

Relations industrielles Industrial Relations



“If the Workers Took a Notion”: *The Right to Strike and American Political Development*, by Josiah B. LAMBERT, Ithaca, N.Y.: ILR Press, 2005, ix, 259 pp., ISBN-10: 0-8014-8945-8 and ISBN-13: 978-0-8014-8945-7

Étienne Cantin

Volume 62, Number 2, Spring 2007

URI: <https://id.erudit.org/iderudit/016096ar>

DOI: <https://doi.org/10.7202/016096ar>

[See table of contents](#)

Publisher(s)

Département des relations industrielles de l'Université Laval

ISSN

0034-379X (print)

1703-8138 (digital)

[Explore this journal](#)

Cite this review

Cantin, É. (2007). Review of [*“If the Workers Took a Notion”*: *The Right to Strike and American Political Development*, by Josiah B. LAMBERT, Ithaca, N.Y.: ILR Press, 2005, ix, 259 pp., ISBN-10: 0-8014-8945-8 and ISBN-13: 978-0-8014-8945-7]. *Relations industrielles / Industrial Relations*, 62(2), 386–391. <https://doi.org/10.7202/016096ar>

Tous droits réservés © Département des relations industrielles de l'Université Laval, 2007

This document is protected by copyright law. Use of the services of Érudit (including reproduction) is subject to its terms and conditions, which can be viewed online.

<https://apropos.erudit.org/en/users/policy-on-use/>

Érudit

This article is disseminated and preserved by Érudit.

Érudit is a non-profit inter-university consortium of the Université de Montréal, Université Laval, and the Université du Québec à Montréal. Its mission is to promote and disseminate research.

<https://www.erudit.org/en/>

problème de légitimité et de pouvoir des institutions internationales. Par ailleurs, il attire notre attention sur le fait que ce même système lie inexorablement à la fois les entreprises internationales et les mouvements antimondialisation. L'auteur présente les différents arguments des tenants des mouvements antimondialisation. Il enchaîne ensuite en mettant l'accent sur les protestations antimondialisation contre le pouvoir des multinationales. L'imputabilité et le contrôle démocratique font l'objet d'un développement qui explique que le monde fait face à de sérieux problèmes qui sont davantage internationaux que nationaux, notamment le sida, le trafic de drogue, la prolifération nucléaire et la paix mondiale. Or, faire face à ces enjeux requiert des accords multilatéraux ainsi que des institutions internationales. Restreindre les interventions à un niveau national serait loin d'être suffisant. Le développement sur la mondialisation, la surconsommation et l'homogénéisation retient que la mondialisation et les entreprises multinationales sont plus visibles qu'avant. La mondialisation est souvent associée à la croissance des habitudes de consommation américaine à travers le monde qui résulte en une augmentation de l'homogénéisation des biens en remplacement des produits locaux par des produits de masse largement publicisés. Existe-t-il des approches alternatives ou un pouvoir

susceptible de contrebalancer celui des multinationales ? Pour répondre à cette question, l'auteur examine le mouvement syndical et son déclin précipité aux États-Unis, la mobilité des capitaux compromise par le pouvoir de négociation des gouvernements nationaux et la dépendance des gouvernements nationaux à l'égard des entreprises multinationales. En terminant, l'auteur observe l'existence de certains désaccords sur la nature de la mondialisation entre les différents mouvements antimondialistes, alors que tous s'accordent pour déplorer la pauvreté, les iniquités et les abus environnementaux causés par la dominance des entreprises multinationales.

Cet ouvrage est sans doute d'un grand intérêt pour toute personne qui s'intéresse au phénomène des multinationales. Son approche essentiellement historique le démarque de plusieurs livres récents traitant du même sujet et lui donne une surprenante profondeur d'analyse. Même si on peut noter certaines inégalités entre les chapitres, il n'en demeure pas moins qu'il s'agit d'un ouvrage à la fois de référence et de réflexion qui apporte un regard différent sur les multinationales et leur rôle qui façonne l'histoire de la mondialisation.

TANIA SABA
Université de Montréal

“If the Workers Took a Notion”: The Right to Strike and American Political Development,

by Josiah B. LAMBERT, Ithaca, N.Y.: ILR Press, 2005, ix, 259 pp., ISBN-10: 0-8014-8945-8 and ISBN-13: 978-0-8014-8945-7

