15 minimum wage in April 2016. Among low-wage sectors heavily affected is the social assistance, or human services, sector with approximately 315,000 workers statewide. Most of these workers are employed by nonprofits providing services under government contract. As minimum wage floors rise, service delivery costs for labor-intensive nonprofits can rise significantly. This paper examines the efforts in 2015–2016 of nonprofit human service providers to get New York City and New York State to increase contract funding in $5 billion in human services contracts for the purpose of funding higher mandated wages.

Wage Floors and the New York City and State Nonprofit Human Services Sector

In the spring of 2013, New York State enacted an increase in its minimum wage to $9.00 an hour in three annual steps, with the first step an increase from the federal $7.25 minimum wage to $8.00 an hour on the last day of 2013 and the third step reaching $9.00 on the last day of 2015. In the 2015 legislative session, bills were introduced, but not enacted, to authorize the City of New York and other local governments to set their own minimum wages, up to a level 25% or 30% above the statewide minimum.

New York City Mayor Bill de Blasio took office in January 2014, and in September 2014 issued an executive order to expand and increase the minimum wage level to $13.13 an hour for the city's living wage law that applied to companies receiving substantial economic development benefits from the city. He did not act at that time to adjust the city's living wage law applicable to selected city service contracts. The service contract living wage affected workers in seven occupational categories (childcare, Head Start, temporary clerical, food service, building services, home health care, and workers providing services to people with cerebral palsy), with wage levels ranging from $10.00 an hour plus a $1.50 supplement for benefits if employer health insurance is not provided (for childcare, Head Start, and home care workers; and workers providing services to people with cerebral palsy) to $26.20 plus $10.46 for supplemental benefits for the highest class of building cleaner.[1]

With the exception of workers in these occupational areas, employees of nonprofit organizations providing human services under contract to the City of New York are exempt from coverage under the city's service contract living wage. An effort to include such workers in 2002 was rebuffed by nonprofit leaders on the grounds that the city under Mayor Michael Bloomberg was not prepared to adjust contract funding so that nonprofits could pay the higher wages.[2]

In late 2014, leading New York City nonprofit human services organizations began to organize to press Mayor de Blasio to increase human services contract funding connected to a first-ever wage floor in this sector.[3] Because of the importance of additional funding, the new campaign focused on the city budget rather than amending the

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service contract living wage. By early 2015, Mayor de Blasio was advocating a phased-in $15 minimum wage for New York City. In his FY 2016 budget proposal released in early May 2015, he included funding for an $11.50 wage floor for human services contracts plus a 2.5% cost-of-living adjustment (COLA) for human services contract workers paid above the $11.50 wage floor level. This was the first wage increase or COLA for such contracts since the onset of the 2008–2009 Great Recession. Dating back at least to the early 2000s (and possibly further back), the city had periodically provided additional funding to nonprofit human services contractors to give employee wage increases following the wage pattern negotiated under municipal labor contracts. Under de Blasio's predecessor, Mayor Bloomberg, the municipal labor contract round covering the years 2008–2010 had not been completed by the time Bloomberg left office at the end of 2013.

Establishing an $11.50 wage floor for human services contract workers occurred at the same time the city modified its collective bargaining agreement with District Council 37 of AFSCME to raise the pay of its lowest-paid members—school crossing guards—to $11.50 an hour. The city's FY 2016 budget, adopted by the city council in late June 2015, included $25 million to fund the $11.50 human services contract wage floor, effective July 1, 2015, and $29 million for the 2.5% COLA. In addition, at the request of the advocacy campaign, the new budget included $5 million to develop a sector-wide education and training system to provide career ladder services and supports for 80,000 nonprofit contract workers employed on city contracts.

Influenced by the national Fight for $15 campaign and the political clout of two large affiliates of SEIU, Governor Andrew Cuomo used his executive authority to convene a wage board in May 2015 to investigate the adequacy of compensation in New York's rapidly growing fast-food industry. The wage board held four hearings around the state in June and took testimony from policy experts and scores of fast-food workers. In July, the wage board recommended a phased-in $15 wage floor to be reached at the end of 2018 in New York City and by July 2021 in the rest of the state. The final wage order was issued in September 2015 and covered an estimated 122,000 workers in fast-food chain restaurants.[4]

At the time the final fast-food wage board recommendation was issued, the governor first suggested legislation to enact an across-the-board phased-in $15 minimum wage increase for all workers on the same timetable as specified in the fast-food wage order. The legislation would be introduced in January for the 2016 state legislative session. Using his executive authority, the governor announced in November that he was implementing a $15 minimum wage for all workers in the State University of New York (SUNY) system.

Not to be outdone in the jostling for policy leadership in proposing higher wages, Mayor de Blasio announced in early January 2016 that all city employees (mainly affecting a few thousand school crossing guards and seasonal parks employees) and all city-funded nonprofit human services contract workers would be covered by a $15 minimum wage. This announcement benefited approximately 50,000 workers—20,000 direct city employees and 30,000 full-time equivalent positions in the contracted human services sector. The mayor proposed the same phase-in schedule as for fast-food workers in New York City—hence, reaching $15 by December 31, 2018, and proposed that the city fund the wage increase for nonprofit contract workers. Mayor de Blasio included this funding—which would rise to $100 million annually when $15 was fully phased in—in his preliminary FY 2017 budget in January 2016 and in his executive budget proposal released in late April 2016.

