

TOWARD FLEXIBLE INDUSTRIAL RELATIONS INSTITUTIONS

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This paper is an attempt to capture part of a series of conversations around the question of institutional inflexibility. We have focused primarily on the context of collective bargaining under the National Labor Relations Act, also known as the Wagner Act. Several years ago now, we began conducting interviews with a wide range of workers who had formed affinity groups within organizations. These groups were growing at the same time that trade unions were contracting and collective bargaining was declining. They seemed in some sense to offer an alternative way of organizing the workforce based around identity. The interviews that Mike and I conducted ranged from Hispanic engineers to gay newspaper reporters; an effort that took us for a time inside a major U.S. banking establishment searching for ways in which social identities—or more specifically, identities not immediately connected to the workplace like being Hispanic or gay—cropped up in the way peoples work lives.

In a companion to this paper, we draw on these same conversations to discuss the rise of new set of institutions in the U.S. based around these social identity categorizations and how, in particular, these have come to be institutionalized in law and practice. The question we hope to address here, however, is one step removed from that discussion: why was it that this new alternative became necessary at all? More specifically, was there something about the Wagner Act—the basic law on which American industrial relations has been based since the 1930s—that made it somehow inherently inflexible in the face of the changes taking place in the nature of the economy and of society? Could the Act have been designed in such a way as to make it more adaptable? Can we learn lessons from what seems today to be its failure that might be applied to designing institutions in the future? What has emerged for us is the beginnings of a framework which is not quite fully worked out, but which I hope can nevertheless form the basis of a rich discussion.

Our argument, in short, is that institutions that lack a visceral connection to salient identities ultimately fail. The problem confronting would-be designers of institutions, therefore, is to understand how identity intersects with institutions: how that intersection is achieved in the first place; how it erodes and how institutions might take these processes into account in order to reinvigorate the connection between the two over time.

To fill this in, one needs to draw a sharp distinction between the notions of interest and identity. Interests define people according to their basic drives for survival and comfort. In the context of the workplace, this suggests a divvying up of profits, resources and conditions of employment in ways that ensure distributional fairness. This divvying up is necessary in order to ensure survival, basic comforts and perhaps most fundamentally in order to ensure social peace. But, needs and wants are not what make each of us individuals. Fully realizing ones individuality requires satisfying a broader range of human aspirations: the desire to have one's humor appreciated, one's history recognized, ones goals comprehended. There is, in other words, a fundamentally human desire to be understood and it is out of this desire that identity emerges.

Identity is a fundamental building block of institutions. Neither mechanisms for efficient exchange nor for instruments for asserting interests, we have come to see institutions are better thought of as manifestations of the intersection of interest and identity. Identities are often woven into institutional fabric in many ways including legal definition. For instance, the Wagner Act provides a detailed definition of what a worker is for the purposes of the Act. Collective bargaining agreements provide very specific definitions of bargaining units which define in detail who is included and who is not. These definitions are sign posts of identity; they provide easy shorthand for people to identify themselves with respect to each other when interacting under the auspices of a given institutional regime. However, such institutionalized definitions of identity are not given. Rather, they are typically the result of complicated—often highly contested—social actions including conflicts, social movements and crises. Identities pre-exist the events that shape them—workers, as an identity group, certainly existed long before the passage of the Wagner Act—but in the course of social action, the boundaries and meaning of identities are sharpened. In this sense, the identities that are incorporated into institutions emerge in the course of struggle.

It was out of the CIO movement of the 1930s that of identity of the blue collar industrial worker emerged. And it was this particular identity that would come to define what it meant to be a *worker* under the American system of industrial relations. To illustrate this, let me delve into a specific story that comes from some of my dissertation work. It concerns the organizing of Bethlehem Steel which was (up until about two months ago actually) the second largest steel producer in the United States. The Steel industry had been a primary target for labor organizers stretching back to the 1860s and the drive to organize the Homestead works in Pennsylvania. But in the 1930s, the effort gained momentum driven by successful efforts to gain labor recognition in mining and in the automobile industry. To the surprise of many, the union won early recognition in 1937 at U.S. Steel Corporation which was by far the largest steel maker in the United States and by many estimates, the largest company in the world at that moment in history. But the rest of the steel industry—including the second leading company, Bethlehem Steel—refused to go along. A bloody five year organizing campaign ensued.