This book by political scientist Josiah Bartlett Lambert revisits the history of the right to strike in the United States to answer two questions: How did the American labour movement in the private sector sink to a ten percent unionization rate? How did “one of the most militant labor movements”

become so “cowed” with a strike rate that is only a “mere one-tenth of what it was a generation ago?” (p. 4). A decade after the election of a new AFL-CIO leadership committed to reversing the decline in union membership through aggressive organizing, the downward drift continues. The share of American

workers belonging to unions has been falling for more than 50 years—an almost inexorable decline barely affected by the new energies that John Sweeney’s team brought to the AFL-CIO in 1995. Hiring new organizers, alliances with other social movement organizations, new political initiatives—none of these strategies of revitalization has visibly affected American labour’s decline, and the share of private sector workers belonging to unions has now fallen to pre-New-Deal levels. Beginning with an important but familiar fact of U.S. industrial relations—the declining propensity to strike—Lambert explores the declining legal protection offered striking workers as an indicator of a larger phenomenon: the growing bias against collective action in America’s liberal polity. In a nutshell, he argues that “the rise of the modern American liberal state transformed the right to strike from what had been a stalwart citizenship right, founded on civic republican principles, into a tentative and conditional commercial right based on modern liberal precepts” (p. 5).

Lambert’s study draws on a wide range of secondary works about the history of American industrial relations and labour law from the early nineteenth century onwards. By bringing forward historiographical and social-scientific concepts that have been developed by others in the study of 19th century American labour relations, Lambert’s historical survey attempts to show that “rights-based liberalism cannot provide an adequate justification for the right to strike because it offers no satisfactory theory of collective rights” (p. 187). Lambert’s three-pronged argument is a complex one, which should be read and pondered carefully. The author finds the principal cause of the falling rate of striking in the erosion of the right to strike, exemplified by the use of permanent replacement workers. He then attributes this to labour law’s historic decision to treat the right to

strike as a commercial matter, rather than as a question of fundamental constitutional rights. Finally, he proposes to draw on the tradition of 19th century “civic republicanism” to reground the right to strike in the Constitution’s 13th Amendment—the “Free Labor Amendment” that bans “involuntary servitude.”

The conventional story of the right to strike in the United States—tracing to the work of John R. Commons and his associates—holds that from colonial times through much of the 19th century, strikes were banned as common law conspiracies. Judges gradually renounced the conspiracy doctrine and established the right to strike—a great advance in labour and human rights. According to this conventional account, labour has by and large accepted the remaining limitations on that right. Lambert’s revisionist account of the history of the right to strike tells a rather different story. Lambert reminds us that through the 1870s or the 1880s, there were actually remarkably few practical limitations on the right to strike in the United States—the hostility of legal doctrine notwithstanding. While some strikes were suppressed under the conspiracy doctrine, a far greater number were conducted without judicial interference. Lambert shows how nineteenth-century strikers were protected in law and respected in their communities because their strikes—and their collective action in general—were seen as a necessary tool for exercising collective and democratic governance of their workplaces. From the early days of the American republic, Lambert argues, labour leaders and social reformers supported a robust right to strike as essential for the democratic citizenship of working Americans and for the defence of republican institutions. Democracy was understood as a social phenomenon that is necessarily expressed as collective action by the mass of the American republic’s population.

Lambert explains that this peculiarly American tradition of working-class republicanism gave a labour twist to the Jeffersonian notion that citizens must be economically independent to be politically independent: Full labour rights could make workers independent just as land ownership made the rural yeomanry independent. From this labour-republican vantage point, the right to strike was one of the liberties that distinguished the free worker from the slave and bondsman—an aspect of “free labor” that provided an alternative to the growing concentrations of private power, the declining standing of the “citizen worker,” and the “degrading” forms of work discipline, subordination and dependence inherent in capitalism’s “wages-system.”

As William E. Forbath and Victoria C. Hattam have argued, this expansive labour-republican view of democracy and collective action was challenged in the late nineteenth century by judges and others frightened by labour militancy. Unlike these legal historians, however, Lambert argues that state suppression of the right to strike was spearheaded not just by the judiciary but by the entire political system (p. 18). Drawing on recent works in the field of American Political Development, Lambert explains the emergence of a “new American state” in the post-Civil War era that asserted a concentration of sovereignty and a monopoly of force at the national level. However, mass strikes threatened the emerging American state’s claim to a monopoly of the legitimate use of force. Lacking the political, constitutional, and administrative resources to address the underlying causes of industrial unrest, federal and state officials by default relied on armed force to break strikes. Between 1877 and 1922, state and federal governments used armed soldiers in literally hundreds of strikes, in the process destroying several unions and fatally harming the Knights of Labor and later the Industrial Workers

of the World. As Lambert explains (again building upon earlier works of Montgomery and Forbath), state suppression of the right to strike was increasingly legitimated by an ascending liberal ideology in which democracy is understood as a matter of individuals with equal rights protected in their individuality from oppressive social institutions, such as governments and unions.

