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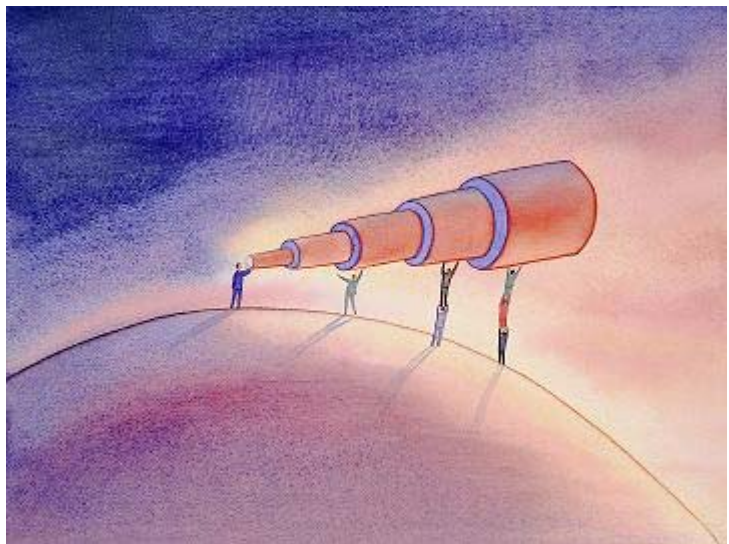
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**Union Recognition and Collective Bargaining:
How Does the United States Compare With Other Democracies?**
By John Logan

The Employee Free Choice Act (EFCA) is undoubtedly one of the most significant and controversial bills facing the new Congress. Its opponents have attempted to portray the bill as a radical, undemocratic and dangerous piece of legislation that would disenfranchise millions of American workers and damage an already fragile economy. One of the country's largest management law firms, Jackson Lewis, states that it "calls for revolutionary changes to labor law," while another opponent has attacked its "radical approach to first contract bargaining."¹ In reality, it is a modest piece of legislation that would establish recognition and bargaining rights for U.S. workers weaker than those enjoyed by workers in most other developed democracies.

How does the United States measure up to other democracies when it comes to recognition and bargaining? First, let us look at the usual suspects. Collective bargaining coverage in every nation in Continental Europe is several times higher than it is in the United States. (I exclude Central and Eastern Europe, which will be considered shortly.) While union density has fallen in several European countries, collective bargaining coverage has remained high and relatively stable. Union density in Western Europe ranges from below 10 percent in France to almost 80 percent in Sweden; but collective bargaining coverage is over 80 percent in all but Germany, where it is over 60 percent. Several factors have contributed to a more supportive environment for collective bargaining: centralized labor market regulation, union involvement in unemployment insurance in certain countries, and union-friendly legal frameworks.

U.S.-style systems of majority recognition do not exist in Continental Europe. In most of Continental Europe, aggressive opposition to bargaining is relatively uncommon; thus, many countries do not have specific legislation addressing the issue. Statutory or constitutional provisions on freedom of association are in some countries interpreted as entailing bargaining rights, and national laws in certain countries contain a legal obligation to bargain. In Austria (and Slovenia), for example, compulsory membership of employers' organizations results in almost 100 percent bargaining coverage. Even in those countries in which multi-employer bargaining is voluntary, strong state sponsorship for bargaining without statutory backing is common. Under mandatory extension laws—which extend collective agreements to cover non-union workers in Germany, France and Holland—bargaining coverage has remained high, even as union density has declined.



It is not simply the “usual suspects” that have bargaining coverage higher than the United States. Even in Central and Eastern Europe—where unions are weaker and often operate under unfavorable macroeconomic conditions—coverage is, on average, significantly higher than in the United States (See Table 1).

Table 1. Collective bargaining coverage in Central and Eastern Europe

Year 2006	Collective bargaining coverage (in %)
Czech Republic	35
Hungary	42
Poland	35
Slovakia	50
Estonia	22
Latvia	20
Lithuania	15
Slovenia	100
EU-25 average	66

Sources: European Industrial Relations Observatory Online (2007) and European Foundation for the Improvement of Living and Working Conditions, Industrial Relations Developments in Europe (2006 and 2007).

Europe is, of course, no paradise for workers. European unions face many of the same challenges as their U.S. counterparts—heightened international competition and relocations to countries with cheaper labor costs and fewer legal protections, increasing employer demands for decentralization in bargaining and company-specific flexibility, the challenge of maintaining stable organizations among low-paid, dispersed and transient service sector workers, and more hostile national governments. But few European employers campaign against bargaining coverage and threaten workers’ careers or predict job losses through relocation or closure if workers choose to bargain collectively. Organizing typically means internal recruitment, as workers are already covered by a collective agreement. In the United States, organizing involves both an adversarial campaign for the right to bargaining rights with a specific employer and a union membership campaign. This explains why we find higher bargaining coverage in Europe and why BMW and Mercedes-Benz workers, among others, have bargaining in Germany but not in South Carolina or Alabama.