At Bethlehem, the organizing effort was ultimately led by a man named John Ramsay. A devout Presbyterian, husband to the daughter of a Moravian missionary, Republican, and founder of a local Boy Scout Troup, Ramsay's was hardly the background of a "typical" labor activist. But spurred by the suffering he witnessed emerging all around him in the hardest years of the Great Depression, Ramsay, he and a young Presbyterian minister, Paul Cotton, formed a work group in 1931 to help address the needs of growing ranks of unemployed men in the city called the Unemployed Citizens League. They soon confronted the intransigence of local businessmen to the League's efforts and, prompted by the passage of the National Industrial Recovery Act—an anti-Depression initiative of the Roosevelt administration that included some rudimentary protections for labor—they began considering labor organizing as a possible solution.

Ramsay eventually came to play a leading role in crafting the union's organizing strategy; a strategy designed primarily to overcome what he saw as the campaign's major obstacle: the fact that Bethlehem's workforce was fragmented into at least eleven distinct ethnic groups who lived and worked in close proximity to each other but who, nevertheless, rarely mixed socially or politically. Ramsay's approach built on his religious convictions and his belief in

the power of conversion. Along with a band of volunteers known as “Ramsay’s Boys,” he spread throughout the plant converting workers one-by-one to the union cause. The campaign took on the trappings of a religious revival with radio broadcasts featuring prayers from Catholic and protestant religious leaders. Rather than giving formal speeches, Ramsay’s Boys approached local ethnic clubs mainly by mixing into funerals and weddings.

The organizing drive at Bethlehem Steel came to a head in 1941. The first election took place in Lackawanna where the company had organized a group of local clergy who portrayed the union as Communist dominated. The union asked Ramsay to travel from Bethlehem to assist. He arranged meetings with Protestant, Catholic, Jewish and African-American religious leaders and secured their support. Having won over these key community leaders, the Union easily succeeded in the election; its first major victory in the battle to organize “Little Steel.” Bethlehem’s other plants soon followed. By the outset of the Second World War, the entire steel industry had been organized as a result of the triumph at Bethlehem.

Bethlehem’s employees did not initially identify primarily as workers, *per se*. Like John Ramsay, they saw themselves as husbands, sons, Presbyterians, Catholics and Moravians first and only in the course of the conflict came to realize their common identities as “workers.” Of course, they were workers before the social action. But slag pullers and railroadmen at the Works did not see themselves as sharing much more in common than an employer. What linked them together was the concerted social action of the union organizing campaign. In the course of making sense of the problems their community faced and of strategizing a response to them, this campaign drew on all of the various identities—particularly on religious identities which perhaps most salient at that time. By the time the union won recognition from the company, what it meant to be a “blue collar worker had become both intertwined with and delimited from the broader set of economic, social and political identities which held sway in that community. It was this set of identities that formed what the “community of interest” among the group of workers within the company who shared enough of a common identity to make a cohesive bargaining unit within a firm.

For a moment in time—starting with the years just before the passage of the Wagner Act and lasting to the opening of the Second World War—the identities that emerged in the course of

the Wagner Act's birth and implementation accurately reflected the social, political and economic identities that fueled its creation. Problems emerged, however, as the inevitable evolutionary forces of both society and the economy proceeded apace. The War had a dramatic impact on the economy itself both in terms of catalyzing its expansion and also by introducing a much more bureaucratic approach to the organization of firms to parallel the kind of military command and control which been so successful in prosecuting the War. The Taft-Hartley Act and Landrum-Griffin Acts of 1949 and 1954 were attempts to adjust labor law to reflect these economic shifts. But the War also effectively brought out the salience of a number of social identities as well—particularly those of African-Americans and of Women who had effectively been ignored under the New Deal's collective bargaining regime.

In a companion piece to this essay, we discuss how an alternative set of labor market institutions, beginning with Equal Employment Opportunity Legislation in the 1970s, came out of the social movements that emerged out of these groups and how, in doing so, they drew on different sets of institutional templates from the ones that informed the New Deal industrial relations institutions. For the purposes of this discussion, however, it is enough to note that by the 1970s, these alternative social movement were fully developed in their own right and were cast *in contrast* to 'blue collar' identities that lay beneath the New Deal collective bargaining regime. Indeed, in combination with the technological and organizational shifts that emerged after the War, the notion of a blue collar identity had largely been undermined as representative of a workforce that was both increasingly diverse and increasingly white or pink collar in nature. By the 1980s, the Wagner Act's connection to the identities of people which it intended to give voice to had become so weak that it was a relatively easy thing for Ronald Reagan and his colleagues to sweep the regime aside.