The FY 2017 budget was adopted by the city council in mid-June. As was the case with the funding in the FY 2016 budget, the council supported the mayor's proposal to increase contract funding for the purpose of phasing in a $15 wage floor for nonprofit human services workers.

The nonprofit advocates pressing for city funding for higher wages launched a parallel statewide campaign in the fall of 2015 to seek increased state government wage increase-related funding in state and local government human services contracts. The coalition leaders released a public policy advocacy report outlining the need in December 2015.[5] The report noted that because nonprofits do not have any pricing power, an unfunded mandate to raise the wage floor affecting many of their workers might lead to increased caseloads and the curtailment of some services—and could lead to the closure of some nonprofits. The report also noted that if nonprofit human services workers were excluded from coverage under the higher wage floor, recruitment and retention issues that already pose a challenge to the sector would only be exacerbated. Based on preliminary estimates of $1.5 billion in state human services contracts, the coalition report estimated that a fully phased-in $15 minimum wage would require

approximately $250 to$300 million in additional funding, including some provision for moderate wage increases for workers paid slightly above $15 an hour, to avoid undue wage compression.[6]

As at the New York City level, part of the organizing work of the nonprofit coalition at the state level involved convincing other nonprofits that had previously opposed minimum wage increases to support the legislation for a $15 minimum wage and to press for the additional state funding to fund higher wages. Some of the organizations from the sector providing services to the developmentally disabled—a sector largely funded by Medicaid reimbursements but with average wages in the $11 to $12 range—had testified against a higher minimum wage for fast-food workers on the grounds that they could lose workers to the fast-food sector because fast-food work involves considerably less responsibility and is less stressful than serving the developmentally disabled population. For several years, the developmentally disabled sector had sought greater state Medicaid funding without success. During the early 2016 campaign, the sector serving the developmentally disabled supported the higher state minimum wage.

Several discussions were held with representatives of the state Budget Division and the governor's office to make the case for additional contract and Medicaid funding. One of the complicating factors was a rigid 2% state operating budget spending cap that the governor had instituted early in his first term. In practice, the 2% overall spending cap meant that funding for human services usually had declined in nominal terms from the prior year because Medicaid and local school aid—two budget categories accounting for about half of all state operating expenditures—had higher growth limits that had worked out to range from a little under 4% to 6%. This meant that human services and other spending (e.g., general-purpose local aid, higher education funding, and funding for parks and transportation services) had been falling in real terms in most years since 2012.

Throughout the campaign, the nonprofit coalition held fast in support of the minimum wage increase and actively worked to secure its passage even in the absence of any firm commitment from the governor's office to increase nonprofit funding.

The legislature, particularly the Democratic-controlled Assembly, was much more sympathetic and included in its budget proposal $200 million for additional funding for human services contracts and other state-supported mental hygiene and home health care services. While the Republican-controlled Senate publicly resisted the governor's $15 minimum wage proposal, there was some support from key Republicans for additional human services contract funding should the minimum wage increase be approved. However, the leadership of neither chamber was ready during the 2016 budget session to seriously challenge the governor on his 2% spending limit.

In the broader New York $15 minimum wage campaign in the early months of 2016, the governor and advocates highlighted the need for a higher minimum wage to enable workers to meet family budget needs and stressed the positive economic impact of additional spending by the 3 million-plus workers who would benefit from a phased-in wage increase.[7] To counter arguments asserting a negative impact on businesses, the Institute for Research on Labor and Employment (at UC Berkeley) released a report presenting an integrated analysis of the combined effects on business operations and consumer spending that showed small net employment effects and a significant improvement in living standards for low-wage workers.[8]

Even though Governor Cuomo's legislative proposal included a slower phase-in schedule for the suburban areas outside of New York City and for upstate, opponents argued that upstate businesses would have a much harder time adjusting to higher wages given weaker economic conditions than in the downstate region. Lower overall median wage levels for upstate areas were cited. In response, the Fiscal Policy Institute pointed out in a report that at a detailed occupational level for the largest low-wage occupations (e.g., retail clerks, cashiers, or stock clerks), median wage levels in upstate metropolitan areas were often within 5% to 10% of corresponding wage levels in New York City and the downstate suburbs and that in some jobs, such as retail sales, the highest median wage levels were in upstate areas.[9]

As a condition of supporting the higher state minimum wage, the Senate Republicans insisted on a longer phase-in period for the upstate region north and west of Westchester County. The enacted legislation calls for a $15 minimum wage to be reached in New York City at the end of 2018, in the three largest suburban counties (Nassau, Suffolk, and Westchester) by the end of 2021, and a level of $12.50 in the rest of the state by the end of 2020 with subsequent annual adjustments based on a yet-to-be-determined formula decided by the state budget office and labor department with the increases continuing until $15 is reached.[10]

The enacted New York legislation did not include provision for any inflation adjustment once the $15 level is reached. Without a built-in inflation adjustment factor, the purchasing power of the eventual $15 wage floor will be eroded in future years unless there are periodic adjustments.

