

# Do Labor Laws Matter? The Density Decline and Convergence Thesis Revisited

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Under the density decline and convergence thesis, market forces are gradually eroding union density levels, leading to convergence with the U.S. level throughout the developed world. A key implication is that the U.S. decline has been unavoidable and that little, including labor law reforms, can be done to reverse it. Canada appears to refute this thesis, for it has stronger laws, and density is double that of the United States. Yet (1) Canada's higher public-sector density may mask private-sector declines, (2) any private-sector differences simply may reflect a tendency for Canada to lag the United States, and (3) labor law may not explain U.S.–Canada differences. This article explores these possibilities, finding little support for them. It concludes that a strong case can be made for Canadian-style labor law reforms but that such reforms may not be sufficient by themselves to revitalize the U.S. labor movement.

ALTHOUGH STATES TRADITIONALLY HAVE PLAYED A KEY ROLE in shaping industrial relations (Godard 2002a), there is concern that their capacity to do so has declined since the demise of the “golden age” of the 1950s and 1960s and that labor market institutions are now subject to a neoliberal imperative<sup>1</sup> (e.g., Krugman 1996; Strange 1997). A key argument in this respect has been that labor unions are increasingly undermined by inexorable market forces and a concomitant flexibility imperative and that labor laws and policies intended to support them can make little difference (Troy 2000, 2001). As such, the low levels of union density observed for the United States can be considered exceptional only in the sense that the United States leads other nations. It is only a matter of time before density

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<sup>1</sup> There have been two main variants of this argument. The first, an “economic” variant, suggests that economic forces erode union density over time and that state policies and laws can make little difference. The second, a “political economic” variant, is that state policies and laws may make a difference but that economic and ultimately political pressures arising from globalization have undermined the ability of states to enact or sustain such policies and laws (e.g., Crouch and Streeck 1997). This article focuses on the former.

levels throughout the developed world converge toward U.S. levels. Taken to the extreme, what we are witnessing is, in effect, “the end of labor history.” At most, unions will be contained within the public sector, serving primarily as narrow interest groups promoting increased government spending (Troy 2001:257). For present, this may be referred to as the “density decline and convergence” (DD&C) thesis.

Few have rigidly subscribed to this thesis, but it underscores concerns held by many not only as to the future of labor movements in a global era (Ross and Martin 1999) but also as to whether labor laws and, more generally, state policies to encourage collective bargaining can effectively reverse or even halt union decline. These concerns are of particular relevance in the United States, where, despite past defeats (e.g., the 1978 Labor Reform Bill), there has been a widespread belief that weak labor laws and policies represent a major reason for union decline and a widespread hope that reforms to these laws and policies can make a difference (e.g., Weiler 1983, 1984; Gould 1993; Block 1994, 1997; Gross 1994; Block, Beck, and Krueger 1996; Human Rights Watch 2000). However, they may have important implications for other nations (e.g., Britain and Canada). To the extent that the DD&C thesis is correct, the promise of stronger labor laws may be a false one for these nations as well.

To date, support for this thesis has been mixed at best. Although there have been recent declines in union density in a majority of developed nations, the degree of this decline and current levels of density vary considerably (see, e.g., Lipset and Katchanovski 2001:235), making it difficult to draw any firm conclusions. In addition, density figures may mask continuing high levels of union coverage and influence in a number of countries (Wallerstein, Golden, and Lange 1997; Golden, Wallerstein, and Lange 1999; Heery 2001). In Europe in particular, unions remain much stronger than has ever been the case in the United States. Although they have faced a number of challenges over the past few decades (Ross and Martin 1999), it is too early to establish whether these are temporary, reflecting a period of economic difficulty, or whether they portend long-term, irreversible decline.

A further problem has been that most developed nations differ substantially from the United States not just in their systems of labor law and collective bargaining but also in their broader institutional structures and policy traditions (Godard 2002a), both of which shape these systems and how they are affected by global economic and technological developments. This means that it is difficult to extrapolate from the U.S. experience, on which the density decline and convergence arguments seem largely based, to arrive at predictions for these nations. More important for the present

analysis, it also means that these nations cannot provide very good lessons as to the potential efficacy (or lack thereof) of labor law and policy reforms in the United States.

A simple but critical distinction may be between “coordinated” and “liberal” market economies (e.g., Hall and Soskice 2001). The former are most exemplified by northern European and Nordic countries; the latter by the United States, Canada, and Britain. In the former, market forces tend to be constrained in considerable measure by centralized bargaining and labor market institutions, and this historically has created conditions favorable to union growth (Western 1997). In the latter, market forces are much less restricted. It thus may be argued that even if the DD&C thesis does not apply to the former, it may to the latter. Yet even this appears to be uncertain. Although there has been some decline in Canada and even more in Great Britain, density in these countries remains at roughly 30 percent (see WID 2001; Snead, 2001), compared with roughly 13 percent in the United States. Canada is of particular relevance because it has a great many institutional similarities to in the United States, including adoption of the basic model associated with the National Labor Relations Act.

There are a number of possible explanations for the Canada–U.S. density divergence (Kumar 1991), but many people (Weiler 1983; Gould 1993; Block, Beck, and Krueger 1996; Taras 1997; Wood and Godard 1999; Human Rights Watch 2000; Taras and Ponak 2001) attribute it to differences in labor law, including, in most or all Canadian jurisdictions, provision for card certification and first contract arbitration, bans on permanent striker replacements, strong limits on employer speech, and agency shop requirements. The Canadian case thus would appear not only to refute the DD&C thesis but also to establish that labor law, and hence states, can still make a substantial difference and that Canadian-style labor laws could help to reverse the fortunes of the U.S. labor movement. Based on this assumption, these authors have advocated a number of reforms, although these reforms sometimes have fallen short of full adoption of Canadian-style laws.<sup>2</sup>

There are, however, at least three possible counterarguments: (1) the apparent stability of union density in Canada is illusory, attributable primarily to higher levels of public-sector unionism that mask private-sector declines caused by market forces, (2) any differences between the Canadian

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<sup>2</sup> For example, the Dunlop Commission did not advocate card certification, and Human Rights Watch (2000) did not advocate Canadian-style limits on employer speech. There also have been attempts to reinforce worker rights in the absence of labor law reform, such as the Clinton executive order denying federal contracts to those violating these rights.

and U.S. private sectors reflect a tendency for Canada to lag the United States and hence can be expected to diminish over time, with Canadian density converging with that of the United States, and (3) labor law cannot prevent decline and does not explain U.S.–Canada differences. These arguments have been most developed by Leo Troy (1992, 1999, 2000, 2001), the most vocal exponent of the DD&C thesis. Although his work has been subject to criticism (e.g., Thompson 1993; Rose and Chaison 1993, 1996), critics generally have not addressed these arguments fully, and their analyses in any case now may be dated due to recent developments.

