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# Introduction

Richard B. Freeman and Joni Hersch

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Private-sector unionism, the institution that has historically represented and advocated on behalf of workers in capitalist economies, is in decline in the United States. At this writing, union density has fallen into single digits in the private sector and shows little or no sign of reviving, despite a major effort by the American Federation of Labor-Congress of Industrial Organizations (AFL-CIO) and many affiliated unions to organize new workers. Falling union density is not unique to the United States, however. Density has dropped in several countries in the European Union (EU), Japan, New Zealand, and Australia as well.

But declines in density have a much greater impact on workers in the United States than in Western Europe or Japan and in most other countries. The reason is that the United States lacks institutional alternatives to trade unions to provide workers with collective voice. In Western Europe, falling union membership does not reduce workers' voice at their workplace because EU law provides for elected works councils at workplaces. In Japan, nonunion workers have some voice at their workplace because Japan's consensual style of labor relations creates scope for workers to express their views outside of union settings. By contrast, U.S. law makes alternative forms of collective voice difficult to attain, due to the Wagner Act's outlawing organizations weaker than independent unions. Management's fear that any form of independent collective voice will lead to full unionization makes it difficult for workers to represent themselves as a

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group in many U.S. enterprises. As union density has fallen in the United States, so too has the collective voice of workers.

In the face of this development, labor activists, workers, and non-governmental organizations concerned with the well-being of workers have sought to develop alternative ways to represent workers' interests. They have formed diverse nonmembership organizations (NMOs) or have altered the operations of member-based organizations, such as occupational associations, to perform some of the functions that traditional unions undertake on behalf of workers.

What is the nature of these new institutions? How do they operate? How effective have they been in providing services or voice to workers compared to unions? Do the new institutions have the breadth and scope to expand in the labor market and substitute at least in part for traditional unions, or are they likely to be limited to small niches?

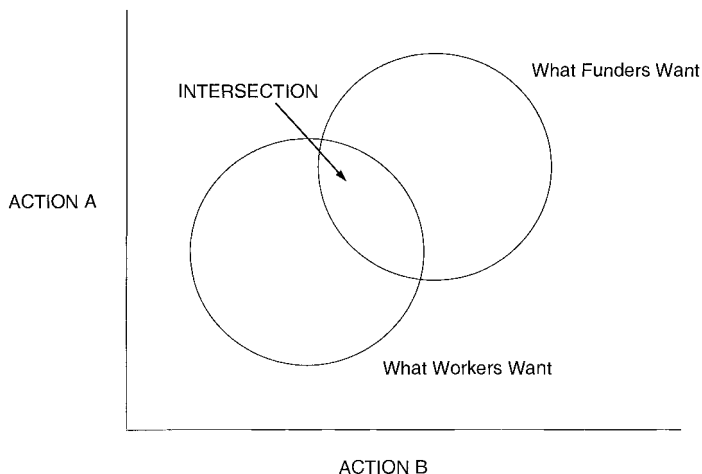
These questions motivate the research in this volume. Because the new labor institutions of concern have short histories, much of the research takes a case study approach, describing the history and operation of particular innovative institutions. The purpose of the volume, however, is neither to produce definitive case histories nor to illuminate the idiosyncrasies of particular institutions. Rather, it is to understand the behavior of the new institutions within the framework of the standard economic analysis of optimizing agents. This framework directs attention at the goals of the new labor institutions—their maximands, as it were; the constraints on their actions; and the way in which they respond to parametric changes in economic and other incentives.

At the heart of this volume is the difference between membership-based nonunion organizations, where members have some direct say in the way the institution operates, and non-membership organizations, which activists form and run on behalf of workers. There is nothing new about membership-based nonunion labor organizations. In most professional occupations, there is an association that provides information, holds meetings, and represents the occupation to the public. Workers join these organizations when they believe it benefits them. Economists join the American Economic Association. Convention managers join the Professional Convention Managers Association. Scientists join the American Association for the Advancement of Science, and so on. In all of these cases workers establish a traditional principal-agent relation with their organization. What is new is the pressure on these organizations to take on more of the functions of trade unions in the wake of union decline.