A concrete example of this comes from a case I worked on before I came back to graduate school when I was a member of the labor relations staff of the National Federation of Federal Employees, a union which represents federal government employees in the United States. In 1975, workers at the Smokey Mountain National Park—a remote and strikingly beautiful area straddling the borders of Tennessee and Kentucky—voted to join the American Federation of Federal Employees; a labor union which represents federal government workers. National Parks are lands managed by the US Federal Government both to protect

and ensure public access to uniquely natural landscapes. The history of the Parks stretch back to 1902 when President Theodore Roosevelt created the first National Park at Yellowstone. In doing so, he created also an occupation that has become a staple of American culture: the Park Ranger. Conspicuous perched on horseback in tall green felt hats, wide belts and jack boots, Park Rangers have a long, well known tradition of providing valuable information to park visitors while simultaneously enforcing the rules and regulations that keep the parks in pristine condition.

Under the Federal Labor Relations Act,¹ the boundary of a bargaining unit is defined according to shared “communities of interest.” Communities of interest are intended to be organically defined by the parties to the collective bargaining agreement to reflect an identifiable group of workers who share a set of common interests. The unit at Smokey Mountain initially identified one single community of interest among all of the workers at Park reflecting the common struggle in which they had engaged in the effort to get the union in place. Over time, however, two events served to alter the boundaries of the unit. First, in the early 1990s, concessions services—including hotels, motels, lodges and restaurants—were privatized. Under federal law, the workers in these facilities retained their positions, but as private workers they were now subject to private sector labor laws and therefore barred from remaining within the local.

The second event occurred in 1995 with the bombing of the Oklahoma City Federal Building. In the aftermath of that event, the US Congress enacted legislation to substantially increase both the pay and the amount of training given to federal law enforcement officers. This change, however, created a dilemma for the Park Service. For some time, a de facto separation of labor had existed within the ranks of the service’s Rangers with some concentrating on the law enforcement side of the job and others on its educational aspects. Indeed, by the late 1980s there was even a voluntary organization which held informally organized national meetings and carried on discussion with the separate administrative infrastructure within the Park Service that oversaw law enforcement efforts at the Parks.

¹ The Federal Labor Relations Act was passed during the Administration of President Jimmy Carter and, with only a few exceptions, patterned on the Wagner Act.

At Smokey Mountain, these differences were quite strong. Over time, in fact, a political division had developed within the local union between representatives of the two kinds of Rangers. Maintenance workers within the bargaining unit, however, tended to side with the educationally oriented Rangers in union elections giving this group the political advantage. Frustrated with this, Law Enforcement Rangers had filed several “duty of fair representation” complaints over time.²

The passage of these legislative law enforcement enhancements forced the divide into the open. In 1998, the law enforcement Rangers filed a petition with the Federal Labor Relations Authority (counterpart to the NLRB under the Wagner Act) to form a separate unit consisting of Law Enforcement Rangers. The law-enforcement Rangers’ informal organization had approached the Fraternal Order of Police, a union in the U.S. that mainly represents municipal police officers, to form one single bargaining unit encompassing all of the Park Service’s law-enforcement officers nationwide. In doing so, they would push to give law enforcement Rangers a separate official identity; one that reflected the de facto divisions that existed on the ground.

Affected unions³ and the Park Service opposed the motion on the grounds of the Park Rangers’ long history, a fundamental aspect of which was the unity of the Rangers’ educational and law enforcement responsibilities. The FLRA agreed and denied the Rangers’ motion. A year later, a maverick group of Rangers at the Park filed a petition to decertify the union. Few workers actually participated in the election. The few that did vote won a majority to decertify. Today no union represents workers at Smokey Mountain National Park.

Interests are typically defined in contrast to the interests of others, particularly if one understands interest as fundamentally a drive to improve one’s chances of survival or degree of comfort. Interest, in other words, is inherently competitive nature. It therefore leads to

² A “duty of fair representation” complaint is an administrative proceeding intended to give union members recourse in the event that they feel the union is failing to adequately represent their interests.

³ By expanding the petition to cover all such workers nationally, the petition affected several other unions which also represented Park Service Employees. Sean Safford was employed as a staff member of one of the affected unions, the National Federation of Federal Employees, and was the union’s representative at the hearings in which this case was tried.

forms of action that are essentially individualistic for, even if one joins with others in a coalition of interest to achieve a particular desire, at some point the logic of interest requires one to divide up the spoils within the coalition as well. Ultimately, the group itself is reduced to a collection of atomized actors. Identity, on the other hand, emerges in the course of *communication, declaration and representation*; it emerges, in other words, from interaction within the context of a group. It is this interaction that simultaneously gives the group and the individual meaning.

Organizations built around interest are therefore simply a collection of individuals. As a result, they face the classic free rider problem. Identity is a communitarian concept; it is rooted in a concept of self that is linked to a larger community and one is motivated to support the community in order to preserve the self.