The purpose of this article is twofold: (1) to revisit the DD&C thesis, addressing each of these arguments in turn, and, based on this analysis, (2) to address the potential efficacy of Canadian-style labor law reforms as a strategy for union revival in the United States. In so doing, this article will serve as a corrective to Troy's recent work. However, the intention is not to provide support for a particular "side" in the DD&C debate but rather to shed light on a series of questions that have important implications for industrial relations (IR) theory and policy and ultimately for the strategies adopted by labor unions and advocates of stronger labor market institutions. To the extent that Canadian union density has not been in decline, convergence has not been occurring, and Canadian labor laws have mattered, it may make sense to expend even greater effort and resources on labor law reforms. To the extent that this is not so, however, attempting to restore the "promise" of American labor law may be futile. In this regard, the question may be not just whether labor law reforms can help to reverse the fortunes of the U.S. labor movement but also what prospects they hold for density improvements beyond the current Canadian level.

### Has Union Density Declined in Canada?

Attempting to precisely establish density levels or trends in Canada is difficult. Three major series exist, each of which calculates density differently (see Kumar 1988; Murray 2000:82–4). The first is the Human Resources Development Canada (HRDC) series, data for which have been collected from annual surveys of unions with over 50 members since 1911 (see Godard 2000:83–4). The second is the Corporations and Labour Unions Reporting Act (CALURA) series, data for which were collected from the financial statements of national and international unions with over 100 members for the period 1962–1995 (see Mainville and Olineck 1999). The third is the Statistics Canada Labour Force Survey (LFS), a survey of

TABLE 1  
TOTAL UNION DENSITY ESTIMATES, SELECTED YEARS

	United States <sup>a</sup>	Canada		
		HRDC <sup>b</sup>	CALURA <sup>d</sup>	LFS <sup>e</sup>
1955	32.0	33.7	—	—
1960	30.4	32.3	—	—
1965	27.6	29.7	30.8 <sup>e</sup>	—
1970	26.4	33.6	32.6	—
1975	24.6	35.6	31.8	—
1980	22.2	35.7	30.6	—
1981	22.2	35.4	31.0	—
1982	—	35.7	31.3	—
1983	20.1	36.4	33.4 <sup>f</sup>	—
1984	18.8	37.2	33.1	—
1985	18.0	36.4	33.1	—
1986	17.5	36.0	32.6	—
1987	17.0	35.2	31.9	—
1988	16.8	35.0	32.0	—
1989	16.4	34.8	32.5	—
1990	16.1	34.8	33.1	—
1991	16.1	34.7	33.4	—
1992	15.8	35.8	33.2	—
1993	15.8	36.0	32.5	—
1994	15.5	36.1	32.1	—
1995	14.9	34.7	32.3	—
1996	14.5	34.3	—	—
1997	14.1	34.5	—	30.8
1998	13.9	32.7 <sup>e</sup>	—	30.3
1999	13.9	32.6	—	29.8
2000	13.5	31.9	—	29.9
2001	13.4	31.3	—	30.0

<sup>a</sup>For 1955 to 1981, I use the series developed by Freeman (1998) from various sources. For 1983 to 2000, I use data from Hirsch (see <http://www.trinity.edu/bhirsch/>), based on the Current Population Survey. For 2001, I use estimates from the BLS Web site. In the early 1980s, the Hirsch estimates parallel those of the Freeman series, but the latter estimates somewhat lower density levels as of the 1990s (e.g., 14.0 in 1995). I use the Hirsch series because it matches up with the official BLS estimates for 1999–2001.

<sup>b</sup>Pre-1988 from HRDC, *Directory of Labour Organizations in Canada*, various years; 1988 to 2001, from *Workplace Gazette* (HRDC/Labour Canada), Vol 3–4:36.

<sup>c</sup>A change in data-collection methods may account for as much as 1.4 percentage points of the drop in 1998 (see note 4).

<sup>d</sup>From Mainville and Olineck (1999).

<sup>e</sup>This figure was obtained in 1966, the first year of the CALURA series.

<sup>f</sup>Before 1983, the CALURA survey did not include professional organizations engaged in collective bargaining. Their subsequent inclusion may help to account for much of the increase in 1983. Yet these associations grew substantially in the 1970s, so the decline in density estimates from 1970 to 1980 may reflect in part their exclusion.

<sup>g</sup>See Table 3.

labor force participants that only began to collect union membership data in 1997 (Akyeampong 1997, 1998, 1999, 2000, 2001). Estimates from all three series appear in Table 1, along with U.S. estimates from various sources.

*Overall Trends.* Because the HRDC data set represents the longest continuous series, it provides the best indication of overall density trends.<sup>3</sup> As revealed in Table 1, overall union density in Canada peaked in 1984, at 37.2 percent. By 1989, it had dropped to 34.8 percent, fluctuating around this level until 1998, when it dropped from 34.5 to 32.7 percent. As of 2001, it was 31.3 percent. However, the HRDC data also suggest that compared with two and three decades ago, when density was 35.7 (1980) and 33.6 (1970) percent, respectively, the rate of decline has been relatively small, at least in comparison with the rate of decline in the United States. This is especially so after accounting for a change in data-collection methods in 1998, which may account for as much as 1.4 percentage points of the reported drop in that year.<sup>4</sup> However, even without this adjustment, the HRDC series shows density as decreasing by only 16 percent since peaking in 1984, compared with a 29 percent drop in the United States for that period.

This finding tends to be supported when the LFS and the CALURA overall density figures are compared. The CALURA series indicates that density ranged between 30.8 and 33.4 percent from the mid-1960s to the mid-1990s, with no discernible trend and with only a 3.2 percent drop since peaking in 1983. This compares with a 25.9 percent drop in the United States for the same period. In addition, the LFS estimate for 2001, of 30.0 percent, is only 0.8 percentage points below the range for the CALURA estimates. The LFS series also suggests only a 0.8 percentage point decline over the 5 years for which it includes density data. This is a 2.6 percent drop, compared with a 5.0 percent drop in the United States for this period.

Although all three series indicate some decline, the rate of decline shown by each is much too low to suggest convergence, except perhaps in the very distant future. The HRDC series reveals an annual rate of decline of 0.34 percentage points from 1984 (when it peaked) to 2001, the CALURA series shows an annual rate of 0.08 percent from 1983 (when it peaked) to 1995

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<sup>3</sup> A criticism of this series has been that unions tend to artificially inflate their membership figures (e.g., Troy 2000:697–8). However, there is now less than a 2 percentage point difference between the HRDC and the LFS estimates. This could reflect a tendency for unions to include workers who are not members but are represented by the union and pay dues under an agency shop arrangement. The LFS series indicates about a 2 percent difference between union membership and coverage, consistent with this explanation. The problem also may reflect a reporting bias in the LFS (discussed below).