The FY 2017 state budget that was adopted as part of a broader agreement to raise the minimum wage included $19 million to adjust Medicaid reimbursement rates for workers providing Medicaid-funded home health care and developmental disability services and to fund minimum wage increases for certain school districts and providers of special education services. The budget cost of these increases will rise to $588 million by state FY 2020.[11] However, the budget did not include funding to increase amounts for state human services contracts whose employees will be covered by the statewide minimum wage increases.

The reason for this disparate treatment of private sector workers providing state-funded human and health services likely has something to do with the fact that Local 1199 of SEIU represents tens of thousands of affected home health care and nursing home workers. The union also invested heavily in the pro-minimum wage campaign and was a co-leader along with 32BJ SEIU (the large New York City-based building service workers local) in the progressive campaign in support of the increase. Most of the nonprofit human services workers not covered by any spending increase in the budget are not unionized.

The Cuomo administration's position with regard to human services contracts is that they will consider possible contract funding adjustments on a case-by-case basis in instances where there is financial "hardship" for the organization. While the governor has voiced concern that some nonprofit executives are "highly paid," suggesting there is no need in such cases to increase government funding to raise pay for low-paid workers, some state officials indicate that the state's 2% spending cap is a key factor in complicating the ability of the state to fund human services contract increases.[12]

Purchase of Service Contracting

Settlement houses and various religious and other charitable organizations have a long history in New York City of providing a range of human services to low-income communities. The provision of government-funded human services grew sharply in the wake of the Great Society anti-poverty programs in the 1960s, and the scale of service provision has expanded significantly in the decades since, for a variety of reasons, and to meet a wide range of needs. Sometimes this programmatic growth was in response to developments such as increased female labor force participation, the AIDS epidemic, the increased number of elderly, or the deinstitutionalization of those with mental health issues. To take another example, federal welfare reform in 1996 pushed many mothers of young children into the paid workforce, increasing the need for childcare subsidies and after-school programs, and the TANF block grant that was part of welfare reform provided a funding source for more services for low-income households.

Almost from the start of the expansion in the 1960s, publicly funded human services provision has been channeled through nonprofit organizations rather than directly by employees of state or local government agencies. There was already a sizable infrastructure of charitable service providers, and new community-based organizations emerged as government funding increased. The decision to fund services through nonprofits was done to build on existing service networks, to foster community-oriented approaches to service delivery, and partly to keep costs down and limit the further growth in government agencies that had expanded in response to pressures from the civil rights movement and urban unrest in the 1960s. Nonprofits expanded their capacity along with growing human services needs and government funding opportunities. Nearly a quarter century ago, Smith and Lipsky noted that nonprofits had become the "favored tool of public service delivery."[13]

Beginning in the 1970s, and accelerating in the 1980s, the federal government devolved greater responsibility for providing and funding human services to states, which in turn relied on nonprofit contractors to deliver services.[14] As Fabricant and Fisher have written, while federal social policies in the 1960s and early1970s relied on contracting to overcome the limits of private charity and local and state governments, by the Reagan years and into George H.W. Bush's term, federal policies reoriented the federal role in order to end social welfare expansion and reduce reliance on unionized public sector workers.[15]

Within New York, the state has tended to rely heavily on local governments, particularly New York City, to share funding responsibility for public assistance programs and the delivery of most human services. In recent years, New York City has contracted out over $4 billion in human services delivery annually, primarily to nonprofit

organizations. An estimated 80,000 full- and part-time workers are supported under city contracts.[16] The state funds a significant share of contract funding in certain areas, like foster care, family homeless shelters, domestic violence, and AIDS-related services, but many program areas are largely, if not entirely, city-funded. In addition, the state directly contracts with New York City nonprofits to provide about $1 billion in services.[17]

Most nonprofit organizations providing human services have become heavily dependent on government contracts. While some service providers have become less connected to the neighborhoods from which they evolved years ago, many continue to reflect community concerns but have been limited by inadequate or inflexible public funding. For the past quarter century, many nonprofits have relied on government purchase of service contracts for 80% or more of their funding. For example, in 1993, 80% of the combined budgets of the 38-member settlement houses within the United Neighborhood Houses umbrella organization were from government contracts, and 80% of that contract total represented contracts with the City of New York.[18]

Most New York human services nonprofits were experiencing serious financial challenges even before the Great Recession of 2008–2009. The recession sharply reduced state and local tax revenues that resulted in several years of budget cuts falling heavily on the human services contract sector. With the historically weak economic and employment recovery of 2009 to 2013, human services funding was reduced at a time when economic hardships remained elevated, as indicated by the two-thirds increase in supplemental nutrition assistance recipiency in New York State during the recession and recovery.[19] In New York City, while overall city-funded expenditures rose by a slight 2% on an inflation-adjusted basis from 2008 to 2013, real spending on human services fell by 8%.[20]

