INTRODUCTION TO A SPECIAL ISSUE ON THE NEW LABOR FEDERALISM

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The articles in this volume grew out of a 2018 conference organized by the Rutgers School of Management and Labor Relations and Cornell University's ILR School to address questions regarding labor regulation at lower levels of government. During the extended period that federal reform has been blocked, enormous activity has taken place at the state and local levels in terms of both the passage of new employment laws and regulations as well as their administration and enforcement. Drawn from the larger set of papers presented at that conference, these articles focus on specific dimensions of the puzzle. This introduction paints the broader picture suggested by the conference and papers taken as a whole. The move toward federalism as a strategy, particularly as an alternative to organizing through the NLRA, while promising, is so far limited because it focuses on the substance of labor regulation exclusively, in isolation from the procedures through which work regulation is promulgated and enforced. The most likely place to look for reforms that will give the new labor federalism institutional support and stability comparable to that of the New Deal collective bargaining regime at its apogee is in their implementation and enforcement.

The past 40 years constitute a particularly bleak period in US labor history. The legal framework that grew out of New Deal labor legislation has seemed less and less able to protect worker rights to organize and to bargain collectively; minimum labor standards have progressively deteriorated; and efforts to address these problems through national labor law reform have repeatedly failed. Trade union membership has fallen from a third of the labor force to barely 9% (less than 6% in the private sector). In 1968, a minimum wage worker earned $10.59 per hour in inflation-adjusted terms, 46% more than today's $7.25 federal minimum wage (Cooper, Mokhiber, and Zipperer 2021). In the United States, 90% of workers have

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seen their pay shrink dramatically as a share of total personal income, from 58% in 1979 to 47% in 2015 (Bivens and Shierholz 2018).

But during the extended period federal reform has been blocked, enormous activity has taken place at the state and local levels in terms of substantive protective legislation, particularly by and for workers at the bottom of the wage hierarchy. Lower levels of government have begun to play an increasingly important role in both the passage of new employment laws and regulations as well as their administration and enforcement. During the past decade, organizers and policy entrepreneurs in more than 29 states and 44 localities have succeeded in passing minimum wage laws higher than the federal level;[1] enacting paid sick leave laws in 15 states, 19 cities, and 3 counties;[2] domestic workers' bill of rights legislation in 9 states and 1 city (Fernández Campbell 2019); and "ban the box" laws removing conviction history questions on job applications across 35 states and more than 150 cities and counties (Avery and Lu 2020). They have expanded the range of substantive areas under regulation particularly with regard to women in the workforce—in areas such as paid sick leave, paid family leave, domestic workers' rights and benefits, and problematic employer scheduling practices—areas in which the federal government has failed to act. Thus, as Susan Lambert and Anna Haley (2021: 1232) observe in this issue, this legislation is "not so much a matter of devolving federal authority to local actors, but rather of newly legislating aspects of employment that have seen little regulation at any level of government." Some cities and counties, with San Francisco, Seattle, Los Angeles, and New York in the vanguard, have established sizeable new labor standards agencies to carry out enforcement of their new local labor laws.

Three years ago when we began work on this special issue, these developments seemed to constitute a *new labor federalism:* a shift away from national labor and employment standards toward standards imposed by state and local governments. This shift represented a reversal of patterns established in the 1930s, when the federal government became the dominant actor in the regulation of work and labor relations—and which continued with the passage of national civil rights and employment discrimination laws in the 1960s and beyond. The political impasse in Congress and the ideological turn against regulation more generally had limited the possibility for new policy initiatives at the federal level and led economic justice activists to turn to state and local regulatory bodies for action. Surprisingly, perhaps, while federalism has generally been understood as a tool for abetting business's policy agenda (Hacker and Pierson 2002; Peterson 2012) as opposed to labor's, and more generally to defend a conservative "state's rights" agenda around race, gender, and other issues in the past few

[1]Economic Policy Institute, Minimum Wage Tracker, accessed at https://www.epi.org/minimum-wage-tracker/.

[2]National Partnership for Women and Families, accessed at https://www.nationalpartnership.org/our-work/economic-justice/paid-sick-days.html.

decades, it has provided the best opportunity for progressives to improve employment standards. As Freeman and Rogers (2007) proposed and Colbern and Ramakrishnan (2020) elaborated in their recent work, federalism can also provide opportunities for states and localities to forward a progressive policy agenda.