<sup>4</sup> Before 1998, unions were provided with their previous year's membership report, and there was concern that unions were simply using that number rather than admitting to a membership drop. In 1998, HRDC stopped providing that number, and density estimates dropped from 34.5 to 32.7 percent. Yet the LFS series showed only a 0.4 percent decline (from 31.1 to 30.7 percent). This suggests that as much as 1.4 percentage points of this drop was an artifact of the change. This is neither reported nor adjusted for in the HRDC series. It is also possible that there is some lag between membership declines and union acknowledgment of those declines. If so, the 1984 peak may be artifactual because it follows two years of substantial job losses.

(when it ended), and the LFS series shows an annual rate of 0.16 percent from 1997 (when it began) to 2001. The figure for the CALURA and LFS series combined (1983–1995, 1997–2001) is 0.12 percent. At these rates of decline, it would take, respectively, 52, 206, 103, and 138 years for Canadian density levels to reach even U.S. levels of 2001.<sup>5</sup>

Under the DD&C thesis, however, Canada's higher density and relative stability reflect the growth in public-sector unionism since the 1960s. Unlike in the United States, virtually all public-sector workers are subject to the same or similar labor laws as those in the private sector (see Kumar 1991:88–91). The LFS estimates show public-sector union density to be 71.4 percent as of 2001 (double that of the United States), representing roughly half of all union members.<sup>6</sup> In contrast, they show private-sector density to be 18.3 percent. To bracket off the public sector is to render the DD&C thesis a partial one at best, for it is to ignore not only a large portion (in Canada, close to a quarter) of the labor force but also the implications of public-sector density for private-sector unionism.<sup>7</sup> However, this thesis is essentially a thesis about private-sector decline because public-sector employers are typically not subject to any of the market forces assumed by this thesis to be the main cause of decline.

*Private-Sector Trends.* Analysis of private-sector density trends is even more difficult than is analysis of overall trends (e.g., see Troy 2000:699–702).

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<sup>5</sup> There is also a possibility that the density differences between the United States and Canada are greater than suggested by the comparisons in Table 1 and that the rate of decline in Canada is even slower. The LFS only asks whether an individual is a union member, whereas the CPS, on which U.S. estimates are based, also asks whether the individual is a member of "an employee association similar to a union." Also of note, LFS proxy respondents (i.e., those who respond on behalf of another household member) are about 20 percent less likely to indicate union membership than are nonproxies. For example, data obtained from Statistics Canada reveal that, in January 2002, 33.6 percent of nonproxies reported union membership. This compares with 27.5 percent of proxies. The latter comprise about 60 percent of LFS respondents. This suggests that the LFS may underestimate density by as much as 3 percentage points.

<sup>6</sup> This is contrary to Troy's assertion that "most union members are now in the public sector" (2000:700–701).

<sup>7</sup> In Canada, public- and private-sector unions are members of the same federations and have overlapping (if not always identical) political interests, so a high public-sector density enhances the labor movement's economic and political presence. Public-sector density also has implications for the percentage of the overall labor force in unions and hence the extent to which union representation is seen as "normal" and may have important "demonstration effects," especially since it means that nonunion workers are likely to know union members, a factor that is associated with union preferences (Gomez, Gunderson, and Meltz 2002). Finally, public-sector unions have substantial resources with which to organize in the private sector, enhancing organizing potential in that sector, whereas private-sector unions can (and often do) also organize public-sector workers, enabling them to enhance their resource levels. For example, in 2000, the Steelworkers won a huge bargaining unit consisting of over 5000 University of Toronto support staff (Yates 2000).

TABLE 2  
PRIVATE-SECTOR DENSITY ESTIMATES, SELECTED YEARS

	United States <sup>a</sup>	Canada <sup>b</sup>			
		Bergeron	Meltz and Verma <sup>c</sup>	Troy <sup>d</sup>	Labour Force Survey <sup>e</sup>
1961	31.9	30.0	—	—	—
1966	30.8	28.6	—	—	—
1970	29.1	29.3	—	—	—
1974	23.8	28.3	—	—	—
1975	21.9	—	—	25.7	—
1980	20.4	26.0	—	—	—
1984	15.5	—	20.6	—	—
1985	14.6	—	—	20.7	—
1986	14.0	21.0	—	—	—
1989	12.4	21.5	20.5	—	—
1990	12.1	—	20.5	18.0 <sup>e</sup>	—
1991	11.9	—	20.4	—	—
1992	11.5	—	20.2	—	—
1993	11.2	—	18.4	—	—
1994	10.9	—	18.0	—	—
1995	10.4	—	18.2	—	—
1996	10.2	—	—	—	—
1997	9.8	—	—	—	19.0
1998	9.6	—	—	—	18.8
1999	9.5	—	—	—	18.1
2000	9.0	—	—	—	18.4
2001	9.0	—	—	—	18.3

<sup>a</sup>To 1970, from Troy and and Sheflin (1985); 1974–1980, May Current Population Survey (CPS), as provided by Larry Hirsch (<http://www.trinity.edu/lbhirsch>); 1984–1999, from CPS Outgoing Rotation Group Earnings Files, also as provided by Larry Hirsch; 2000–2001, from the BLS Web site.

<sup>b</sup>Dion and Hebert (1989) also report estimates for 1961 (33 percent) and 1984 (21 percent), but their sources and methods are not identified.

<sup>c</sup>Estimates for 1989 and 1991–1995 were calculated by the author using the same method as Meltz and Verma. They include agriculture, forestry, fishing, mining, manufacturing, construction, trade, finance, bus, services, accommodation, and other services.

<sup>d</sup>In some of his work (e.g., 1992:38), Troy provides estimates for 1958 and 1966, but these are based on the assumption that private-sector density was the same as overall density in each of these years (1990:37).

<sup>e</sup>The source of Troy's 1990 estimate is unclear, but it appears in an article where he states that his earlier estimates were too high, suggesting a change in his method of calculation for 1990 (see 1992:37). Troy does not, however, explain how any of his estimates were arrived at.

<sup>f</sup>See Table 3.

Only the recently begun LFS series provides for clear distinctions between private- and public-sector employment, and even for this series, Canada–U.S. differences in the extent to which particular industries (e.g., health care, utilities, postsecondary education) are in the private sector make attempts at cross-national comparisons inadvisable. However, this series is useful for establishing the extent to which Canadian private-sector density has been in decline in recent years. As revealed in Table 2, it does show a



drop of from 19.0 percent in 1997 to 18.3 percent in 2001, or an annual average rate of 0.14 percentage points. At this rate, it would take 66 years for convergence onto the 2001 U.S. private-sector level to occur.

A number of authors have attempted to estimate private-sector density declines prior to 1997. As indicated in Table 2, Meltz and Verma (1995) have provided estimates for 1984 and 1990 based on breakdowns from the CALURA series.<sup>8</sup> These have been extended to 1989 and 1991 to 1995 using the same method. Troy (1990, 1992) has provided estimates for 1975, 1985, and 1990 using CALURA data that were apparently obtained in a more disaggregated form (he does not report how his estimates were arrived at). Bergeron (1993) has provided a further set of estimates, beginning in 1961, although different years are based on different sources, including Labor Canada surveys of union locals from 1961 to 1974, special computations of the 1980 CALURA data, and data drawn the Labor Market Activity Survey (LMAS), which collected union membership data from 1986 to 1989.