Over the years, state and city contracts generally have left New York nonprofit human services providers in a precarious financial position. Following the abrupt bankruptcy and dissolution of one of the largest citywide multi-service nonprofits—the $250-million-a-year FEGS organization—a task force established by the umbrella Human Services Council reported that government contracts cover, on average, only about 80% of each dollar of "true program delivery costs." City contracts, for example, typically provide limited funding for indirect costs. A major nonprofit providing criminal justice services notes that while the federal government provides a 19% indirect rate, many city contracts allow only 10% or even as little as 5% for indirect costs.[21]

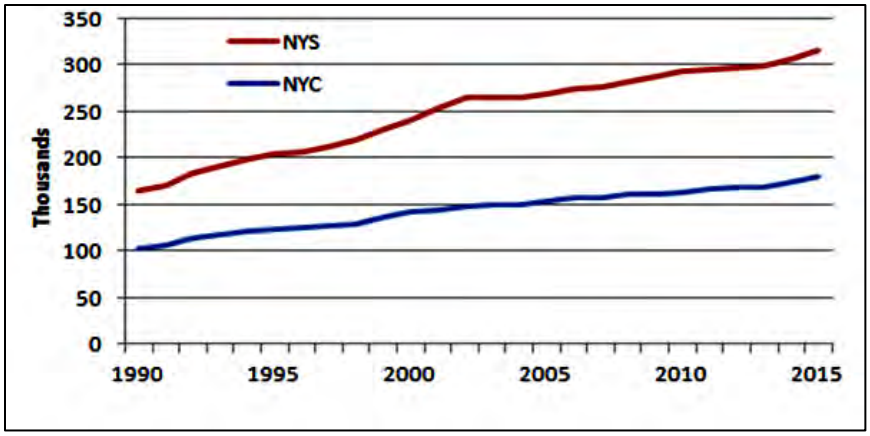
Moreover, both the city and the state routinely make contract payments several months following service delivery, forcing nonprofits to undertake costly borrowing that is not reimbursable.[22]

A comprehensive financial analysis of New York's nonprofit sector found that government accounted for 90% of total revenues for the median (by revenue) health and human services nonprofit. The financial analysis also determined that 18% of the city's nonprofit health and human services providers were insolvent, and 50% had almost no cash reserves, allowing little margin for error. The Oliver Wyman/SeaChange Capital Partners report concluded, "government contracts … virtually guarantee a deficit. Government contracts also create working capital needs because funding arrives after expenses are paid. These funds are also subject to unpredictable delays."[23]

The Nonprofit Human Services Workforce—Educated, Dedicated, Discriminated, and Underpaid

There are about 315,000 social assistance (also called human services in this paper) workers in New York State, the great majority of whom work for nonprofit organizations.[24] Human services employment grew by 150,000, or 91%, from 1990 to 2015, with 100,000 of that job gain occurring between 1990 and 2004, with an increase of 50,000 jobs since 2004. While New York City accounts for 57% (179,000) of statewide human services employment (vs. its roughly 45% share of all nonagricultural jobs), job growth in this sector was 116% outside of New York City from 1990 to 2015 compared to a 76% increase in New York City.[25]

FIGURE 1
New York State and New York City Social Assistance Employment 1990–2015



Average annual wages in the social assistance or human services sector were about $27,100 in 2015, lower than in all other New York industries except for restaurants ($26,400) and grocery stores ($25,000). About half of the workers were paid less than $15 an hour in 2014, and 30% earned less than $10.50 an hour.[26] Teachers and support workers in childcare centers are particularly low paid. Occupational employment statistics data indicate that half of all preschool teachers were paid less than $13.80 an hour in 2014, and 90% of childcare workers made less than $14.50 an hour.

Even workers in the human services sector who are not at the bottom of the sector's pay scale are significantly underpaid considering their education, skill levels, and the responsibilities of their jobs. Most social workers and mental health, substance abuse, and other counselors in the field have a master's degree and need to meet and maintain professional certifications or licensing requirements, yet are paid well under $50,000 annually. Workers with comparable education and responsibilities but employed directly by government or elsewhere in the private sector frequently have salaries well above that level.[27]

Two-thirds of human services workers have some level of college education, with 45% holding four-year bachelor's degrees or higher. Women make up 82% of the statewide workforce. People of color account for 50% of human services workers in the state and an even larger portion in New York City, where they account for 75% of the workforce.[28]

According to an analysis by the UC Berkeley Center for Labor Research and Education, more than three out of five New York human services workers paid below $15 an hour receive some form of public assistance, or a family member does.[29]

Compensation is so low for New York's human services workers for many reasons, chief among them historical gender- and race-based pay discrimination, general lack of unionization, and the weak bargaining position of their nonprofit employers vis-à-vis state and local government contracting agencies.