We wondered: Could the country's industrial relations system renew itself from the bottom up? And if so, what would this new system or regime look like, and how would it relate to the system that emerged from the New Deal labor legislation? Would it include a more diverse set of constituencies often left out of the action under the old regime, both in terms of worker voice in elections and the policymaking process, as well as some type of occupational, sectoral, or workplace structure? If it were to grow and spread, was it likely to prove a complement to the collective bargaining around which the New Deal regime was built, could it prove to be a competitive alternative, or would it be too limited—confined to a relatively small set of states and cities where the political climate made these policies feasible and preemption unlikely? Would it have a spillover effect—creating patterns that were eventually adopted by the national government, such as the pattern bargaining of the New Deal collective bargaining regime? Could it spread upward in the wage structure to effectively set incomes throughout the local economy?

The articles in this volume grew out of a 2018 conference organized by the Rutgers School of Management and Labor Relations and Cornell University's ILR School to address these questions. Drawn from the larger set of papers presented at that conference, these articles focus individually on specific dimensions of the puzzle. Our intention with this introduction is to paint the broader picture suggested by the conference and subsequent events, taken as a whole.

The Turn toward Local Action

The turn toward state and local action is not a spontaneous development. It is a self-conscious political strategy developed in reaction to the impasse at the national level by a network of criminal justice, labor, progressive, and feminist policy advocacy organizations including All of Us or None, the National Employment Law Project's (NELP) Family Values at Work, A Better Balance, and the Center for Law and Social Policy (CLASP), often in collaboration with economic justice networks including the Retail Action Project, Center for Popular Democracy, Partnership for Working Families, and the National Domestic Workers Alliance, and their local affiliates, along with worker advocacy groups, unions, and central labor bodies. The financial support required to initiate and sustain the endeavor has come from the Service Employees International Union (SEIU) for the Fight for $15, and primarily from foundation grants for the other policy campaigns. This pro-labor alliance might have come together earlier but it had to overcome

a historical legacy of hostility and distrust among the various groups that now compose it.

The traditional labor movement had not been particularly hospitable to the groups that have spearheaded the contemporary movement (Foner 1974, 1982; Gould 1977; Cobble 1993, 2007; Delgado 1993; Fletcher and Hurd 2000; Frymer 2008; Fine and Tichenor 2009; Windham 2017). Black workers were continually subjected to racial discrimination, exclusion, and occupational segregation and in some cases forcibly removed from the skilled trades. They were most commonly kept out of craft unions altogether or required to organize through segregated locals with little interference from their national unions or the American Federation of Labor (AFL), and frequently confined to the worst jobs in the industrial unions. Agricultural and domestic workers, overwhelmingly Black, were excluded from the Fair Labor Standards Act (FLSA) and the National Labor Relations Act (NLRA) as a compromise with the southern white supremacists who were in leadership positions in key committees in Congress (Farhang and Katznelson 2005). Women had to struggle for access to unions and for recognition of the pervasive gender discrimination and occupational health and safety issues they faced on the job. Given that the traditional gendered division of labor was so deeply embedded in the labor movement, as in society, pay equity and ''work–family issues'' such as paid family leave, child care, and unpredictable work schedules were siloed or ignored altogether.

Immigrant workers were frequently viewed by unionized workers as undercutting their wages and working conditions, and immigrant worker organizations, like worker centers, tended to be viewed by unions as competitors to their own labor market institutions (Fine 2007). At various points in American history, many unions backed anti-immigrant and exclusionary immigration policies. In recent years, the novelty and complexity of the issues faced by immigrant workers in non-union construction, for example, and the strategies they develop to protect their own health and safety in a hostile system, are suggested by the Natasha Iskander and Nichola Lowe (2021) article in this issue. The regulation process they describe is organic to the work process in much the same way that traditional shop floor unionism has always been, but neither the immigrants nor the unions recognized the parallels.

Black political and community groups as well as women's organizations often tended to be seen by mainstream labor leaders as divisive, while the groups themselves were suspicious of the labor movement's commitment to their rights and concerns. Until relatively recently, Blacks, Latinx, indigenous, women, and immigrants were almost completely absent from leadership positions within the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) and most of its affiliated member organizations (Warren 2005, 2007).