What happened at the Smokey Mountain, in a sense, can be boiled down to a conflict between interests and identities as drivers of institutions: the collective identity of “Park Ranger” lost salience for the workers that ascribed to it. It had been drifting for some time. By the time Congress took action to enhance law-enforcement officers’ conditions of employment, this group of workers already encompassed a well developed and decidedly separate identity. But the institution resisted this shift; it could not adequately adapt to it. As a result, the bargaining unit ultimately devolved into what was essentially just a coalition of interests. Inevitably, law-enforcement officers’ interests clashed with the interests of others within the bargaining unit and, lacking a salient identity tying them together, the unit eventually foundered. In a sense, this very same process can be used to explain what has happened to the Wagner Act more broadly. It has emerged simply as a institution which creates and protects coalitions of interest. But the workers no longer identify with it.

The stories of organizing Bethlehem Steel and the death collective bargaining at the Park Service provide book ends on the life cycle of the Wager Act which reached its peak in the years just after the Second World War but is today a decided secondary feature of the institutional landscape in the United States. Alternative ways of organizing the labor market—ways which are discussed more fully in the paper Mike will be presenting on Saturday—have emerged and in many ways eclipsed the New Deal era industrial relations institutions.

The question we are left with, however, is whether this necessarily had to be the case. In other words, could the Wagner Act have been designed in ways that might have allowed it to change and adapt along with the changes taking place in the American economy and American society? Our answer to this question is incomplete. However, we have the notion that the answer is to be found somewhere in the way that social action transforms identity. Somehow, it would seem to be

Our goal, in thinking about this question must be to avoid the impulse which assumes that the identities we see all around us today are the same identities that will exist tomorrow. Identities are constantly shifting and evolving. Institutions benefit from some kind of mechanism which incorporates social action into their fabric for, as we saw in the case of Bethlehem Steel it is in the course of social action that identities are sharpened, invigorated and incorporated into institutions.

Intriguingly, the Wagner Act actually did incorporate such an important element of social action. Under the Act, collective bargaining agreements are required to be renegotiated every three or four years. At the same time, local unions are required to elect their leaders every few years. In theory, it is just these kinds of social action invigorates identity by sharpening them and making them more salient. Somehow, it seems like it should be possible capture the power of social action to incrementally update institutions in ways that might ensure that they reflect identities as they change over time.

Intriguingly, the Wagner Act actually did incorporate element of social action which were intended as mechanisms for renewing identity including, for instance, regular elections of union officers and the requirement that collective bargaining agreements should be renegotiated every three or four years. In theory, at least, it is just these kinds of social action that should serve the purpose of invigorating salient identities among workers while, at the same time, serving to update the institutions in ways that ensure they accurately reflect these identities.

But at the end of the day, these mechanisms did not permit the incorporation of radical shifts of identity. Indeed, they actually had the opposite effect by essentially recommitting people to identities which they already had. In the end, these mechanisms did not allow shifts that were radical enough. What was needed somehow was a way to fully reengage the notion of the “community of interest” calling for a full redefinition of the bargaining unit or even of the union. The Wagner Act could have facilitated this. But as the Park Rangers’ case illustrates, it did not.

The problem is made more complicated today as well by the fact that identities are far more complicated than what the Wagner Act envisioned. To illustrate what I mean by this, I will offer one last vignette which I think suggests both the possibilities and the challenges inherent in trying to incorporate a more dynamic view of identity into the way we think about institutions and institutional design.

Esther Simeone was born in Haiti in a town called Rezistanze. In 1986, she came to the United States as part of a large wave of migration from that country fleeing the political unrest which erupted in the wake of Papa Doc Duvalier’s death. She and her daughter settled in a part of Miami, Florida, known as Little Haiti. Initially, Esther worked in light manufacturing while pursuing a certificate as a nurse’s assistant at night. She graduated and eventually found a job in a nursing home where many of her compatriots from Resistance worked as well. This was no accident of course. When she arrived, she and her friends had formed a home-town club which met regularly to listen to Haitian music and generally to catch up. The club also had a functional purpose which was to send money to loved ones still living under the oppressive conditions back in Haiti. When it came time to look for a job that took advantage of her skills, she naturally drew on these friends to find work.

In 1996, a group of workers at the nursing home where Esther worked started organizing a union. Florida is a ‘right-to-work’ state which means that, even though there may be a union in the workplace it is illegal to require workers to pay dues union to the union. As a result, it is perhaps not surprising that less than 4% of workers in the state are union members. Ester’s background from Haiti had not exposed her to what a union was let alone the somewhat complicated process that has emerged to govern the election process. She attended the first meeting though at which she was asked whether she might consider joining the campaign.