As revealed in Table 2, all three sets of estimates indicate density to be 21 percent at most as of the mid-1980s, which is only 2.7 percentage points higher than the LFS estimate for 2001. It is possible that such a comparison could understate the magnitude of any decline because the 1997 LFS estimate is 0.8 percentage points higher than the 1995 Meltz and Verma (i.e., CALURA-based) estimate, which likely reflects differences in data sources rather than a sudden increase in density. Yet the 1986 Bergeron estimate should be compatible with the LFS because it is also based on a labor market survey (LMAS). Indeed, Bergeron's 1989 estimate is 1 percentage point higher than the Meltz and Verma estimate for that year, which is close to the 0.8 percentage point difference between the 1997 LFS and the 1995 Meltz and Verma estimates. Thus the best way to establish the magnitude of decline from the mid-1980s to the present would appear to be to use Bergeron's 1986 estimate and the LFS 2001 estimate.

The Bergeron and LFS estimates suggest that although there has been a decline since the mid-1980s, this decline has been much slower than in the United States, where from 1986 to 2001 density declined at almost double the Canadian rate in absolute terms (i.e., 5.0 versus 2.7 percentage points) and almost triple this rate in relative terms (i.e., by 36 versus 13 percent). At the post-1986 annual rate of decline (0.18 percentage points per year), it

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<sup>8</sup> There are a number of problems with this series. It ends as of 1995, and it provides only for industry breakdowns, rendering attempts to establish private-sector density somewhat crude and hence subject to debate (Troy 2000:699–700). This is especially problematic prior to 1989 because education and health services were reported in the same group as private-sector services. Although Meltz and Verma provide an estimate for 1984, this is based on a "special calculation." Finally, it was not until 1983 that associations engaged in bargaining were included.

would take 52 years for Canadian private-sector density to reach current U.S. levels.<sup>9</sup> It is also noteworthy that private-sector decline has, since the mid-1980s, been concentrated in two years: 1992 to 1993 and 1998 to 1999. Unlike the United States, private-sector density appears to otherwise have been stable during this period.

There does appear to have been a substantial decline since the early 1960s, when private-sector density was around 30 percent. Bergeron's estimates suggest that much of this decline was between 1974 and 1985, when density dropped from about 28 to about 21 percent, with the main drop occurring after 1980, when private-sector density is estimated to have been 26.0 percent. Although Troy's estimates are only for 1975 and 1985 and so cannot verify the finding that much of this decline was in the early 1980s, they also indicate a dramatic decline during this period. However, as Table 2 reveals, the amount of decline in percentage points appears to have been less than in the United States, even though Canadian private-sector density was higher at the beginning of this period. It also reveals that the decline prior to this period was slower than in the United States.

*Markets or Politics?* The finding that most of the private-sector decline in Canada occurred from the mid-1970s to mid-1980s would appear to be contrary to the DD&C thesis, which argues that density is eroded over time by market forces and hence suggests a more gradual decline. Moreover, to argue that the decline during this period is consistent with the DD&C thesis would require a very expansive definition of market forces. This period was essentially a transition period marking the end of the "golden age" and characterized by sharply higher unemployment, slower productivity growth, and declining incomes—conditions that have always been associated with union stagnation and decline (see Chaison and Rose 1991a:16–9). This is especially true of the early 1980s, when well over 1.2 million jobs (over a tenth of all employment) were lost within a year and a half (Palmer 1992:346), unemployment surged to 12 percent, and unions became the primary scapegoat for double-digit inflation, with the federal government imposing "voluntary" wage and price constraints from 1983 to 1985 and hence undermining collective bargaining (e.g., see Godard 1994:391). Thus the decline during this period would appear to reflect economic conditions, but these conditions do not appear to reflect "normal" market forces. Moreover, state policies (e.g., a shift to monetarism, wage constraints) aggravated

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<sup>9</sup> An alternative is to add the decline indicated by the Meltz and Verma estimates for 1984 to 1995 (2.4) to the decline indicated by the LFS estimates for 1997 to 2001 (1.1) and divide by 16 (11 + 5 years). This yields a rate of 0.22 percentage points. At this rate, it would take 42 years to reach the U.S. level.

(if they did not produce) the harsh conditions of this period in Canada (Palmer 1992:341–7; Godard 1997a:414–7), as they also did in the United States (Dubovsky 1994:228–31) and the United Kingdom (Marsh 1992). This is contrary to the DD&C thesis (as considered here; see note 1), which allows little role for the state.

Harsh economic conditions also may account for the inability of private-sector unions to reverse their decline since. In 1992, Canada's economic performance dropped to the same levels as a decade earlier, which accounts for the density decline observed from 1992 to 1993. However, despite some fluctuation, Canada's economic performance was poor throughout the entire period from the mid-1980s to the latter half of the 1990s. Unemployment remained high, averaging around 10 percent, while gross domestic product (GDP) and family income levels remained largely stagnant. These conditions also appear to have been in considerable measure attributable to government policies rather than to market forces alone (Godard 1997a; Rose and Chaison 2001:41). Particularly important were highly restrictive monetary policies and hence artificially high interest rates beginning in the late-1980s. These rates were largely responsible for burgeoning deficits, followed by aggressive government cutbacks beginning in the early 1990s (Mimoto and Cross 1990), and for an artificially high Canadian dollar so that labor costs were 25 percent higher in Canada than in the United States (Neef, Cask, and Sparks 1993; Economic Council of Canada 1992:20, 27, 29). Also making organizing difficult was the introduction of mandatory certification votes in five provinces since 1977 (Nova Scotia in 1977, British Columbia from 1984 to 1992, Alberta in 1988, Manitoba from 1997 to 2000, and Ontario in 1995) and the loosening of trade restrictions, especially through free trade agreements with the United States in 1989 and the United States and Mexico in 1992. Although the direct effects of the latter on unions remain unclear (Gunderson 1998), an indirect effect may have been to increase the fear of organizing (Arthurs 1996).