Even when the liberal state and the law became more sympathetic to unions and collective action during the New Deal of the 1930s, Lambert shows how it remained fundamentally hostile. Legislation like the Norris–LaGuardia Act (1932) and the National Labor Relations (or Wagner) Act (1935) purported to protect unions and workers from hostile judges and employers. Several legal historians have explained how these laws were subverted and now offer virtually no protection to workers or union organizers. But Lambert goes further and shows that this subversion was no accident but was almost inevitable in the original design of these laws because the New Deal did not protect collective action as an essential manifestation of popular democracy. Instead, it defended collective action as a necessary evil—a weapon needed by working people to defend their interests in a bargaining process dominated by powerful employers. Without unions and strikes, workers would be vulnerable to oppression by employers grown large by the growing scale of production. But if they are nothing more than bargaining weapons, unions and their strikes deserve no more respect in law than the tactics employed by employers. Worse, where an employer’s actions are the work of an individual and entitled to protection, strikes and unions are inherently suspect as conspiracies against the public, intended to create an unfair monopoly. “Rights-based liberalism,” Lambert laments, “cannot provide an adequate justification for

the right to strike because it offers no satisfactory theory of collective rights” (p. 187). Nor, he might add, does it offer a coherent defence of the right to participate in other forms of collective action, including joining a labour union.

Of course, workers have historically proved defiant of the suppression of strikes and union organizing. Indeed, the mass strikes of 1934, just before the passage of the Wagner Act, defiantly utilized illegal and even violent methods to counter violent repression by employers and government. Lambert writes that labour law evolved to allow a limited right to strike against individual employers when it became apparent that the state’s use of force to break strikes was undermining the state’s legitimacy, and when state officials realized that a limited right to strike would support the state’s interest in industrial recovery. But the right to strike was treated both by law and by “pure-and-simple trade unionism” as a commercial right rather than a fundamental constitutional one. As a result, the right to strike has been highly circumscribed. Wage earners have the right to strike, but not during the term of their contract. Employees are free to participate in a work stoppage, but only over issues of wages and working conditions. Job holders may engage in concerted activities, but not against someone else’s employer. Working men and women may stop production, but they may not strike for political purposes. They may refuse to work, but not if it disrupts essential services. Workers may strike, but they may not interfere with strike breakers.

The right of employers to hire permanent replacement workers has long been part of the U.S. industrial relations. Lambert argues that the legality of permanent replacement workers—often blamed on passing comments in the Supreme Court’s decision in *NLRB v. Mackay Radio and Telegraph* (304 U.S. 333 [1938])—in fact arose from

the NLRA itself, and especially from the 1947 Taft-Hartley amendments. He explains that the absence of major use of permanent striker replacements from the 1940s through the 1970s was not the result either of law or of government policy but of the proven capacity of the labour movement and the working class to mobilize direct action by enraged workers and supporters to counter it. The use of permanent replacement workers was legal, but virtually unknown, from the Wagner Act until Ronald Reagan’s mass firing of striking PATCO air controllers in 1981. Lambert argues that the growing use of permanent replacement workers has since significantly reduced labour’s bargaining power in strikes. Still, this does not explain the decline in the incidence of strikes, the greatest part of which had occurred before the PATCO strike. Lambert explains this decline by the slow deterioration in the right to strike.

Lambert echoes the work of Harvard political scientist Michael Sandel by proposing to reground the right to strike in the tradition of “civic republicanism.” More specifically, Lambert revives the critique of treating labour as a commodity and grounding labour rights in the Commerce Clause of the Constitution. He proposes to rehabilitate the traditional labour position that instead bases the right to strike on the 13th Amendment’s prohibition on “involuntary servitude.” As Lambert acknowledges, however, the U.S. Supreme Court has been consistently hostile to claims that the 13th Amendment guarantees the right to strike. But he argues, drawing on the important work of legal historian James Gray Pope, that until the passage of the Labor Management Relations (Taft-Hartley) Act in 1947, labour unionists insisted that their rights to organize and to strike were constitutional rights resting upon this amendment. Still, although workers insisted that the

Constitution guaranteed the right to strike, that didn't stop the courts from throwing them in jail for exercising it. Indeed, the function of labour's argument was not so much to persuade the courts as to justify for themselves and the public the claim that the right to strike was a basic constitutional right. They conducted what Pope characterizes as a "constitutional insurgency," in which a social movement rejects current constitutional doctrine, but rather than repudiating the Constitution altogether, draws on it for inspiration and justification; unabashedly confronts official legal institutions with an outsider perspective; and goes outside the formally recognized channels of representative politics to exercise direct popular power, for example through extralegal assemblies, mass protests, strikes, and boycotts.