Not surprisingly, given the low pay and demanding jobs within the nonprofit human services sector, many nonprofits struggle to maintain a highly skilled and dedicated workforce. Recruitment and retention is a serious challenge for many organizations. Based on a survey of its member organizations providing child welfare and childcare services around the state, the Council of Family and Child Caring Agencies reported an average annual turnover of over 30% in 2014.[30]

Next Steps for the New York City Career Ladder Campaign and the Statewide $15 and Funding Campaign

Earlier in this paper, a brief overview was provided of the New York City and statewide campaigns of human services organizations pressing for a higher wage floor and increased government funding to enable nonprofits to pay the higher wages. This section will provide further information on those campaigns as well as an assessment of the efficacy of the advocacy efforts and suggestions for further work.

The city campaign met with much greater success partly because of supportive elected officials, particularly Mayor de Blasio and the speaker of the city council, Melissa Mark-Viverito. Still, the campaign's goal of funding higher wages for city service contract workers was not an initiative proposed by any elected official; it was advanced by a newly formed coalition of human services organizations and advocates. One of the coalition's biggest challenges was organizing the sector itself, a sector populated by several large multi-service and often citywide agencies as well as many mid-size and smaller community-based nonprofits. The sector had never before come together to address the low pay of its workforce, and its budget-related advocacy agenda had usually consisted of demands for a general COLA.

The campaign initiated by the Federation of Protestant Welfare Agencies and the Fiscal Policy Institute was called the Career Ladder Project and had the twin objectives of raising the wage floor in stages to $15 an hour, with the city providing the requisite funding to pay higher wages; and establishing a sector-wide career ladder system. The focus was clearly on raising the pay and enhancing career opportunities for the lower-paid half of the sector's workforce, which is overwhelmingly comprised of people of color, mostly women, who live in some of the city's poorer neighborhoods. In that regard, the purpose was squarely in line with the mayor's emphasis on raising wages and living standards for the city's least advantaged. Higher wages for all workers in the lower and middle tiers of the sector would be necessary to complement an effective career ladder system in order to reward workers increasing their skills and education. Connecting the funding requirement to the wage floor increase was critical in getting major nonprofits on board with this agenda, which represented a significant change in direction from previous advocacy efforts.

The Human Services Council, which for several years had led nonprofit campaigns seeking COLAs, again sought a COLA as the 2015 budget season unfolded, but soon began working with the Career Ladder Project (CLP). By the time the mayor's executive budget proposal was finalized, the two campaigns came together behind a three-part initiative: a funded $11.50 wage floor (to be effective with the start of the next city fiscal year, July 1, 2015), a 2.5% COLA for all other workers, and $5 million to fund the development and start-up of a human services sector-wide education and training system to provide career ladder opportunities. The three components were incorporated as proposed in the adopted FY 2016 budget. Since then, HSC, FPWA, and FPI have combined their efforts to continue to broaden coalition-building efforts at both the city and state levels.

As the human services coalition moved to the state level in the fall of 2015, it dealt with a similar challenge in enlisting the cooperation of a diverse set of nonprofit service providers to actively support the governor's $15 statewide minimum wage proposal, again by linking it to the need for increased government funding. The statewide campaign went by the hashtag "#15 and Funding," so named to connect to the visibility and organizing success of the broader Fight for $15 campaign and to stress the need for increased contract funding.

Despite the governor's enthusiastic support for raising the minimum wage, his conservative fiscal policy posed a huge obstacle to securing the required state funding to enable nonprofit service contractors to pay higher wages. While the Assembly majority and many senators from both parties supported increased funding related to the wage increase, funding was not part of the compromise agreement because it was not a priority for the governor. In the end, the coalition just did not have sufficient support among key Senate Republicans to force the governor's hand.

The waning days of March 2016 witnessed the spectacle of New York and California racing to be the first state to enact a $15 minimum wage. In the end, it appeared to be a photo-finish tie. However, when it comes to ensuring that no workers are left behind, California clearly came out ahead when its agreement included a commitment to provide budget funding so that state-supported childcare workers, as well as workers providing Medicaid-reimbursed services, would see the higher wage floor. [31]

The New York State coalition has its work cut out for it in more effectively pressing the case for increased human services funding in the year ahead. Some of the coalition partners are also preparing to work with a broader set of advocates, such as leading community organizing groups, public sector unions, and others concerned about the limits on New York's state and local government spending in pushing to raise or end the governor's self-

imposed 2% spending cap. The human services coalition is also starting to frame its advocacy in terms of the need for pay equity and state government responsibility for the publicly funded human services workforce. Now that the across-the-board $15 minimum wage floor has been established, the coalition will focus directly on funding concerns. A more direct focus on funding is likely to garner broader and deeper support among nonprofit service providers.[32]

Because of the cumulative effects of persistent under-funding, there is also a critical need not only to increase contract funding to enable nonprofits to pay higher wages up to the new wage floor but also to raise the pay of human services workers now paid above $15 an hour but underpaid given their education, skills, and job responsibilities. In New York, this has often been referred to as the wage compression issue, referring to the need to increase pay for workers above the minimum to avoid a morale-challenging compression of wage differentials. The wage compression issue is another manifestation of a pay equity problem because many better-educated and female-dominated counselor and social work positions fall into this category.