Finally, state support for unions was eroded substantially in the middle to late 1990s (Chaison and Rose 2001). This was especially so in the Ontario jurisdiction, which elected a neoconservative government in 1995. This government enacted a number of anti-union labor law reforms (including compulsory certification votes and elimination of a short-lived ban on the use of temporary replacement workers) and began an aggressive program of public-sector downsizing and privatization in that year. As Martinello (2000) has demonstrated through longitudinal analysis (see below), these developments appear to have had a significant negative impact on union density in that jurisdiction. Descriptive data also bear this out. Overall density in Ontario dropped from 27.7 percent in 1997 to 26.1 percent in

TABLE 3  
RECENT DENSITY ESTIMATES: 1997–2001

	Canada					U.S.
	1997	1998	1999	2000	2001	2001
<b>Total</b>	30.8	30.3	29.8	29.9	30.0	13.5
Public sector	69.7	69.9	70.3	70.1	71.4	37.4
Private sector	19.0	18.8	18.1	18.4	18.3	9.0
British Columbia	22.2	22.0	21.2	21.8	21.1	—
Alberta	11.6	11.6	11.6	10.9	11.7	—
Saskatchewan	16.5	16.5	15.8	15.9	17.3	—
Manitoba	19.4	18.5	19.3	17.6	19.0	—
Ontario	17.9	18.1	16.6	17.1	16.5	—
Quebec	23.9	23.0	23.1	23.7	24.2	—
New Brunswick	13.0	12.7	12.2	13.3	12.1	—
Nova Scotia	14.1	14.4	14.3	14.1	13.7	—
Prince Edward Island	8.0	8.7	8.5	8.3	8.3	—
Newfoundland	20.1	19.9	19.8	19.8	21.0	—
<b>Industry</b>						
Goods producing	32.4	31.3	30.8	31.2	30.9	n/a
Agriculture	3.3	3.7	3.5	2.7	3.3	1.6
Natural resources	28.2	26.9	26.8	28.0	25.3	12.3
Utilities	67.4	64.7	67.6	65.9	66.4	23.7
Construction	29.9	29.8	29.9	30.6	31.7	19.0
Manufacturing	33.3	32.1	31.0	31.5	30.8	15.5
Service producing	30.3	30.0	29.4	29.5	29.7	n/a
Trade	12.9	12.5	12.5	13.2	13.0	4.7
Transportation and warehousing	43.0	44.6	42.1	41.6	42.0	25.4
Finance, insurance, real estate, leasing	7.9	7.7	7.8	9.0	8.8	2.8
Professional, scientific, technical	4.1	4.5	4.1	4.0	4.1	n/a
Management, admin., & support	12.9	12.8	10.5	11.1	12.9	n/a
Education	68.2	68.7	68.8	68.0	69.5	n/a
Health care and social assistance	52.6	52.7	52.1	52.4	54.3	n/a
Information, culture, & recreation	28.1	27.4	26.5	25.6	26.0	n/a
Accommodation and food	7.9	7.7	6.3	7.8	7.3	n/a
Other	9.0	9.6	8.6	8.6	8.8	n/a
Public administration	64.9	64.1	64.7	65.2	66.2	n/a

SOURCES: All Canadian data were obtained directly from Statistics Canada in June 2002. These data have been revised since initial publication (Akyeampong, 1997, 1998, 1999). The U.S. data are based on the Current Population Survey and obtained from the Bureau of Labor Statistics Web site. Because the U.S. categories may differ, they are for general comparison only.

2001 (available on request), and private-sector density dropped from 17.9 to 16.5 percent (Table 3). Ontario accounts for 40 percent of the Canadian labor force,<sup>10</sup> so these drops are equivalent to nationwide density drops of 0.64 and 0.56, respectively, or 80 percent of the observed national declines

<sup>10</sup> Forty percent of all Canadian employees live in Ontario, but 10 to 15 percent are covered by federal rather than provincial labor law.

in both overall and private-sector density during this period.<sup>11</sup> While other factors may no doubt have played some role, it thus would appear that these declines are largely attributable to political developments.

*Whither the DD&C Thesis?* It would be wrong to suggest that there is no support for the DD&C thesis. There has been a decline in private-sector density in Canada, and although the rate of this decline was greatest from the mid-1970s to mid-1980s, it has continued since. Moreover, market forces undoubtedly have played a role. For example, both the CALURA series (available on request) and the LFS series (Table 3) show decline to have been greatest in manufacturing and natural resources sectors, which have been most susceptible to increased market pressures and capital flight since relaxation of trade barriers beginning in the early 1980s. However, it appears that politics have played at least as great a role as market forces in explaining the Canadian decline and, indeed, that they have been largely responsible for the latter. More important, Canadian private-sector density reached roughly double that of the United States by the mid-1990s and has remained at this level. Thus there is little evidence that convergence has been occurring. In addition, most of the Canadian decline since the mid-1980s appears to have been in two years, 1992–1993 and 1998–1999. There are three primary ways to explain these findings. They can be referred to as the “markets,” the “politics,” and the “societal” explanations.

### The Markets Explanation: Is Canada Simply Lagging the United States?

It is possible that even if there is little evidence of the rate of decline necessary for convergence to date, it is only because markets have been slower to “have their way” with Canadian unions and hence that it is only a matter of time until this decline will be observed. For example, Troy (2000) asserts that such lags existed in the 1950s and again in the 1970s. In the former case he maintains that Canada lagged the United States in the shift to a service economy. In the latter case he states (but does not provide evidence) that

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<sup>11</sup> Indeed, Ontario accounted for 85 percent of the decline from 1998 to 1999. Part of the reason may be that, in that year, employment in manufacturing surged, increasing by 7 percent, with no corresponding increase in union membership, and hence producing a density decline of 2.5 percent. Manufacturing represented 26 percent of Ontario private-sector employment, thus accounting for roughly half the Ontario density decline in that year. Without the manufacturing density decline, the Ontario drop likely would have been much smoother in this period.

private-sector membership peaked in 1979, compared with 1970 in the United States. However, it is not clear why either lag should explain current trends or differences. Indeed, the latter provides a partial reason to expect divergence: Private-sector union membership in Canada continued to grow for almost a decade after its U.S. counterpart had stopped doing so, even though density levels were comparable by the late 1950s.

In his recent work, Troy provides no argument as to why a market-based lag can still be assumed to exist. Compositional shifts would represent one possibility, but future shifts are unlikely to make much of a difference. There is little evidence that the shift toward service industries has affected union density appreciably in Canada in the past (Meltz and Verma 1996; Johnson 2000), and although the percentage of paid employees in traditionally high-density private-sector industries (manufacturing, construction, forestry, and mining) declined from 28.4 percent in 1989 to 25.8 percent in 1994, it subsequently increased to 27.1 by 1999 (Statistics Canada 2000:22–31). There is no reason to think that significant shifts away from these sectors will occur in future.

Moreover, as revealed in Table 3, the only service industries in Canada that clearly fit the latter category, with lower densities than in the U.S. private sector overall as of 2001, are finance and real estate (8.8 percent); professional, scientific, and technical (4.1 percent); accommodations and food (7.3 percent), and “other” (8.8 percent). As of 1999, the percentage of employees accounted for by these industries was, at 28.1 percent, only 3.7 percentage points higher than in 1989 (Statistics Canada 2000:22–31). If these industries were to grow at the same rate over the following decade and unions were unable to increase their density, this would lower overall private-sector density by only about half a percentage point.<sup>12</sup>

Furthermore, even if the case could be made that Canada has lagged the United States and that major compositional changes have yet to occur, it is unlikely that this would matter. As revealed in Table 3, density differences for comparable private-sector industry classifications in Canada and United States are substantial, with Canadian industries typically characterized by densities that are double that of their U.S. counterparts. According to Riddell (1993), compositional differences in any case only accounted for about 15 percent of the U.S.–Canadian density gap as of the early 1990s.