Labor analysts have not studied nonunion labor organizations to the same extent that they have studied trade unions, but there is no qualitative difference between modeling how a union operates on behalf of its members and how a nonunion labor organization operates on behalf of its members. In both cases, the economists' natural inclination is to treat the

organization in terms of a maximizing model. Analysis of unions as optimizing organizations stretches back at least to the union maximand models of Dunlop (1944) and proceeds through the analysis of unions as responding to median members in Freeman and Medoff (1984). The key issue in maximand models of unions has been the relative importance of wages and employment as union goals in collective bargaining. By focusing on these two outcomes to the exclusion of others, the models ignore much of what unions do at workplaces. Median member models stress that senior immobile workers have a greater impact on outcomes than they would in nonunion markets, which respond to younger marginal workers. But, just as in median voter models in political science, median voter models of unions fail to allow for side bargains among groups, differences between active and nonactive members, and so on. Optimizing models of these kinds give analysts a framework in which to think about the factors that affect union decisions (Farber 1986) but have not succeeded beyond that. We see no reason to expect these models to be any more or less successful in accounting for the behavior of nonunion membership-based organizations than they have been of trade unions.

Nonmember-based organizations differ substantively from membership-based organizations and require a different framework for analysis. From the perspective of principal-agent theory, what is distinctive about NMOs is that the agents or activists select groups of workers as their principals—a reversal of the relation in the standard principal-agent model in which the principals select the agents. Legal services centers choose to defend workers in some areas on some issues. Antisweatshop activists make the well-being of workers in less-developed countries their cause. In neither case do the workers choose the lawyers or the activists to represent them. Because nonmember organizations have only recently attained some importance in the labor market, the analyses in this volume represent the first serious attempt to consider how they operate. The organizations have to please two quite different groups to survive. Because they have no members and thus no dues, NMOs have to raise resources from outside funders and thus must be responsive to those funders. Christine Jolls's analysis in chapter 4 gives a detailed discussion of this problem in the case of lawyers' groups who seek to aid workers. At the same time, the NMO must meet the potentially different needs of the workers it seeks to represent or service. In simplest form, we can think of the NMO as having to find the intersection of the two sets of interests in some space of actions, as shown in the Venn diagram of figure 1. Within that intersection, the NMO or its leadership presumably has freedom to exercise its own preferences about what is more important. Kimberly Ann Elliott and Richard B. Freeman's analysis of antisweatshop organizations—which must gain the support of Western consumers to pressure firms to improve conditions in developing countries and which must demand “reasonable changes” to help the workers they seek to



**Fig. 1 Nonmembership-based organizations must seek intersection between funders' interests and workers' interest**

represent—documents the way this process operates. They stress the entrepreneurial skills that activists must have to succeed.

A key question for this volume is the extent to which, if at all, the emerging labor institutions might substitute for declining unionism. This question has two parts: whether the new NMOs (or nonunion membership-based organizations) can provide services and representation of workers comparable to those of unions, and whether they can expand their reach to service as large a proportion of the work force that traditionally relied on unions as the worker-oriented institutions in the labor market. The studies in the volume answer both questions in the negative. The new institutions have a long way to go before they will be able to provide remotely comparable economic benefits to unions. Even in their weakened state, unions have major effects on wages and benefits, according to the analysis by Thomas C. Buchmeuller, John E. DiNardo, and Robert G. Valleta in chapter 7, which none of the new organizations studied in this book have come close to replicating, including the Working Today effort to provide selective group benefits studied by Joni Hersch in chapter 6. In addition, the new institutions have not managed to expand beyond small niches in the labor market. One of the most successful community based groups, the Industrial Areas Foundation discussed by Lisa M. Lynch in chapter 9, has succeeded in improving pay and training in San Antonio, Texas but has not been able to mimic that success broadly.

David Weil's analysis in chapter 1 provides some reasons for the negative answer to the question about whether the new institutions can substitute for unions. Weil presents a broad overview of the requisite activities any new institution will have to undertake to assist workers in exercising their

rights. Whatever its organizational form—a trade union, a legal aid group, a narrowly focused membership organization, or a myriad of other possibilities—any agent for workers must deal with the standard “free-rider” problem. Activities that benefit workers in the totality, such as enforcing workplace rights, generate positive externalities so that the marginal benefit for the workplace as a whole is always greater than for any individual worker. Any labor organization must find ways to overcome this problem at the workplace. There is also the standard collective action problem. The marginal costs of exercising rights are likely to be lower for a group of workers than for a single individual. This combination implies that the outcome of individual action is likely to be inferior to the socially optimal level. But reaching the socially optimal level of group activity requires some mechanism or institution that aggregates worker preferences and reduces the marginal costs of exercising rights. Because the benefits of group activity require a significant number of persons to be involved, a key issue is how the institutions deal with the free-rider problem. Considering all of these requirements, Weil concludes that it is unlikely that a single nonunion institution can effectively implement worker rights, but he suggests that some mixture of groups could fill the gap left by the decline of unions. Alternatively, it is possible that union experiments with different forms of representing workers, such as the open-source unionism proposed by Freeman and Rogers (2002)—in which unions use the Internet to reduce the costs of servicing workers and form non-majority organizations inside firms—might evolve in ways that would fill the gap. But this volume did not explore that possibility.