The issues these groups were bringing to the fore, with some notable (and often partial) exceptions such as the garment, hotel, and hospital unions, were issues with which older unions had little experience, interest, or expertise to offer their comrades. Over time, however, the hostility of the two sides toward each other has been muted, and as Daniel Galvin (2021) demonstrates, unions have become important allies in the struggle to raise standards in non-union sectors in which the prospects for unionization are low. The national AFL-CIO, local central labor councils, and state federations have strongly supported the local and state legislative campaigns for living wage, higher minimum wage, and paid sick and safe time, putting their political power behind them. SEIU has been the main financial backer and organizing muscle behind the Fight for $15. Some unions have become leaders on immigrant worker rights as well as work–family policy and bargaining issues, and a small number have developed organizing partnerships to jointly mount unionization campaigns. As Galvin's article in this issue suggests (and as he demonstrates in greater detail elsewhere), a strong correlation exists between union density and labor federalism (Galvin 2019, 2021).

In some ways, the success of a more local approach had been presaged by the movement to organize government employees that unfolded with less fanfare beginning in the 1960s but continued under the radar even in the President Reagan years, until today the union membership rate in the public sector (34.8%) is five times higher than among private-sector workers (6.3%). Union density among government employees has now reached a level equal to that among private-sector employees at its apogee. Indeed, the expansion of public-sector unionism tended to obscure the growing decline of organization in the private sector, and the resources these public-sector unions brought to the labor movement helped sustain the movement's political power even as its economic power continued to decline. In fact, because public-sector unions depended on legislative action to fund their contracts, they have been more deeply committed to political action and in a better position to support new legislation (Johnston 1994).

Note, however, the fundamental differences between the new labor federalism and public-sector unionism. Most important of these is that the former focused on generating *substantive* regulations through political action and policy whereas the latter focused on union recognition and collective bargaining, which established a regime. They created a set of institutional *procedures* through which substantive regulations were generated and *embedded in the economy*, a point to which we will return. A second difference between the two movements is that public-sector unionism was built upon the NLRA model. The model was modified in various ways in separate jurisdictions, but because it was the shared starting point for virtually all of the local initiatives, it facilitated learning and the spread of intuitional innovations across the country. The importance of this effect is apparent in the evolution of federal systems in Canada and Spain, which were the

subject of papers at our Federalism in US Work Regulation conference but are not included in this volume. The emergent labor federalism in the United States today does not seem to have a single model to serve as a reference point. What is common to local initiatives at the current moment in the United States is that in their emphasis on local action they contrast sharply with the efforts to control and direct the evolution of work under the New Deal framework. The locus of action in the New Deal framework was most frequently the workplace, firm, or industry, but it rarely cut across firm or industry boundaries or included non-workplace-based organizations.

Environmental Factors Promoting Federalism

Although the turn away from a single national model appears to have been largely a reaction to the failure of efforts to strengthen worker welfare at the national level, changes in the social and economic environment have facilitated these developments. Four of these are of particular salience. First, the decline of manufacturing and the growing importance of personal services; second, the decentralization of production; third, the explosion of technology that has facilitated work-for-hire/gig arrangements, and, through global positioning system (GPS) technology, a higher level of surveillance—centralization of control but decentralization of production; and fourth, as previously noted, the growing centrality of women and immigrants in the labor market.

The increased importance of services relative to manufacturing has shifted the terrain of action. Because manufactured goods are mobile and manufacturing firms must compete in the national, and now increasingly international, marketplace, workers' gains are possible only if the industry as a whole can be organized, and this has historically led to broad national unions (Commons, Lescohier, and Brandeis 1935; Ulman 1955; Kaufman 2003). The range of activities that can be performed remotely has been greatly expanded by digital technology, the internet, and the experience of remote working arrangements in response to the COVID-19 crisis, but the market for services, including retail trade, leisure and hospitality, food services, health care, and social assistance, and the array of personal services that require direct physical contact between provider and client, is inherently local and some gains can be made on the purely local level without organizing in other places.

A second trend in the socioeconomic environment that has encouraged federalism is the decentralization of production, what David Weil has termed fissuring, and, relatedly but separately, a dramatic move toward what is labeled "independent contracting" by its proponents but "misclassification" by its detractors (Carré and Wilson 2004; Weil 2014; Goldman and Weil 2020). Fissuring and independent contracting both involve the dispersion of work once performed in a single enterprise to a variety of subcontractors or, in the case of independent contracting, individuals.