There may, however, be some basis for arguing that free-trade pressures could result in increased erosion of union density in future. It is now over

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<sup>12</sup> If we include all sectors with densities under 20 percent (this would mean adding both trade and management services), the 1999 figure would be 50.2 percent of all employees, up only 5.5 percentage points from 1989, for a projected density decline still under 1 percentage point.

a decade since the signing of the U.S.–Canada Free Trade Agreement (in 1989), but it could be argued that increased pressures arising out of this agreement and its 1992 successor, the North American Free Trade Agreement, have not yet worked their way through the Canadian economy. Consistent with this possibility, the largest recent density declines have (as earlier indicated) been in manufacturing and natural resources, where density dropped by 2.4 and 3.2 percentage points from 1997 to 2001. However, these sectors now account for only 22.8 and 2.3 percent of private-sector employment, and their losses have been offset to some degree by growth in other sectors, which is why overall private-sector decline has been slower in Canada than the United States. Finally, the Canadian and U.S. economies already were closely linked as of 1988, with low or nonexistent trade barriers in many goods (Ceglowski 2000:61), and as of 1995, there were virtually no barriers (Ceglowski 2000:62).

On the other hand, the Canadian dollar has traded at less than 75 percent of its U.S. counterpart since early 1994 and 70 percent since 1998 despite a purchasing-power-parity value of more than 80 percent.<sup>13</sup> If it were to increase to its purchasing-power-parity value, market pressures could be expected to increase. The likelihood of this is at best uncertain unless one nation substantially alters its monetary policy and the other does not, or there is increased labor productivity in Canada relative to the United States. The former is unlikely, and the latter would offset any increased market pressures that resulted (Murray 2000:56). The case can be made, however, that Canadian union density is higher in part because an undervalued dollar shields Canadian employers from market forces. The extent to which this is so is also uncertain because much depends on the extent to which unions necessarily entail a competitive disadvantage, evidence for which is weak in Canada.<sup>14</sup> However, it could at most account for only a portion of the U.S.–Canadian difference in private-sector density. Even in the unlikely event that the dollar increased to its purchasing-power-parity level, both the manufacturing and the natural resources sectors were to drop to U.S. levels as a result, *and* there was no compensating growth in other sectors, Canadian private-sector density would drop by 3.7 percentage points, or only 40 percent of the Canadian–U.S. private-sector density difference.

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<sup>13</sup> As of March 2003, it was \$0.68.

<sup>14</sup> For example, the current average wage premium is only about 8 percent in Canada (Gunderson, Hyatt, and Riddell 1999) and may be offset by certain productivity advantages. There is also little reason to assume that unions will not accept a lower premium or agree to productivity enhancements and little evidence that unions place employers at a competitive disadvantage in Canada (Laporta and Jenkins 1996). Notably, most such evidence in the United States (e.g., Leonard 1992; Becker and Olson 1992) is dated, based on data from the 1970s or early 1980s.

One study sometimes cited in support of the DD&C thesis (Troy 2000:703–4) is Richard Long’s analysis of employment growth in union and non-union Canadian firms between 1980 and 1985 (Long 1993). He found that union firms grew at a rate 3.4 percent slower than their non-union counterparts, a result that parallels Leonard’s finding of a 4 percent average difference in the U.S. manufacturing sector from 1974 to 1980 (Leonard 1992). However, such findings tell us little about density trends. They only show that to maintain or increase density, unions must be more successful at organizing than otherwise would be the case. Moreover, for convergence to occur, Canadian unions would need to be less successful than their U.S. counterparts. To the extent that they are more successful, which in fact appears to have been very much the case (Rose and Chaison 1990, 1996), this would result in divergence, not convergence. It is also notable that Long’s findings are for the very period in which most of Canada’s private-sector decline appears to have occurred and may not be applicable to subsequent or previous periods.

In short, although it is possible that differences in market pressures account for some portion of the U.S.–Canadian private-sector density gap, these differences are unlikely to decrease in the near future. More important to the present analysis, they likely explain only a limited portion of the U.S.–Canadian density gap. They are not sufficient to rule out labor law, and hence ultimately politics, as a primary explanation for this gap.

### The Politics Explanation: Is It Labor Law?

We play by the rules where we operate. In the United States, there are no rules. Here, rules exist, and we follow them.

Manager of a U.S. employer with operations in  
Canada (Thompson 1995:113)

According to Troy, “as market forces gain strength, they undermine the power of labor law” (2000:709). However, although it is clearly not possible to establish that labor law will prevent future decline and ultimately convergence, it is possible to explore the evidence as to its role in accounting for Canadian–U.S. differences in union density to date. The main differences between Canadian and U.S. labor law are relatively well known (Wood and Godard 1999; Block 1993, 1994, 1997; Gould 1993; Bruce 1993; Taras 1997, 2001; Logan 2002) and so do not warrant extensive review here. Instead, I briefly identify these differences and then review the evidence that they matter. Again, focus is on the private sector.



In the United States, a certification vote is required in all cases, there is often a lengthy campaign from the time that the union applies for certification to the time of the vote (see Bronfenbrenner 1994; Block, Beck, and Krueger 1996:23), and employers have strong speech rights. The National Labor Relations Board (NLRB) can do little to prevent unfair labor practices during this time, and the penalties the board may levy are weak and easy to appeal (Gould 1993:166, 221). The strongest available remedy is issuance of an order to bargain, but the union must be able to establish that it at some point had majority support (Gould 1993:33). Where the union wins certification, the employer is not required to bargain until the appeals process is exhausted (Block 1994). There is also no mechanism for ensuring that a first agreement is reached, and the employer may hire permanent replacement workers in the event of a strike or lockout (see Block 1997:38). Bad-faith bargaining is difficult to establish and can be subject to lengthy appeal where a charge is upheld (Gould 1993:168). Finally, open shops are legal in all states and required in almost half (see Moore 1998).

In Canada, about 10 percent of the labor force is covered by the federal jurisdiction and the remainder by each of 10 provincial jurisdictions, so there is substantial variation, and the number of jurisdictions with specific laws changes with some frequency.<sup>15</sup> However, as of this writing (April 2003), labor boards may grant card certification in six jurisdictions, and in most where they may not, there is provision for a vote within 5 to 10 days of a union's application. If there is any reason to suspect unfair labor practices, boards may hold a prehearing vote, usually within 2 or 3 days after an application. During the organizing period, employer speech rights are highly circumscribed, especially when compared with those in the United States (see Taras 1997:321–2). In five jurisdictions, boards may issue an order to bargain regardless of whether the union can establish prior majority support. There is also only limited room for employers to appeal labor board decisions, and these decisions in any case stand until such time that they may be overturned (see Bruce 1993). In addition, although bad-faith bargaining is (as in the United States) difficult to establish, seven jurisdictions provide for first contract arbitration (see Friedman and Wozniak 1996). In all jurisdictions it is illegal to hire striker replacements on a permanent basis. In two of the three largest provincial jurisdictions (Quebec and British Columbia), even temporary replacements are banned, and in the federal jurisdiction it is an unfair labor practice to use them to break a strike. Finally, open shops are effectively illegal, and seven jurisdictions,

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<sup>15</sup> In the spring of 2002, there also was a substantial weakening of labor laws in the third largest province, British Columbia. This has yet to be reflected in density figures.

accounting for 90 percent of the labor force, provide for some form of mandatory dues checkoff<sup>16</sup> (see Taras and Ponak 2001:544).