An additional dimension that the coalition needs to effectively address involves local government-funded human services contracts elsewhere in the state outside of New York City. In the state of New York, county governments constitute social service districts and fund contracts for child welfare, housing, after-school care, childcare, and youth and senior services. These services are mainly provided by nonprofits facing the same funding constraints as state- or New York City-funded nonprofits. Because the state's local property tax cap (set at the lesser of inflation or 2%) severely constrains county government finances, the coalition is planning to advocate for increased state aid to county governments for the purposes of increasing amounts in human services contracts to nonprofits facing higher wage costs. This should help develop allies among county executives and local legislators and provide a more visible local constituency in the districts of Senate Republicans.

Because childcare is such a large and important service area and because early childhood educators and childcare workers are so poorly paid, there is also a compelling need to develop a childcare sector-specific policy agenda as the higher wage floor is phased in. One of the most pressing policy priorities likely will be increased funding for childcare subsidies, both to address the long-standing need to increase the number of families who can receive subsidies but also to increase the amount of the subsidy to reflect the higher costs associated with the minimum wage increase. A related priority will be to increase the state's child and dependent care tax credit to assist families of modest means who pay for childcare out of their own pockets as childcare fees rise.

As part of the advocacy to secure additional state funding, the coalition would be well-served by being able to provide reasonable estimates of potential cost savings that will accrue to state and local governments in the form of reduced public assistance spending as higher wages lift workers above eligibility thresholds. Such estimates should also reflect the higher personal income (or lower state EITC credits) and sales tax revenues that would be generated as the wage floor rises.

Finally, at the New York City level, FPWA and FPI are continuing to work with the city to develop the sector-wide career ladder system that will include not only education and training programs but also career and financial aid counseling and childcare support services for the children of workers attending classes. Yet to be addressed is whether it makes sense to advocate for some form of career advancement supports for state-funded human services workers.

Government Responsibility for the Human Services Contract Workforce and for Fully Funding Service Contracts

State government relies heavily on nonprofits to provide a broad range of important public services. Because its contracting practices and funding commitments have contributed to the substandard compensation levels for the nonprofit workforce and to the precarious financial condition of most nonprofit service contractors, state government should acknowledge its role as the indirect employer and its responsibility to fully fund the provision of contracted public services.

Governor Cuomo has talked about the need to recruit and invest in the next generation of state government workers, but he needs to recognize that the state also has an obligation to change its funding and contracting practices so that nonprofits can better recruit, retain, and develop a skilled workforce providing services that are just

as important a state responsibility as providing education, transportation, or public safety services. Fully funding the cost of contracted public services will also likely result in higher-quality and more effective and efficient services.

The state also has an obligation to assist county governments in raising the pay of county-funded service contract workers and in fully funding such contracts.

The City of New York has accepted some responsibility for its contracted workforce in budgeting in its four-year financial plan for covering the full cost of a phased-in $15 wage floor. However, the city still needs to make a commitment to address the compression issue by increasing the pay of demonstrably underpaid workers that now receive more than $15 an hour.

There are many other aspects of purchase-of-service contracting that the city and the state need to address, including higher indirect rates and timelier contract and payment processing and the need for more expense flexibility in performance-based contracts.

Endnotes

[1] The city's Service Contract Living Wage Law is Section 6-109 of the NYC Administrative Code.

[2] Several nonprofit leaders later regretted that decision because it contributed to a perception that nonprofit leaders were not willing to fight for better wages for their employees.

[3] This campaign was initially co-led by the Federation of Protestant Welfare Agencies (FPWA), an umbrella group, and the Fiscal Policy Institute (FPI), a nonprofit New York State and local fiscal and economic policy research and education organization. By the spring of 2015, the leadership group also included the umbrella Human Services Council (HSC).

[4] See *Report of the Fast Food Wage Board to the NYS Commissioner of Labor*, July 2015, labor.ny.gov/workerprotection/laborstandards/pdfs/Fast-Food-Wage-Board-Report.pdf

[5] FPWA, Human Services Council and Fiscal Policy Institute, *A Fair Wage for Human Services Workers: Ensuring a Government-Funded $15 per Hour Minimum Wage for Human Services Workers Throughout New York State*, December 2015.

[6] Ibid.

[7] David Cooper, *Raising the New York State Minimum Wage to $15 by July 2021 Would Lift Wages for 3.2 Million Workers*, Economic Policy Institute, EPI Briefing Paper #416, January 5, 2016; National Employment Law Project, *How Much Do New York's Workers Need? At Least $15 per Hour—Both Upstate and Down*, Fact Sheet, January 2016.

[8] Michael Reich, Sylvia Allegretto, Ken Jacobs, and Claire Montialoux, *The Effects of a $15 Minimum Wage in New York State*, UC Berkeley Institute for Research on Labor and Employment, Policy Brief, March 2016.