These developments are particularly problematic for collective bargaining under the Wagner Act, which excluded independent contractors and certified unions on the basis of majority vote in a workplace or establishment. Workers employed in such a unit were barred from expressing an interest in conditions of work outside their own bargaining unit or bringing to bear economic pressure in the form of a strike or boycott. The Act made exceptions for certain industries that have historically been organized in this way, most notably garment and construction, but in recent years, as production processes have dispersed, these exceptions have not been expanded nor has their rationale been extended to other industries. Indeed, beginning with the Taft-Hartley amendments to the original NLRA in 1947 and then through progressive reinterpretation by the courts in favor of employers, the reach of the NLRA has been increasingly narrowed and restricted even as employment practices in firms and industries have continued to evolve over time.

The specific reasons the decentralization of labor standards accelerated are complex and vary across states and localities. In his insightful article on the evolution of the construction industry in this special issue, Mark Erlich (2021) brings these complexities to light in a powerful indictment of the industry and regulators alike. Erlich shows how the dynamics of this industry are a precursor to the lack of regulation in the current gig economy. He traces the evolution of contracting in the construction industry and distinguishes the way in which it was originally accommodated in the industry from its current use as an instrument for the evasion of collective bargaining altogether. In a fresh take on the issue, Gali Racabi's (2021) article asks whether independent contractor organizing might actually be a way of *evading* the rigidities of the Wagner Act and constructing a system of employment relations at the municipal level. To do so, Racabi compares the approaches to local regulation and organization taken by Uber drivers in Seattle and New York City.

Technological changes have also encouraged decentralization: Digitalization and GPS make it possible to monitor and control a dispersed labor force in a way that used to be possible only through direct supervision. The emergence of platform economies building on the new technology have adopted independent contracting as their preferred organization of work and have built not only their human resource management but arguably their whole business model around organizing work in this way. The complexity of these new management systems and the desire to protect working conditions without blocking technological progress suggests the advantage of a decentralized local regulatory process in which a variety of approaches can be developed, but to realize this advantage would require a system for sharing experiences and comparing them across localities, the mechanisms for which do not currently exist.

The movement toward decentralization has received further impetus during the COVID-19 crisis as the practice, and technology, of work at home

has expanded in ways that are sure to extend the bounds of independent contracting, but how much and in what directions are as yet unclear. We have already alluded to the role of women and immigrants in the move toward localism.

The Limits of Labor Federalism

The current socioeconomic environment along a variety of dimensions seems more conducive to local regulation of the work process. But the move toward federalism as a strategy, particularly as an alternative to organizing through the NLRA, is, in our view, limited because it focuses on the substance of labor regulation exclusively, in isolation from the procedures through which work regulation is promulgated and enforced. That distinction between substance and procedure is in many ways reminiscent of the distinction between employment law and labor law, that is, between the FLSA, which specified wages and hours, and the NLRA, which created the framework for the determination of work conditions but left the substantive content to be determined through those procedures. Insofar as the federal strategy has been built around a single model, it has drawn upon the model of the FLSA rather than the NLRA.

The limits of this approach are exemplified by the Fight for $15, otherwise by far the most successful of the local campaigns, and, in a sense, the issue most exemplary of the new labor federalism. Although the campaign demand began as "Fifteen dollars and a union," the union piece, as a subject of local policy or union organizing, has been unsuccessful (Rhomberg 2018). This is why, as Ken Jacobs, Rebecca Smith, and Justin McBride (2021) argue in this volume, local sectoral bargaining is so critical, as we discuss below.

Furthermore, because the Fight for $15 campaign began in 2012, the value of the $15 target has been eroded over the intervening nine years, and it is completely unclear whether, if, and when it is achieved, pressure will emerge for another increase. Is this actually a campaign for $15 per hour or is it for social control over the wages at the bottom of the labor market? What will be left of the minimum wage as the value of $15 erodes further and the political climate in certain localities does not permit a new campaign?

We are not arguing that we need to reproduce a NLRA-type framework on the local level through a series of little Wagner acts. Indeed, the whole point of the exercise in which we are engaged is to imagine an alternative to the New Deal system, not simply in employment law but in labor law as well. We emphasize that the new labor federalism is an open-ended approach to worker welfare, a political strategy not in itself a prescription for a new institutional regime of work regulation. But we believe that the ingredients of a new procedural order are inherent in attempts to address

the unsolved problems that have emerged in the effort to enforce the substantive legislation.