She commented later “I never knew the union cared about us” referring to the immigrant women of color with whom she identified. But soon Ester was fully involved in the campaign and eventually she helped the union to win recognition at the nursing home.

The story did not end there for Ester. In 2002, she became involved in Democratic politics for the first time. Florida, as the world now knows, was highly contested in the 2002 presidential election. Ester mobilized to help ensure that her voice and the voices of her compatriots were heard in it. Her project initially was to lead the registration of voters in Little Haiti and to encourage them to vote for Al Gore. But when the election results were finally tallied and were shown to be a virtual tie—one, as everyone knows, that was tainted by a number of inconsistencies in the voting process—she engaged the political battle that ensued by arranging for busses to take a contingent from Little Haiti up to Tallahassee in order to participate in the protests happening there.

A year later, Ester was mobilized once more, this time in response to the way in which immigrants—like her and her friends—were treated in the aftermath of 9/11. Following the terrorist attacks, foreign men without either immigration or citizenship papers were arrested and detained for indefinite periods of time without benefit of legal recourse. This included men from the Caribbean who, of course, were not implicated in the attacks but which the U.S. government nevertheless labeled suspect. Ester and her community were outraged and mobilized to demand answers to the treatment these men had received. She and her compatriots organized sessions in which immigration administrators and elected officials were called to task over the treatment and their efforts paid off as concessions were agreed to by the federal officials. Today, Ester is proud but somewhat surprised to look back on all that she has accomplished in just a few years since she came to the US.

Social action moreover has the unique property of tying identities into the institutional fabric as is perhaps best illustrated by Ester’s story. Figure 1 is a representation of the various identities, social actions and institutional manifestations of action that emerge from her vignette. Ester came to the United States with several fundamental identities—as a mother, a Catholic, and a Haitian. The process of migration, however, fundamentally shaped her identity, particularly as a Haitian woman. This, in turn, had consequences for the institutions with which she interacted. The most obvious example of this is perhaps Little Haiti. Before

the large scale migration, the neighborhood where Esther and her compatriots settled was simply one of the many Latin quarters in the city. But the arrival of so large a group of migrants—a group that was made cohesive through the joint process of migration—fundamentally altered the neighborhood. Ester's Rezistanze hometown club was just one of the many manifestations of this change as were the numerous shops and churches that accompanied them.

Education shaped Ester's identity, admitting her to the mysteries of this particular occupation. However, Ester brought her own identity into it as well. Joining her Little Haiti sisters at the nursing home, Ester and her friends created Haitian sub-culture within the nursing home which was an amalgamation of mainstream nursing practice infused with its own humor, pace, history and language.

The union organizing campaign entailed yet another transformation; one that appended the identity of "worker" onto her pre-existing identity as a nurse. The union campaign encouraged Ester to become politically involved in her community; thus altering her identity within the community of Little Haiti. Organizing politically within her community helped to shape that community; giving it a voice in the electoral process. It was altered still more in the aftermath of 9/11 Ester—and her community—mobilized in response to actions of government.

The point of all of this is that, if we see Esther solely as a worker or as a union member, we miss so much of what it is that engages Esther in her community; we miss a great deal of her identity: her ethnicity, her motherhood, her status as an immigrant. What links all of these together though is social action. By engaging in all of these social actions, Esther's identities have evolved and become sharper. In each instance, new language developed; Ester for instance learned that the union cared about her. But her story, in turn, has become part of the folklore of the union itself. She taught the union that women like Esther cared about being cared about and in this way, the union as an institution was altered as it took on a language with which Ester and those like her recognized. Both were strengthened and drawn together in the process. Somehow, we must learn how to capture the power that comes from these mutual realizations in the way we think about designing industrial relations institutions in the future.

We have run out of time to work this out more fully. But basically, the implication is that in order to survive, collective bargaining and trade unions would have had to adapted their organizational structures to the changing structure of identity in the workplace and in society more generally. When it failed to do that, it became simply a coalition of individuals. As such, it was unable to mount a defense in the face of employer hostility which emerged in the 1980s. An extension of this argument which we definitely don't have time to develop here, is that as a coalition of interests it was impossible negotiate the kind of economic flexibility which employers were asking for. That flexibility required unions to give up the range of things like job definitions, seniority, grievance procedures based on precedent as practice. A cohesive organization rooted in identity might have been able to adjust. But it was impossible for a coalition of individuals to do so.

Figure 1