[9] FPI, *Upstate–Downstate Wage Differentials Are Relatively Small in Low-Wage Occupations*, March 24, 2016.

[10] For a chart with the timing and amounts of increases in the wage floor for fast-food and all workers in New York State, see Patrick McGeehan, "New York's Path to $15 Minimum Wage: Uneven, and Bumpy," *New York Times*, April 1, 2016. For a discussion of the reduced economic impact of the slower minimum wage phase-in for the upstate regions, see Edward Krudy, "New York's Two-Tier System Offers Testing Ground in Minimum Wage Debate," Reuters, June 30, 2016.

[11] Office of the New York State Comptroller, *Report on the State Fiscal Year 2016–17 Enacted Budget Financial Plan and Capital Program and Financing Plan*, July 2016, Appendix A.

[12] The governor has never raised the issue of executive compensation at hospitals even though the state's voluntary hospitals receive billions of dollars in Medicaid and other state funding. With state tax revenues growing 4% to 5% annually while state operating spending is subject to a 2% cap, lack of revenues is certainly not a constraint. The governor has supported a series of tax cuts as part of his austere approach to state spending. From state FY 2011 to 2017, general fund expenditures for human services contracts grew by only 0.3% annually. After inflation, this represents a 1% annual decline. In contrast, during the recession and its immediate aftermath,

inflation-adjusted state general fund spending on human services contracts increased by 3.1% annually, according to the Fiscal Policy Institute.

[13] Steven Rathgeb Smith and Michael Lipsky, *Nonprofits for Hire. The Welfare State in the Age of Contracting*, Cambridge, MA: Harvard University Press, 1993, p. 11.

[14] Michael B. Fabricant and Robert Fisher, *Settlement Houses Under Siege. The Struggle to Sustain Community Organizations in New York City*, New York: Columbia University Press, 2002, pp. 76-77.

[15] Ibid, pp. 77-78.

[16] FPI estimate.

[17] FPI analysis of contract data from the city's Office of Management and Budget, the New York City comptroller, and the New York State comptroller.

[18] Fabricant and Fisher, pp. 78-81.

[19] Fiscal Policy Institute, *A Shared Opportunity Agenda, New York State Economic and Fiscal Outlook, 2015–2016*, January 2015, pp. 38-41.

[20] James Parrott, *Beyond Balance: Forward-Looking Budget Priorities for New York City*, in *Toward a 21st Century City for All: Progressive Policies for New York City in 2013 and Beyond*, edited by John H. Mollenkopf, New York: The Center for Urban Research, The Graduate Center, City University of New York, 2013, pp. 75-76.

[21] Joanne Page, "The Trouble with City Contracts," New York Nonprofit Media, May 13, 2016.

[22] Human Services Council, *New York Nonprofits in the Aftermath of FEGS: A Call to Action*, February 2016.

[23] Oliver Wyman and SeaChange Capital Partners, *Risk Management for Nonprofits*, March 2016.

[24] The 2012 Economic Census indicates that 84% of the employment in the New York City social assistance sector is in nonprofit organizations. For 2014, Quarterly Census of Employment and Wage data indicate that 72% of New York City social assistance employment is in nonprofits.

[25] New York State, Current Employment Statistics.

[26] Annual wage data from QCEW; hourly wage data from FPI analysis of 2010–2014 Current Population Survey.

[27] FPWA, Human Services Council, and Fiscal Policy Institute, *A Fair Wage for Human Services Workers: Ensuring a Government-Funded $15 per Hour Minimum Wage for Human Services Workers Throughout New York State*, December 2015.

[28] FPI analysis of 2010–2014 Current Population Survey Outgoing Rotation Group data provided by the Economic Policy Institute.

[29] Ken Jacobs, Ian Perry, and Jenifer MacGillvary, *The Public Cost of Low Wages in New York*, UC Berkeley Center for Labor Research and Education, January 2016.

[30] Mary Jane Dessables and James F. Purcell, *Workforce Compensation Report*, Council of Family and Child Caring Agencies, April 2014.

[31] The enacted 2016–17 California state budget includes a total of $210 million to cover the first step of the increased minimum wage (rising from $10 to $10.50 on January 1, 2017) and to provide an increase for direct-contracted and voucher-based childcare providers. See the enacted budget summary (ebudget.ca.gov/2016-17/Enacted/BudgetSummary/BSS/BSS.html) and enacted budget detail (ebudget.ca.gov/2016-17/Enacted/agencies.html) for K–12 education and health and human services.

[32] Governor Andrew Cuomo has often championed women's issues, so an aggressive pay equity campaign may meet with greater success. In addition to pushing through a $15 minimum wage increase in the 2016 session, the governor actively campaigned to make New York the fifth state in the nation to provide family leave insurance. [33]

[33] See the public policy recommendations in the Human Services Council Issue Brief, *Recommitting to the Nonprofit Sector: Creating a Path to Sustainability Through Policy Change*, Fall 2013.