Before turning to explore the potential ingredients of a new system, we should recognize three dimensions of the older, New Deal system that would be especially desirable to preserve in any emergent order. One is the way in which the New Deal system recognized and institutionalized worker representation. It not only provided formal recognition to trade unions and defined their role in the collective bargaining process but also made possible a dues-paying membership that provided the means to associational power necessary for the union to be an effective advocate of worker rights in the collective bargaining process. The financial base supporting the new federalism draws overwhelmingly on foundation grants (to the tune of tens of millions per year in the aggregate), government, and in some limited instances, unions. But the foundation support is often unequally distributed, inconsistent, and extremely program specific, and the union support is derivative of the place unions hold in the old system, drawing on the dues-paying base of its certified members rather than on a base of workers who are actually connected to the organizations advancing the new policies (Fine, Narro, and Barnes 2018; Gates et al. 2018). Neither of these supports can be expected to continue indefinitely.

The second feature of the New Deal collective bargaining regime to reproduce or preserve in the new regime emerging from the new federalism is the way in which the protagonists in that regime were embedded in the economy. They were compelled by their position to recognize and take account of the constraints the economy imposes on the capacity of firms to actually comply with any set of substantive requirements without undermining their competitive position and the employment opportunities that it generates and sustains. The political support that sustains the current system of local policies means that organizational demands are constrained by economic conditions in only the most indirect way.

A third feature of the New Deal system virtually never recognized but important in building an alternative, is the distinction it drew between contract negotiation and contract administration. That distinction enabled the collective bargaining regime to establish and recognize contract provisions as a set of individual rights through the grievance procedure in contract administration while at the same time creating collective rights for the workforce in the negotiation of the contract itself.

In her contribution to the special issue, Olatunde Johnson (2021) spotlights the "patchwork problem" of intrastate and interstate variation in workers' rights and regulation that could lead to confusion about the differing mandates within and across states and to businesses fleeing to jurisdictions that do not have these laws. In our own research, which looked at minimum wage and paid sick and safe time policy debates in San Francisco, Seattle, Los Angeles, and New York City, we found that "better business climate" arguments have not been dispositive politically nor led

large numbers of businesses to head for the exits (Fine and Shepherd 2021). A related limitation on local regulation discussed by Lambert and Haley (2021) with regard to fair scheduling laws is that business procedures and performance goals are set at the corporate level under the purview of operations management, and large national firms are reluctant to adjust scheduling and payroll software systems to facilitate compliance by frontline managers when so few locations are covered by the local ordinances. The challenge of expectations on local managers to ensure compliance with local labor laws *and* corporate performance requirements is real, but in our view can be mitigated through enforcement systems on the ground.

Separately but relatedly, the viability of labor federalism as a system is further complicated by the issue of preemption. As both Johnson (2021) and Racabi (2021) point out, opponents have not taken the advance of labor federalism lying down. They have mounted major efforts to pass state preemption laws that strip localities of their power to enact legislation. Johnson traces the evolution of state preemption efforts, first driven by the gun lobby and opponents of environmental legislation and then extended by the American Legislative Exchange Council (ALEC) to preempt cities from passing local labor and employment laws. While the opportunity for action has been foreclosed in many states for now, organizers are advancing legal and political strategies to challenge preemption laws and to block their passage in other places. Preemption is a big problem—but just because it places a limitation on the breadth of cities that can enact these policies, it does not mean that advancing them where the politics work is not a worthwhile strategy. These new laws have broken through the federal stalemate, improved the lives of millions of workers, and expanded the policy imaginary. They may well inspire red-state workers to demand higher standards, as voters have done in Arkansas and Florida, and to overturn preemption laws.

Enforcement: The Missing Piece

In our view the most likely place to look for the reforms that will give the new labor federalism institutional support and stability comparable to that of the New Deal collective bargaining regime at its apogee is in the implementation and enforcement of the regulations being generated through the political process. Unless local regulations are accompanied by a system of implementation and enforcement, the movement will prove purely symbolic or hortatory. But, with some exceptions described below, the existing administrative apparatus of most state and local governments are not up to these new responsibilities. Those existing agencies in which they could be housed all need to be significantly enlarged and expanded to take on these new responsibilities, and in some jurisdictions where no good candidates can play this role, agencies need to be created from scratch.