Collective Bargaining in New Democracies

Recent developments in certain emerging economies illustrate just how far the United States lags other democracies when it comes to the protection of recognition and bargaining rights. Despite inhospitable environments—unfavorable macroeconomic conditions, widespread privatizations, and enormous informal sectors—collective bargaining coverage has risen in several new democracies over the past few decades. In South Africa, for example, bargaining coverage has risen from around 10 percent to over 40 percent since the 1980s. In Brazil, Argentina, Peru and Uruguay, left-of-center governments have strengthened recognition and bargaining rights and coverage has risen. Bargaining coverage has also increased in Taiwan and Korea. Workers in these nations can gain bargaining coverage without having to endure management-dominated representation elections and bargaining campaigns, as they must do in the United States. While one should not minimize the obstacles faced by workers in these countries, their experience demonstrates that, even under adverse circumstances, a decline in bargaining coverage is not inevitable, pressures associated with economic globalization are not irresistible, and governmental policies do matter. Having trailed other OECD nations for years, U.S. bargaining coverage has now fallen below that found in several new democracies.

Other Advanced Anglophone Countries – Canada and the United Kingdom

What about those countries whose labor laws most resemble U.S. law? First, let’s consider the United Kingdom.

Among developed democracies, the United States is alone in having a sophisticated industry worth hundreds of millions of dollars per year devoted entirely to helping management resist collective bargaining. But several U.S. union avoidance firms have recently sought overseas markets for their expertise. When Britain introduced its new union recognition law in 1999, one U.S. firm wrote: "Sixty-five years' U.S. experience with union organizational experience provides valuable parallels from which U.K. employers can learn how to stay union free. It is clear from U.S. experience that worthy U.K. employers... will be able to defeat union organizing efforts."² Former Trades Union Congress general secretary and current European Trade Union Confederation general secretary John Monks criticized the firm for promoting a "dubious approach" to bargaining that was "far more suited to the aggressive nature of U.S. industrial relations."³ But other consultant firms soon followed in its path. One large U.S. union avoidance firm that operates in Canada, Mexico, South America, the United Kingdom, Belgium, France and Germany—telling clients that it enjoys an international reputation for "eliminating union incursions"—has conducted several high profile union avoidance campaigns in the United Kingdom with considerable effect.⁴ When confronted by U.S.-style anti-union tactics, U.K. unions spend more time and resources on campaigns and are much less likely to win recognition. If this behavior were to become the norm in the United Kingdom, it would likely have disastrous consequences for British workers.

Employer opposition in the United Kingdom still pales in comparison with that found in the United States, partly as a result of the fundamental differences between the union recognition law in the United States and United Kingdom. Britain has a "hybrid" system of union recognition: employers can recognize the union without a demonstration of majority support, or, if the employers refuses voluntary recognition, the Central Arbitration Committee (CAC) can recognize the union on the basis of documentary evidence of union membership or by holding an election. Since the law was introduced a decade ago, the vast majority of new recognition agreements have resulted from voluntary recognitions, and the CAC has held relatively few contested representation elections. As a result of these differences in law and employer behavior—a significant proportion of British employers still cooperate with unions and view bargaining positively—United Kingdom bargaining coverage, though it has fallen by almost half since the early 1980s, is still more than double that of the United States.

Recognition and Bargaining in Canada: Lessons for the United States

The Canadian system of industrial relations is broadly similar to that of the United States, and labor laws in several Canadian provinces have or had provisions similar to those of the EFCA. However, Canadian labor law differs from its U.S. counterpart in two critical respects: First, it is decentralized, with only about 10 percent of employees covered by federal labor law—most of the remaining 90 percent are covered by 10 different provincial laws. US law, in contrast, is highly centralized, with a broad and rigid federal pre-emption doctrine curtailing all but the most marginal policy experimentation at the state and local levels during the past several decades. Second, Canadian labor law is more responsive to political realignments than its U.S. counterpart—that is, when there is change in provincial government, we often see significant reform in the province's labor law. In the United States, the need to gain a supermajority of 60 votes in the Senate to overcome a filibuster has presented a formidable obstacle in the path of labor law reform proposals in recent decades.

Canadian labor law also provides an interesting comparison with the United States because, while the labor policy issues are very similar to those in the United States, the policy debate is very different. For the most part, labor law reform in Canada is not accompanied by contentious debate about the need to protect the sanctity of the "secret ballot," but simply a recognition that, even in Canada—with its quick elections (usually between 5-10 days) and strict adherence to these deadlines, restrictions on employer electioneering, and tougher penalties for unfair management practices—majority sign up makes organizing easier for workers, while contested representation elections makes organizing more difficult. Thus, with a left of center government, we see the adoption majority sign up and other reforms, but when the political pendulum swings in the opposite direction, contested elections are reintroduced. Currently, five Canadian jurisdictions have laws that include majority sign-up processes: the federal jurisdiction, Quebec, Manitoba, New Brunswick, and Prince Edward Island.⁵

Have EFCA-Style Provisions Been Discredited in Canada?