It is difficult to establish precisely just how important these differences are, either individually or in combination, because attempts at multivariate analysis designed to establish the effects of variation in specific laws face severe estimation problems. Nonetheless, direct and indirect evidence as to the importance of labor law continues to grow, and a strong case can now be made that it accounts for much of the U.S.–Canadian difference in density levels and trends.

From 1980 to 1995 (prior to the election of a hostile government in Ontario), the union success rates for certification applications to all Canadian labor boards combined and to the NLRB were, respectively, 69 and 48 percent (Meltz and Verma 1996:6; Rose and Chaison 1996:83). According to Troy (2000:705), this reflects a bias introduced by the inclusion of public- as well as private-sector applications in the Canadian data, but evidence from Ontario reveals any such bias to be small and unable to account for different success rates.<sup>17</sup>

Unfair labor practice complaints against employers in Canada are also from one-fourth to one-tenth (depending on the jurisdiction) the U.S. rate<sup>18</sup> (Rose and Chaison 1996:3), even though they are easier to file and win in Canada due to different administrative procedures (Bruce 1993, 1994). Unfair labor practices reduce union success rates (Cooke 1985; Soloman 1985; Reed 1989; Lalonde and Meltzer 1991; Riddell 1996, Bentham 1999,

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<sup>16</sup> Differences in board composition and structure are also sometimes identified as important (Bruce 1993; Block 1997). In theory, the use of political appointees makes the NLRB more susceptible to political imbalances than in Canada, where boards are tripartite. In particular, it is believed that Reagan/Bush appointments made a major difference to U.S. organizing success. However, Western and Farber (2000:15–21) find little evidence of this.

<sup>17</sup> To explore this, I analyzed data from the Ontario Labour Relations Board annual reports for the year prior to its neoconservative government's election (1994–1995) and the two years after (1995–1996 and 1996–1997). Because the former period was characterized by labor laws and policies that were more favorable to unions than in most other provinces, and because the latter was characterized by laws and policies that were substantially less favorable, this should provide reasonable bounds for estimating the likely range of any upward bias. In 1994–1995, public-sector applications accounted for 21 percent of all applications. However, they enjoyed only a slightly higher success rate than private-sector applications, at 82 percent and 76 percent, respectively. The success rate for both sectors combined was 77 percent, suggesting a bias of only 1 percent. In 1995–1996, public-sector applications were 23 percent, with an 82 percent success rate, but the private-sector success rate dropped to 59 percent. The overall rate was 64 percent. In 1996–1997, the private-sector success dropped to 56 percent, but the overall rate was only 59 percent due to a decline in the public-sector success rate, to 77 percent. Thus the bias was higher in these latter two years. However, it was still only 3 to 5 percent. Even these higher biases cannot begin to account for the difference between overall U.S. and Canadian success rates.

<sup>18</sup> These differences are again far too large to be explained by the inclusion of public-sector cases in the Canadian data. They could reflect differences in employer animus toward unions, although there is no apparent reason to believe this to be the case (see below).

2002), and although it might be argued that they can be explained by factors other than legal differences, the extent to which they reduce success rates is substantially lower in Canada (Thomason 1994). This is in all likelihood due to much shorter time delays from application to election, which also has been found to be associated with union success rates (Thomason 1994; Roomkin and Block 1981; Cooke 1983).

Johnson (2000, 2002) found that card check certification may be especially important to accounting for differences in union success rates. Using Canadian data, she estimated that there is a reduction in success rates of from 6 to 9 percentage points when mandatory vote legislation is in place (2002). She also estimated that as of 1995, this alone accounted for 17 to 26 percent of the U.S.–Canadian gap in union density (2000:2–24) and argued that this is a conservative estimate because time delays are much shorter in Canadian jurisdictions requiring a vote than is the case in the United States. In a survey of over 400 recently certified Canadian firms, Bentham (1999:Chap. 7, viii, lii) found that the availability of card certification lowered the probability of illegal employer tactics by 10 percent and increased the probability of certification by 11 percent. Martinello and Meng (1992) failed to find an effect for card certification, although this appears to reflect specification problems (Johnson 2002). Finally, Riddell (1996) observed that success rates were substantially higher (95 versus 77 percent) in the province of British Columbia when card certification was allowed than when it was not, whereas Godard (2000:299) provided similar evidence for the provinces of Ontario (77 versus 59 percent) and Manitoba (75 versus 64 percent).

The evidence also suggests that failure to reach a first agreement may be much greater in the United States than in Canada. In the United States, the Commission on the Future of Worker-Management Relations (1994) estimated that a third of all first negotiations in the United States failed to reach settlement. Weiler (1983, 1984) estimated this figure to be 37 percent as of 1980, whereas Cooke (1985) found it to be 3 in 10 in a sample of newly organized unions in Indiana in 1979–1980. This is typically assumed to be much higher than in Canada due to the provision for first contract arbitration in the majority of Canadian jurisdictions (Gould 1993:168–9). In her survey of Canadian workplaces, Bentham (1999:Chap. 4, lviii) found that a first agreement was not reached in only 8 percent of cases.<sup>19</sup> She did not find provision for first contract arbitration to predict the likelihood of a first agreement, although this may reflect the distribution of her dependent variable (1999:Chap. 7, lv). Consistent with this possibility, she found the

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<sup>19</sup> The accuracy of this estimate may, however, be in doubt due to a low response rate (20 percent).

availability of first contract arbitration to increase the probability of a third party being called on to help conclude a first collective agreement by 39 percent (1999:Chap. 7, lxi).

There is also evidence as to the importance of union security laws. In a review of the relevant literature, Moore (1998) concluded that right-to-work laws, which do not exist at all in Canada, appear to have negative implications for union density in the United States. In a study comparing union density across Canadian provinces, Martinello and Meng (1992:188) found that provision for compulsory dues checkoff significantly increased the probability of union coverage. Taras and Ponak (2001:551) found the percentage of workers covered by a collective agreement but who are not union members to be 21.2 percent in U.S. right-to-work states compared with 8.8 percent in U.S. non-right-to-work states, 11.9 percent in Canadian jurisdictions without mandatory dues checkoff laws, and 7.5 percent in those with such laws. They argue that in addition to providing an *a priori* explanation for higher density, these differences suggest that, especially in mandatory check off jurisdictions, Canadian unions are likely to have more resources available for servicing workers and for organizing, and they have greater incentive to organize.