The problem of implementation and enforcement is moreover much more complicated than it might initially appear. For many businesses, the most important policy details regarding both the paid sick and minimum wage ordinances is the specific cutoff number for what counts as a small versus a large business. Business size dictates the number of years a firm has to phase in the policies and the number of hours a worker can accrue under the paid sick leave ordinance (as well as how many hours can be carried over per year). Additional issues include whether individual franchisees are considered small businesses or part of larger integrated enterprises. These "exceptional" provisions are typically made as concessions to constituencies in the process of building the political coalition required to obtain passage, but ideally these policies should be designed in consultation with an agency that understands the problems of enforcement and implementation even before they are promulgated.

But while the promise of creating a system of enforcement and implementation is implicit in the labor federalism debate, discussion of what such a system should look like is extremely limited. The policy debates focus almost exclusively on the substantive standards, particularly the minimum wage. Neither activists, nor policymakers, nor scholars have devoted much attention to enforcement. A new body of research—much of it our own—has recently emerged that focuses directly on this problem, and endeavors to address many of the limits of the movement toward state and local regulation as an approach to work regulation.

Broadly speaking, this research has three strands: strategic enforcement, co-enforcement, and general (as opposed to specialized) labor inspection. All three of these approaches focus on the fact that labor regulation agencies, like most enforcement in most policy domains, do not have the resources to pursue every violation that occurs and, as a result, exercise enormous discretion in terms of which violations they attempt to investigate and correct. The dominant approach in US enforcement is complaint based; that is, the agency pursues the complaints that come in over the transom, in more or less the order in which they present themselves. This approach is consistent with the widespread view that what is at stake are individual rights, but it does not recognize labor regulation as social policy. Workers in industries with the most serious violations are typically most afraid to complain, and the industries with the most numerous complaints are not necessarily those with the most serious social or economic impact.

Strategic enforcement is an approach that tries to pick out and focus attention on industries and enterprises in which violations are most serious in these terms. In principle it encompasses any approach to information gathering and analysis that helps it to do so. Until recently, it had been primarily implemented at the federal Department of Labor's Wage and Hour Division (WHD), which, under David Weil, pioneered the use of very large data sets and sophisticated statistical techniques for identifying industries and firms on which to focus attention. Under Weil, WHD also created a

new position, the Community Outreach Resource Specialist (CORPS), a full-time outreach position intended to institutionalize working with community organizations (Gleeson and Bada 2019). As of March 2021, CORPS staff were based in 56 district offices across the United States.

At the state level, the California Department of Labor (DOL) is engaged, with its community partners, in strategic enforcement initiatives in six low wage, high violation industries. New Jersey's DOL is in the process of implementing a strategic enforcement approach across seven of its subunits, and both Washington and Colorado have created new units to address companywide investigations.

Co-enforcement could be thought of as another form of strategic enforcement focused on the information that can be gathered through close collaboration with workers themselves and with organizations and advocacy groups (Fine 2017). It recognizes that workers typically have information about employment conditions and practices in individual enterprises that are not available through broad-based surveys but are often afraid to provide that information to government agencies and/or are unaware of its potential significance. But it takes a dedicated long-term effort to cultivate the trust and understanding required to obtain that information regularly and systematically. It thus places less emphasis on the information per se than on the processes required to develop the relationships with local community groups and worker organizations, which build the trust and the common base of understanding and experience that generate a flow of information over time.

The distinction between general and specialized regulation (Piore and Schrank 2008, 2018) recognizes the importance of the scope of responsibility invested in any given regulatory agency and the kinds of corrective action to which that leads. At the national level, we in the United States have a specialized system of work regulation; responsibility is dispersed over a dozen agencies, each with a narrow jurisdiction: health and safety (OSHA), wages and hours (the DOL's WHD), immigration, equal employment opportunity, and so on. Each agency is expected to investigate violations in its own narrow jurisdiction and to sanction the enterprises in which the violations occur. The sanctions are expected to deter violations, but they also discharge the responsibility of the enterprise under the law.