Opponents of the EFCA in the United States have repeatedly pointed to Canada as a country in which, as a direct result of their experience with majority sign-up, lawmakers now recognize the superiority of mandatory elections. Nine out of ten Canadian provinces used majority sign up in the late 1980s, they point out, while only four out of ten use it today. Two decades ago, majority sign-up covered over 90 percent of Canadian employees; today, these same provisions cover about 40 percent of Canadian employees. But claims that majority sign up has been discredited in Canada and replaced by U.S.-style elections are misleading. First, as mentioned previously, union elections in Canada are very different from management-dominated NLRB elections. Second, five Canadian

jurisdictions—including large and influential ones such as the federal jurisdictions and Quebec—still have majority sign up. Finally, the policy situation is far from static and Canadian laws are much more malleable than their U.S. counterpart -- provinces that have moved from majority sign up to elections could still move back in the opposite direction. In May 2008, for example, the Ontario Legislature considered a bill to reintroduce majority sign up. Thus, majority sign-up could, once again, become the norm in Canada.

Canada's experience with majority sign up is relevant to the current U.S. debate in a more direct way. The principal refrain of employer groups opposed to majority sign-up is that it would expose employees to coercion and intimidation by unscrupulous union organizers. What does the Canadian experience suggest? Until the Conservative Harris government did away with majority sign-up in 1995, this system of union recognition had operated in Ontario—Canada's most populous province—for almost half a century. Yet the preeminent scholar of Canadian labor law, Professor Harry Arthurs, recently stated that he did not know of a single case in which the employer had complained that the union had illegally coerced workers into joining a union.⁶ Not one case in fifty years, compared to over 20,000 cases of employer coercion per year under the National Labor Relations Act for the past two decades.

Opponents of the EFCA have also used the Canadian comparison to attack one of the bill's other main provisions – first contract arbitration (FCA). Writing in the *San Francisco Chronicle*, for example, Jackson Lewis lawyer Michael J. Lotito recently (and erroneously) wrote: "A quick review of history shows why [FCA] is a bad idea. In Canada, all 10 provinces once operated under a law similar to the EFCA. Today, that law has been abolished in all but four provinces."⁷ Ten versus four refers not to FCA provisions, as Lotito implies, but to majority sign-up. In fact, seven Canadian provinces have first contract arbitration provisions in their laws, while three (Alberta, Nova Scotia and New Brunswick) have never had it. No Canadian jurisdiction has had FCA and then decided to get rid of it. In contrast with the contention that the Canadian experience illustrates the pitfalls of FCA, academic research suggests the opposite—it has reduced first contract disputes and encouraged bargaining, and arbitrators rarely impose settlements. Professor Susan Johnson, an economist at Wilfred Laurier University, reports that FCA "supports and encourages the collective bargaining process and is not a substitute for it."⁸ Thus, the lessons from the Canadian experience with majority sign up (little or no evidence of union coercion) and first contract arbitration (encourages collective bargaining and reduces first contract disputes by half) support the case for reform in the United States. And as a result of its stronger protection for recognition and bargaining rights, bargaining coverage in Canada is over double the U.S. level: about 31.5 percent overall, ranging from over 39 percent in Quebec (the nation's second most populous province) to under 25 percent in Alberta.

In January 2009, unions from 45 different countries pledged support for the EFCA. Given its moderate provisions, it is not surprising that labor unions from other democracies support the legislation. Workers in their countries already enjoy recognition and bargaining rights at least as strong as those provided for by the bill. It is time to inject some reality into the debate over the Employee Free Choice Act – a bill that would be considered a modest proposal in any other developed democracy—and reject the hyperbolic rhetoric about "radical" and "revolutionary" reform. A systematic comparison of recognition and bargaining in developed democracies can help promote a more realistic and sensible debate.

Notes

1. The Jackson Lewis quote is at <http://www.efcadesensekit.com/>. The other quote is from "Foreign-Owned Automotive Companies in the United States Prepare to Meet New Unionization Challenge," <http://www.globalautoindustry.com/article.php?id=3387&jaar=2009&maand=1&target=Ameri>. Both web sites were accessed February 23, 2009.
2. Eversheds, "Trade Union Roadshow," May 16 2000, Ironmongers' Hall. http://www.hero.ac.uk/uk/business/archives/2008/disuniting_the_workers_Apr.cfm. Accessed February 23, 2009.
3. John Monks, General Secretary, Trades Union Congress, letter to Keith James, Chairman, Eversheds, July 4, 2000.
4. See John Logan, "U.S. Anti-Union Consultants: A Threat to the Rights of British Workers?" Trades Union Congress, London, United Kingdom. www.tuc.org.uk/extras/loganreport.pdf. Accessed February 23, 2009.
5. In addition, Ontario and Nova Scotia have mandatory elections, but allow majority sign up in the construction industry.

6. Jonathan Zasloff, "Card Check and Union Coercion," December 4, 2008, *The Reality-Based Community*, available at:
http://www.samefacts.com/archives/2009_democratic_agenda_/2008/12/card_check_and_union_coercion.php.
7. Michael J. Lotito, "Employee Free Choice Act may increase economic uncertainty," *San Francisco Chronicle*, December 8, 2008.
8. Susan Johnson, "First Contract Arbitration: Effects on Bargaining and Work Stoppages," Department of Economics, Wilfrid Laurier University, Waterloo, Ontario, Canada, December 2008.



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