The empirical parts of the book investigate the performance of some innovative alternative labor market organizations and initiatives in three parts. The first part deals with nonmembership activist organizations. The second section addresses how membership-based organizations attract members. The third section examines evolving union and related initiatives. The strategies and focus of these efforts are quite different, although all are initiatives that attempt to mobilize group action to solve workplace problems or improve workers’ economic status.

Table 1 provides a broad overview of the institutions that the various chapters examine. The table delineates six characteristics of each of the labor institutions studied: the nature of the workers’ problem that they try to address; the potential market failure that created the problem; whether the organization is membership based; its source of power and limits on that power; the funding source of the organization; and its success. We review briefly the studies in each area that underlie the summaries in the table.

## **Part I: Studies of Nonworker Organizations**

Three chapters analyze the way NMOs operate in assisting workers. They examine the activities of human rights activists, living-wage cam-

**Table 1** A summary of labor institutions examined in this volume

Institution or activity	Workers' problem	Market or government failure	Relation of association to constituency	Source and limits of influence	Funding sources	How successful?
Union	Economic and governance	Collective goods at workplace	Run by members	Extensive labor laws	Membership dues	Very good at raising pay/benefits but membership in decline
Professional associations	Information, advocacy in public	Status of profession in society	Run by members	May self-impose licensing	Member dues, for-profit activities	Too early to call but promising
Union-management partnerships	Economic (job growth, security)	Failure to reach mutually beneficial solutions to economic problems	Union representation on corporate boards	Laws require board members represent shareholders	Union and firm	Rare and not successful
National issues lawyers groups	Governance: enforcement of employment laws	Free riders; not attractive to private bar	Not membership	Has legal status to aid workers	Individual and foundation donors	Some successful discrimination lawsuits
Legal services centers	Governance: enforcement of employment laws	Low-wage constituency not attractive to the private bar	Not membership	Legal status to aid workers limited to certain types of cases	Government	Effective in processing unemployment claims
Human rights vigilantes	Economic and governance	Lack of information about working conditions	Not membership	Moral suasion	Unions, community groups, religious groups	High media visibility but little impact
Living-wage campaigns	Economic	Lower wages for publicly funded projects than desired	Not membership	Moral suasion	Unions, community groups	Limited impact on poverty or on employment
Training intermediaries	Economic	Free rider in training	Not membership	Moral suasion and firm self-interest	Foundations, government	Limited
Working Today	Economic	Benefits tied to employers	Not membership	Provision of group health benefits	Foundations	Limited

paigns, and lawyers' groups that assist workers in enforcing employment rights. The distinguishing feature of these initiatives and organizations is that the workers they represent do not run these organizations either directly or indirectly through elected leaders. Without a membership base, these organizations need alternative sources of funding, which oftentimes include financial support from unions or private donors. Some lawyers' groups, such as the American Civil Liberties Union (ACLU) and legal services centers, have a long history of helping workers with their legal problems. The antisweatshop initiatives of human rights activists and living-wage campaigns are more recent and aim to raise earnings and improve working conditions for low-wage workers in developing countries and in local U.S. communities, respectively. These two types of campaigns have much in common. Both mobilize community groups as well as student activists and political and religious groups. Both depend on unions for some financial support, and the unions look upon these campaigns both as ways to help nonunion workers and as an organizing tool.

While most of the institutions studied in this volume endeavor to help workers directly, the human rights vigilantes who run antisweatshop campaigns do not operate in the developing countries where they seek to improve conditions. They mobilize consumers in advanced countries to pressure firms for better treatment of workers. In chapter 2, Elliott and Freeman document that consumers care about labor standards and are willing to pay more for products made under better conditions and are unwilling to buy products made under certifiably bad conditions, such as child labor operating in horrific sweatshops. They note that human rights vigilantes have successfully raised public visibility of labor rights after such concerns had been dormant for years. These campaigns work because they gain media attention and involve churches and other morally concerned groups. The antisweatshop campaigns are among the few efforts that have mobilized student activists in recent years and almost the only area where unions have been instrumental in generating student activism.