Lambert suggests that the Supreme Court may change its mind in the future as it has done in the past. But he does not suggest what historical process or agency might lead it to reconsider its basic approach to the right to strike. This exposes one of the odd features of Lambert's argument: he blames the deterioration of the right to strike essentially on the hegemony of modern American liberalism—a body of thought he defines so broadly that it embraces almost everybody across the entire range of American politics from the genuinely far right to what passes for a left. While this orientation brings fresh air to musty discussions among legal historians and industrial relations scholars, Lambert's strategy of blaming a set of ideas for the policy narrowing that has helped confine and undermine American labour in the last six decades means that he ignores the social and political actors whose very real interests have driven, and benefited from, this process—*viz.*, employers and conservatives. So, it is hard to imagine a reassertion today of the right to strike, however well grounded in "traditional American political discourse," not

being rooted in a labour mobilization that would meet fierce opposition from these same actors.

Pope's recent research indicates that the Supreme Court's decision to declare the Wagner Act constitutional can only be explained as a consequence of the auto plant sit-downs that were occurring even as the court met. Likewise today, a "constitutional insurgency" is likely to be necessary in order to reassert a meaningful right to strike—or indeed any meaningful future for the labour movement. Lambert's political and legal history of the right to strike makes a great contribution by showing that a revitalization of organized labour in the United States must go through a critical engagement with the underlying liberal assumptions of established labour law. It also presents persuasive arguments reminding us of how weak and constricted the right to strike that New Deal statutes, agencies, and judicial rulings created always was, even before it began to be chipped away. Generations of American academics took the New Deal industrial relations regime almost for granted, as an enduring feature of the political-economic landscape, even if they set out to criticize its inadequacies, as did the "new labour historians" of the 1960s through to the 1980s, or the closely related critical legal scholars of the 1970s through to the 1990s. It turns out that they were all wrong: it was always a far more accidental, aberrant, contingent, and vulnerable institutional framework than we believed. In a contemporary context marked by the decline of the American labour movement (weaker now in the private sector than it was in the 1920s), its political marginalization, and the withering away since the 1940s of the rights effectively to join a union, organize, and strike—partly because of a regulatory regime which, supposedly, defines and protects them—the New Deal's liberal industrial relations institutions need all the critical analysis they can get, Lambert's included.

Unfortunately, Lambert's sensible arguments at this level sit alongside, and in the end get buried by, his sentimentalist vision of the golden age of civic republicanism, c.1830–1880, lovingly evoked in chapter two, which provides him with an escape route for American labour and its friends from the dead end in which they find themselves. At times, it seems as if the author is operating with a rather fantastical vision of the American past; and his policy recommendations for getting the American labour movement out of the bind in which it finds itself, and which he depicts very realistically, are evidently well-intentioned, but seem more appropriate for the 19th century than for the United States in the early 21st century. As a result, readers who struggle with or disagree

with Lambert's attempted revival of the tradition of "worker republicanism" and call to base the right to strike on the 13th Amendment's prohibition on "involuntary servitude" are not likely to be convinced of their merits. Still, a key merit of this volume has already been realized with his broad historical survey of the right to strike in its middle chapters, which takes us from the early nineteenth century through to present-day labour battles. In addition, Lambert provides a helpful overview of how public policy toward the right to strike has shifted over many years. Other readers and reviewers should focus their attention on the quality and accuracy of this survey.

ÉTIENNE CANTIN
Université Laval

Vers une transformation des relations industrielles en Amérique du Nord,

par Jean-Claude BERNATCHEZ, Québec : Presses de l'Université du Québec, 2006, 202 p., ISBN : 2-7605-1388-2

Agreable à lire, formateur, audacieux, voire parfois provocateur, l'ouvrage de Jean-Claude Bernatchez offre au lecteur une remise en question réfléchie du régime de relations industrielles nord-américain. Le questionnement de l'auteur provient du constat des différences importantes entre la qualité des conditions de travail nord-américaines lorsque comparées aux conditions de travail en Europe, l'avantage étant clairement en faveur des salariés européens. Le régime nord-américain ne pourrait générer des conditions de travail d'une qualité qui reflète la prospérité économique américaine ou canadienne.

Prenant appui au chapitre 1 sur un survol historique du régime, l'auteur présente aux deux chapitres suivants les contextes et les caractéristiques du régime nord-américain en allant plus en détails quant aux particularités

québécoises. Il s'agit là d'une synthèse intéressante qui permettra entre autres au lecteur européen de saisir les particularités du mode de régulation et de détermination des conditions de travail outre-mer. Certes, on comprend bien en Europe que le régime nord-américain est décentralisé, mais on ne saisit pas toujours sur une base opérationnelle comment le tout fonctionne. À tort, on qualifie souvent ce régime de régulation de laissez-faire et l'analyse offerte par l'auteur permet d'en comprendre le fonctionnement. Ces chapitres, tout comme les autres d'ailleurs, se terminent par des séries de questions qui suscitent une poursuite de la réflexion ou permettent, dans un contexte d'enseignement universitaire, de vérifier la compréhension des concepts et des analyses qu'ils contiennent.

Intitulé « Les modèles internationaux de relations industrielles », le chapitre 4