This approach contrasts sharply with a general system of work regulation in which responsibility for enforcing all labor and employment statutes is placed in a single agency; that agency has the power to impose sanctions in the form of fines—and even criminal liability in the case of willful violations or negligence—but its role and responsibility is not to sanction and deter but rather to take corrective action to ensure the violation does not recur. This responsibility encourages the agency to look for the underlying causes of infractions, which are typically rooted in business strategies and managerial practices, and to demand that these practices are altered accordingly. At the same time, it can delay the implementation of statutory requirements

until the enterprise has time to adjust and offer advice as to what adjustments are required and how they can be made. When the underlying business climate does not provide the latitude for the enterprise to respond in a constructive way, the enforcement agency is expected to inform the legislature that is in principle in a position to take corrective action.

These varying perspectives are not mutually exclusive and indeed could work together to stabilize and institutionalize federalism as a system and embed it in the economy, as opposed to a political movement, as it largely exists today. Particularly promising, it would appear, is co-enforcement. It seems to point toward the creation of permanent partnerships between the enforcement agency and local community and worker organizations. Such partnerships would give these groups institutional status and stability, and in return for their support in education and investigation, a financial base of some kind, although not equivalent to the dues-paying base of trade unions. If we finally began to have stringent enforcement, the move toward a general labor inspectorate would force the agency to think long term, weigh the total burden of the new regulatory mandates upon the enterprise and the local economy in which it was embedded, and modulate the pace of enforcement accordingly. It could also lead the agency to identify the reforms in managerial practice that would enable the enterprise to adjust to the new regulations in the most effective and efficient manner. Of course, doing so would require a significant shift in recruitment of investigators and their qualifications and training. At the same time, strategic enforcement could enable the agency to see how different firms and industries were embedded in the larger regional and national economy and to encourage national organizers to direct their attention to spreading parallel policy initiatives to those localities in order to level the playing field between them.

Thus far it is true that movement in any of these directions has been limited. Fine, Lyon, and Round (2020) have found that labor standards enforcement agencies at the state and local levels still largely embrace individualized enforcement that is dependent on complaints. Among cities in their survey, 70% indicated their enforcement is complaint-driven, while 54% of states interviewed said the same. However, this likely exaggerates the extent to which states are engaging in strategic enforcement. Extensive interviews and conversations with many states revealed that most of those who indicated engaging in proactive enforcement (directed investigations) do so primarily around suspected child labor violations, often in the form of seasonal summer sweeps of boardwalks, restaurants, and the like, but largely not connected to a sectoral analysis or strategy. In interviews in which they were asked to consider strategic enforcement, agency leaders expressed a sense of obligation to pursue every individual complaint as if work regulation was about individual rights as opposed to operating as instruments of social policy (Fine et al. 2020). An example of the way in which this dichotomy presents itself in practice is the choice between

pursuing a minimum wage violation in a small, specialized establishment with few direct competitors relative to a comparable violation in a large establishment that creates competitive pressures that undermine the wage structure of a major industry. As noted earlier, the New Deal collective bargaining regime manages the conflict between collective rights and individual rights through the distinctions it draws between contract negotiation and contract administration.

Nonetheless, pathbreaking developments in the new labor federalism have been taking place at the local level, not solely with respect to policy but also in terms of the institutionalization of enforcement. Beginning with San Francisco in 2001 and followed by Seattle, Los Angeles, and New York City several years later, these cities have established full-time agencies to administer and enforce municipal labor ordinances. These local agencies are also acting as institutional hubs for labor market research and policy and business and worker outreach and education. They are creating a field of local labor market regulation that attempts to compensate for the historical limitations of FLSA and NLRA and to also tackle complex issues that have arisen as a consequence of the fissured economy, including joint employer, up-the-chain liability, and gig work/independent contracting. In contrast to previous labor law regimes, the agencies focus on the bottom rungs of the labor market: low wage, contingent, and precarious workers, particularly immigrants, women, and people of color. Los Angeles and Santa Clara counties have also established local agencies, and Santa Clara has co-enforcement partnerships with several organizations. More modest offices have been established in other cities, including Oakland, Berkeley, Santa Fe, Minneapolis, Chicago, and Philadelphia.

The leading agencies possess strong statutory powers (some stronger than many state departments of labor) that take fissured employment relationships into account and provide extensive investigatory authority and subpoena power. These statutory powers include joint employer and individual liability, high fines and civil penalties for unpaid wages, as well as retaliation remedies available to workers, and under certain circumstances agencies can suspend or revoke licenses. Budgets and staff have been increased substantially over a relatively short period of years, to keep pace with expanding policy mandates and caseloads. Co-enforcement funding for outreach and education is also available in Seattle, San Francisco, and Los Angeles as well as Santa Clara County and Minneapolis.