IX. Work Challenges in First Nations Communities

The Occupational Structure of the American Indian/Alaska Native Workforce

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We analyze the occupational structure of the non-Hispanic American Indian/Alaska Native (AIAN) workforce in the United States, relative to the non-Hispanic White workforce, using Public Use Census Microdata. AIAN workers are generally over-represented in low-skilled occupations and under-represented in high-skilled occupations, relative to White workers. This pattern is stronger among men than among women and stronger among single-race AIANs than multiple-race AIANs. AIAN occupational dissimilarity has not declined substantially since 1980. Controlling for individual differences in factors such as education, age, location, and language proficiency accounts for a significant proportion of AIAN under-representation in high-education occupations.

Introduction

Occupational structure is a useful social indicator. Group differences in occupational attainment may signal inefficiencies that significantly reduce economic productivity, such as labor market discrimination or suboptimal investment in education. Occupational differences can also mediate other adverse social and economic disadvantages—occupations differ in average pay, sensitivity to business cycles, health risks, prestige, status, and authority.

We analyze the occupational structure of the non-Hispanic American Indian/Alaska Native (AIAN) workforce in the United States. Although racial and ethnic differences in occupational patterns have been documented and analyzed for decades (e.g., Blau and Duncan 1967), few studies have focused on the occupational structure of the AIAN workforce, and none that we know of have separately examined both AIAN workers who identify as single-race and AIAN workers who identify as multiple-race.

A detailed analysis of AIAN occupational structure is timely in light of economic and social changes that have affected the AIAN workforce in recent decades. Economies in many reservations and homeland areas have grown rapidly (albeit from a low base) in recent decades (Akee and Taylor 2014). This directly affects many AIANs—about one-fifth of AIAN individuals (single-race and multiple-race combined) lived on a reservation or other homeland as

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of 2010 (Norris, Vines, and Hoeffel 2012). Since the 1970s, tribal colleges have expanded significantly (see www.collegefund.org/ content/tcu_timeline), and there has been a general increase in AIAN educational attainment (see Figure 5 later in this paper). In the broader economy, the occupational distribution of the general workforce has changed significantly in response to deindustrialization and rising service employment.

Measurement changes have also added to the value of an update on occupation and race. Partly as a result of the shift in the general occupational distribution, the Standard Occupational Classification system used by federal agencies was developed in 1977 and updated as of 1980, 2000, and 2010 (Emmel and Cosca 2010). In 1997, the federal government broadened the definition of AIAN to include Central and South American indigenous people and required that multiple-race responses be allowed (Office of Management and Budget 1997). In the censuses of 2000 and 2010, individuals were instructed to "mark one or more" races. In the 2010 Census, there were about 2.3 million individuals who identified as AIAN in combination with another race or races, as well as 2.9 million who identified as AIAN alone (Norris, Vines, and Hoeffel 2012).

In this paper, we address three research questions about non-Hispanic AIAN occupational stratification.[1] First is the occupational distribution of AIAN workers different than that of Whites, now and since 1980? We show that it is and that AIAN workers share many occupational patterns long observed among other racial or ethnic minorities. We find that the pattern of occupational dissimilarity between AIAN workers and White workers is stronger among men than among women (although still significant among women). We do not find that AIAN occupational dissimilarity has declined substantially since 1980, though results about changes over time are relatively tenuous due to changes in measurement and racial identification (see Liebler, Bhaskar, and Porter 2016).

Second, in which occupations are AIAN workers under-represented relative to White workers? In which are they over-represented? We compare single-race Whites to single-race and multiple-race AIANs. Using Census 2000 and the 2008–2012 American Community Survey (ACS), we find that AIAN workers are generally over-represented in low-skilled occupations and under-represented in high-skilled occupations, relative to White workers. This distinction is less pronounced for multiple-race AIANs than for single-race AIANs.

Third, do standard demographic factors account for the under-representation of AIAN workers in high-education occupations (relative to White workers)? Among the observable factors that may account for AIAN–White differences (including age, location, and language proficiency), we find that gaps in educational attainment are the most important. Controlling for individual differences in these factors reduces the degree of AIAN under-representation but fails to account for it fully. We regard the remaining occupational structure differences we find between AIAN and White workers as a sign that deeper social and economic issues may continue to restrain the well-being of the AIAN population.

Previous Studies

In their landmark study *The American Occupational Structure*, Blau and Duncan (1967) documented basic occupational differences between Whites and non-Whites (94% of whom were "Negro" in their sample (p. 207)). After ranking 17 occupations primarily by the median income and education of incumbents in 1962 (p. 26), they found that the occupation status typical for non-Whites was not only different from that of Whites but also "far inferior to that of whites" (p. 209). Although lower educational attainment explained part of this difference, it remained large "even when the lower social origin, education, and first occupation of Negroes [had] been taken into account" (p. 209).

Blau and Duncan's key themes have been confirmed in subsequent studies. Different occupational patterns for minority workers, as opposed to majority workers, have repeatedly been found, with minority workers generally holding lower status or lower paid occupations.