Can consumer concern over labor standards be mobilized to improve worker conditions broadly? Based on the human rights campaigns, the efficacy of such consumer-driven movements is limited. Market pressures help drive such campaigns, yet, as Elliott and Freeman's survey data document, there is a limit to the price consumers will pay to purchase products made under good labor conditions. It is difficult to monitor whether firms comply with labor standards. In some cases, antisweatshop campaigns benefited from a series of circumstances that would be hard to predict or replicate. And even in the best of cases, the campaigns are limited to improving labor conditions for workers producing branded products for export to Western consumers. The campaigns have increased corporate codes of conduct in addressing labor standards, but Elliott and Freeman's assessment of whether targeted firms have changed their behavior is guarded. They conclude that to expand the number of workers who benefit



from the antisweatshop campaigns beyond a very small number requires governmental actions and the rejuvenated International Labor Organization (ILO), which has received more resources to deal with labor standards issues, especially child labor, but which is dependent on the states, unions, and employer groups that constitute its membership.

A more direct approach than using consumer pressure to influence firms' treatment of workers is found in the living-wage referendum movement. Living-wage campaigns seek to raise the minimum wage that must be met by city contractors and/or those benefiting from municipal economic development programs. In chapter 3, Jared Bernstein reviews living-wage campaigns. Bernstein notes the rapid rise in living wage ordinances in the late 1990s/early 2000s, including ordinances in Baltimore, Boston, New York, and Los Angeles. Critics of such campaigns cite the potential for economic distortion and weaker local competitiveness, but Bernstein reports little evidence of adverse effects on employment, in part because the laws are targeted at small groups of workers in firms with municipal contracts.

A third source of nonmembership activism is lawyers' groups, many of which have helped workers with legal problems for decades. The United States has a substantial and expanding set of laws governing the workplace. But as Weil's analysis points out, however, in the absence of an agent to solve the public goods problem or to lower the costs to workers, laws are not likely to be optimally implemented and enforced. Unions have been active participants in enforcing employment laws, so the decline of unionism may further erode effective implementation and enforcement. Jolls notes in chapter 4 that hiring a private lawyer, the usual procedure of an aggrieved party who believes that someone has violated their legal rights, is less effective in the employment context for a number of reasons. Paying for a lawyer on an hourly basis is not financially feasible for lower-income workers, and contingent fee arrangements are generally not attractive to lawyers because damages in employment cases are typically small. Jolls describes two types of lawyers groups, national issues organizations and legal services centers, which help bridge the gap between the law "on the books" and the law "in action." National issues organizations focus on one or more broad-based issues and are primarily funded by private donations, and legal services organizations serve low-income individuals and are funded by the government. Jolls notes that given the funding distinction, it is not surprising that national issues organizations focus on a few high-profile, publicly-charged issues, such as discrimination, that attract private donations. In contrast, legal services centers focus on less controversial cases, such as unemployment benefits; handle a large number of cases; and are frequently explicitly restricted from handling discrimination suits. A key finding is that as a consequence of the funding structure, there is a gap with little provision of impact claims in mundane areas and day-to-day claims in high-

profile areas. For example, low-wage workers are unlikely to have legal representation for a discrimination claim.

## **Part II: Studies of Membership-Based Initiatives**

The two chapters in part II analyze the possibility that a membership organization—either union or nonunion—could represent white-collar workers, who increasingly dominate the economy but have traditionally been nonunion. Unions have had some success with white-collar workers in the public sector but represent few privately employed white-collar workers, especially in newer industries. Workers in newer, high-tech industries often have no experience with unions and see them as alien to their workplaces and employers. Factory workers may need unions, but programmers or engineers at IBM? The chapters in this section explore what attracts nonunion workers to join some type of representational membership organization, as well as examine their prospect of survival without union's legal rights to represent workers.

In chapter 5, Richard W. Hurd and John Bunge analyze a new survey of white-collar workers who experienced a union organizing campaign. The survey probes the attitudes of white-collar workers regarding the choice of a professional association versus unionization to represent their interests. Hurd and Bunge found a significant division among workers. Those favoring professional organizations feared that unions may create conflict at work or cause a loss of personal freedom and preferred an organization that developed a cooperative relationship with management. By contrast, union supporters were drawn to direct action and aggressive organizations that focus on terms and conditions of employment and workplace rights. At present, existing organizations have failed to meet the needs of these two groups. Unions have traditionally not appealed enough to the professional interests of employees who favor professional associations. Professional associations routinely eschew any form of union-like activity, although under pressure, even the American Medical Association has come to accept collective bargaining in its chapters that favor the union route. But for the most part, associations concentrate on issues such as licensing and professional opportunities rather than workplace concerns where the interests of workers and management may differ. Hurd and Bunge conclude that it is unlikely that unions will successfully expand coverage among white-collar workers unless they offer a substantially different set of services or adopt a substantially different strategic approach to better match the preferences and address the specific concerns of these workers.