Many local policy initiatives in these cities target specific sectors. Sectoral minimum wage and standards policies have been set for airports and large hotels in the city of SeaTac in Washington State as well as in Los Angeles and Long Beach, California. Domestic worker standards boards have been established in Seattle and Philadelphia that provide a forum for domestic workers, their employers, worker organizations, and the public to deliberate about strategies for improving working conditions in a very challenging industry. Although ultimately limited to an advisory role, the wage board in

Seattle is empowered to make recommendations on legislation and policy changes that must be reviewed by the mayor and city council. The wage board has a broad mandate that includes wages, pay differentials, access to paid time off, accreditation, portable retirement and health care benefits, and outreach and enforcement strategies. In New York City, the Department of Consumer and Worker Protection implemented a policy that provides specific protections to freelance workers and offers the first municipal "just cause" worker protection bills in the nation, specifically for fast-food and retail workers. The agency also created a Paid Care Division, which focuses on defending the rights and improving the job quality of home health and personal care attendants, nannies, caregivers, and housecleaners.

Some observers see in these developments the possibility of a model for regulation more broadly that could set or establish the forum for negotiating, and then enforcing minimum sectoral labor standards at the local level. Jacobs, Smith, and McBride (2021) elaborate four ways that unions and governments have historically set sectoral-level labor standards (albeit largely at the national level), on a spectrum from collective to individual rights-based regimes: multi-employer bargaining, wage extenders, sectoral minimum standards, and labor standards boards. Some of the local sectoral initiatives and minimum standards policies are suggestive of this approach, and the agencies have the potential to function as the institutional foundation within which new models of organization, representation, and bargaining could be incubated. Most important, because they are supported as a regular part of government operations, the agencies have financial stability, which under the New Deal system, the unions' dues-paying base provided to the major participants in the collective bargaining process.

To be sure, these offices were not initially conceived as a system in the sense we have in mind. The pieces have the makings of a larger whole, but only if worker and community organizations want them to, are willing to devote significant attention to membership recruitment, and local mayors and city councils are amenable to the vision.

Conclusion

What can we conclude about the new federalism in labor and employment policy? It is certainly no substitute for the protection offered by the system that grew out of the New Deal labor legislation. But it is offering increasing protection to workers in the places it has taken hold, particularly to workers at the bottom of the labor market who were never effectively incorporated in the New Deal system. Thus far, that protection has been largely confined to the more politically progressive cities and states. One measure of its success will be its ability to establish patterns of protection that spread widely over time to cities and states that are not at the vanguard of the progressive movement. The ultimate goal would be to create patterns that are

eventually adopted by the national government, as was pattern bargaining in the New Deal collective bargaining regime. The Fight for $15 is emblematic of this possibility; the campaign has spread widely beyond the places it originated, and a national $15 minimum wage is now being seriously debated.

But one need not judge the movement toward state and local labor legislation in terms of its political success alone. One can also think about it as part of a process that is creating new forms of organization and new institutions. As such, the cities and states active in this domain are not to be thought of individually as wins and losses in a political struggle but rather as so many experiments in the invention and evaluation of diverse forms of regulations that are better adapted to the generation and conservation of worker power in the evolving structures of US capitalism, and which better fit the evolving economic and technological constraints of our times. In this perspective, federalism is a national laboratory, a collection of experiments whose strength lies in its diversity not in its uniformity. We have argued that the most promising terrain for such experimentation is in institutions and processes associated with enforcement. But, as we have noted, these same local communities are also experimenting with new forms of organization and labor-management negotiations. Many, even most, of these local initiatives may fail but they seem likely to yield a range of alternatives, some of which will prove robust in the face of a national political environment that remains hostile to the needs of the US workforce.

The ultimate promise of the turn toward local action in work and employment policy is that it is more than a series of separate institutional innovations, more than an accumulation of regulatory victories. The ultimate promise is that these developments will cohere into a systematic approach to upgrading work and employment progressively over time, one that need not displace the collective bargaining system that grew out of the New Deal, but that could stand alongside it and complement it as a permanent addition to labor policy. Indeed, the thrust of the articles in this special issue, taken as a whole, is that a coherent vision of such an approach has already begun to emerge.

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