In chapter 6, Hersch analyzes the organizational strategy of Working Today, a new organization that is striving to fill the lack of representation for professional and other white-collar workers. Working Today was founded to be a broadly based membership organization that represents all

workers, with a special focus on independent workers. But its original design did not succeed, so the organization evolved. The evolution of Working Today demonstrates the challenge a new organization faces as it attempts to gain membership and, with membership, adequate funding for survival. In contrast to professional organizations considered by Hurd and Bunge, a broadly based organization lacks a natural constituency. Hersch models the organization in terms of generating revenues to fund its activities and building its membership base by offering public goods attractive to donors and private goods that attract individual membership. But Working Today largely failed to attract individual dues-paying members to support its public goods function of representing independent workers so that its financial survival depends on its serving as an intermediary for private selective benefits, especially group health insurance. Hersch's analysis of data on health insurance coverage suggests that, as most of the independent workers that would be attractive to insurers are already covered, an organization focused on provision of health insurance may reach a limited scale, which thereby limits the potential influence on the labor market at large.

### **Part III: New Union Opportunities and Initiatives**

The chapters in part III examine potential opportunities to reinvigorate traditional unionism by considering the roles of nonwage benefits, union-management strategic partnerships, and expanded training opportunities.

Using several data sets covering three decades of union activity, Buchmueller, DiNardo, and Valletta examine the union effect on work hours and nonwage benefits in chapter 7. Their analysis demonstrates that for a worker with the attributes of a typical union member, a union job is associated with fewer hours worked, more vacation time, and higher health insurance and pension offer rates. While the union edge in hours worked per week and in benefit provision, especially health insurance, seems to have narrowed over time as union density has fallen, the union advantage remains substantial and offers members economic advantages far above those of any nonunion alternative. The ability of unions to form an actuarially attractive group stands in contrast to the attempt at benefits provision of an organization like Working Today.

There have been various forms of worker involvement in firm decision making, such as quality of work life and high-performance work systems. For the most part these programs provide some representation for workers at the worksite on day-to-day decisions but stop short of involving workers in the key strategic decisions such as downsizing, divesting divisions, or relocating operations. In chapter 8, Eileen Appelbaum and Larry W. Hunter examine two institutions that allow strategic participation for unions: negotiated union-management partnership decisions and union representa-

tion on corporate boards. Strategic partnerships allow some degree of union participation in decisions involving financial planning, corporate strategy, investments, technology, and production processes. Although cooperative arrangement between union and management seems to offer much to both parties, there are substantial barriers to strategic partnerships. Legal constraints limit union participation on corporate boards as corporate boards are required to represent shareholders, and shareholder interests will frequently be in conflict with the preferences of workers. Indeed, unions have good reason for distancing themselves from decisions that may have adverse consequences for their membership. Appelbaum and Hunter's survey of strategic partnerships indicates that employee involvement at the higher levels of corporate power are rare. Unlike the legally mandated works council or codetermination that exist in many European countries, in the United States such partnership agreements are not part of the legal landscape. Appelbaum and Hunter conclude by noting that the legal context is an essential component of the form and success of such partnerships.

In chapter 9, Lynch examines new community-based private-sector training initiatives. Because workers in unionized firms are more likely to receive training than other workers, the decline in unionization may lower the level of training in the economy. This creates a potential market failure for the provision of training. Nonunion training intermediaries need to be able to enforce long-term agreements between employers and workers, identify workers missed by traditional recruiting efforts, monitor training quality, and offer training beyond a single employer—that is, to exploit economies of scale. Without a proven track record, it can be difficult for training intermediaries to secure a reliable source of funding. Lynch provides an overview of a number of training intermediaries.

## **Conclusion**

That all of the emerging labor institutions considered in this volume are struggling to develop strategies and tactics to survive and expand in the economic world is not surprising. We chose to study organizations in a formative or developmental stage to capture the process of adaptation and emergence in much the same way that analysts of industrial organization might study newly formed firms, knowing full well that 80 percent or more are unlikely to survive, or that evolutionary biologists might examine a set of mutations, knowing full well that few will pass the test of natural selection. This volume is just the first chapter in what may be a long story of innovations by nonmember organizations, by professional and other non-union organizations, and by unions to find the best way to represent the interests of labor in an economic environment where traditional unionism is greatly weakened.

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