In a longitudinal analysis of three Canadian provinces, Martinello (1996) found that changes in labor laws are more important than either changes in government or in the economy for explaining variation in density over time. In a subsequent longitudinal analysis of Ontario data (2000), he found that changes in labor law and in political party have had significant effects on union organizing activity and success. Neither analysis was able to establish which legal changes mattered most.

There is also indirect evidence as to the importance of law. Lipset and Meltz (1998), drawing on a 1997 survey of over 3000 Canadian and U.S. workers, found that 47 percent of non-union workers in the United States would join a union if given the chance, compared with 33 percent in Canada.<sup>20</sup> Troy (2000:707) has argued that this result, along with other (often highly dated) Canadian surveys of worker unionization propensities,

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<sup>20</sup> The U.S. figure exceeds that of Freeman and Rogers (1999), who found that 32 percent of non-union workers would vote for a union. This, in part, may reflect differences in sampling methods; for example, the Freeman and Rogers survey sampled only those in private companies and nonprofit organizations with over 25 employees. The Lipset and Meltz survey contained no such restrictions. In addition, Freeman and Rogers allowed respondents to report if they were undecided, with 13 percent reporting that this was the case. In contrast, the Lipset and Meltz survey allowed undecided respondents to indicate whether they would “probably” join, with the 47 percent figure including these responses. In any case, the Lipset and Meltz survey is the only survey to date to ask the same questions of a large sample of both U.S. and Canadian respondents [see Farber and Krueger (1993) for other attempts to compare Canada and the United States].

indicates that Canadian workers are, if anything, more anti-union than their U.S. counterparts and that this is consistent with the DD&C thesis. However, what these figures really show is that it is more difficult for workers in the United States who would like to have a union to obtain one. This could reflect differences in addition to those in the law, but as discussed in the next section, the latter in all likelihood plays a key role. Weak laws mean that union organizing drives are less likely to succeed than otherwise in “marginal” workplaces, where the union’s potential majority is smaller. The Lipset and Meltz data tend to support this interpretation. They reveal similar overall support for unions in Canada and the United States (67 percent compared with 70 percent), a finding that is consistent with previous surveys (Bruce 1994:276).

The Lipset and Meltz data also make it possible to calculate what union density might be in the United States *if workers faced the same organizing conditions* as those in Canada. Under such conditions, we would expect 14 percent of non-union U.S. workers (the difference between the 33 and 47 percent figures) to be unionized. Because non-union workers currently represent 87 percent of the U.S. labor force, this would translate into an increase in union density of 12.2 percent ( $14 \text{ percent} \times 87 \text{ percent}$ ). Yet some workers are in a union against their will because they are in the minority in their workplace. In the United States, Freeman and Rogers (1999:69) find this to be about 10 percent, suggesting a density increase of 13.3 percent ( $100/90 \times 12$ ). Even this estimate may be too conservative, because stronger laws are likely to mean that, as indicated earlier, unions are more likely to succeed in organizing workplaces in which the majority is smaller, so there are more workers covered by unions against their will. A better adjustment factor might be the average percentage of workers voting against a union in successful certification elections; for example, the Ontario figure for the 1996–1997 fiscal year, when there were no longer card certifications but time limits for elections, was 35 percent (Ontario Labor Relations Board 1997:111). This suggests a multiplier of  $10/6.5$ , yielding a figure of 18.8 percent. However, regardless of the specific calculation, density likely would be much higher in the United States if workers faced the same conditions as in Canada.<sup>21</sup> Again, there may be explanations other than labor law

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<sup>21</sup> To simply add this number to current union density would be dangerous because much may depend on whether there are similar voting distributions in the two countries. However, Gomez, Lipset, and Meltz (2001) reached a similar conclusion using the same data set but a different item. The item they used simply asked if workers would personally prefer to belong to a union, to which they report 31 percent U.S. respondents and 22 percent of Canadian respondents answered “yes.” Using a different methodology, they estimated that if effective demand for unionization among non-union workers was realized, density in Canada and the United States would be 36 and 37 percent, respectively.

differences, but as discussed in the next section, they are not well supported by the evidence.

Finally, the importance of labor law would appear to be underscored by the significance that both labor and employer groups have tended to attach to it. The rancour over the aborted labor law reforms during the Carter administration represents perhaps the most notorious illustration of this (Brody 1980:246–9; Davis 1986:132–5), but employers in the United States have fought hard to weaken labor law since the 1930s (see Logan 2001, 2002). In Canada, labor law also has been and continues to be a highly contentious area of public policy (Thompson 1996; Logan 2002), as witnessed each time governments attempt to introduce reforms, as in British Columbia in 1992, Ontario in 1995, and Manitoba in 1996 and 2000. The current perception that labor law reform is simply not in the cards in the United States due to employer opposition may be seen as further evidence that it is considered important to union success.

It is possible that the practitioners are misinformed. However, given the preponderance of evidence suggesting that labor law matters and the lack of convincing evidence that Canadian unions have faced or are about to face the same decline as their U.S. counterparts, this seems unlikely. This does not, however, establish that labor law differences represent the only explanation for either the density gap between Canada and United States or the higher unfilled demand in the United States revealed by the Lipset and Meltz data. As noted earlier, Canadian unions may benefit from an undervalued dollar. More important, there are additional possible explanations. Although they are primarily societal and hence inconsistent with the DD&C thesis, they also deserve consideration before any conclusion can be drawn as to the importance of labor law.

### The Societal Explanation: Is Canada Just Different?

There are at least four plausible additional explanations for Canada's higher private-sector density, all of which may be viewed as deriving from societal differences. The first can be called the "social values thesis." It argues that Canadians have more social democratic values and are hence more predisposed to collective organization (Lipset 1989; Lipset and Katchanovski 2001). The second can be called the "union philosophy thesis." It argues that in part due to value differences the Canadian labor movement adheres to a philosophy of social unionism, under which it pursues broader social and political strategies on behalf of the working class in general, and that this in theory has given it a more positive general image among

potential members (Robinson 1992, 1994; Kumar 1991:39–47). The third and related thesis can be called the “union organizing thesis.” It argues that in part because of its broader social unionism philosophy, the Canadian labor movement has placed much greater emphasis on organizing new workers than has its U.S. counterpart (Rose and Chaison 1996:86). The fourth thesis can be called the “management-resistance thesis.” It argues that management has been more tolerant of unions in Canada, either in reflection of different business norms (e.g., Thompson 1993, 1996) or because Canadian unions do not extract the same economic rents as do their U.S. counterparts.

There is little evidence that either social values or union philosophy explain higher Canadian density levels, at least directly. If they did, this would be reflected in higher public support for unions. Yet, as noted earlier, surveys have repeatedly found support to be no higher in Canada than in the United States. It is possible, however, that these two theses help to explain more favorable labor laws in Canada. Social democratic values supporting greater government intervention potentially include greater support for strong labor laws, whereas social unionism may enhance the political legitimacy of unions and hence of stronger labor laws. In either case, we might expect to observe greater support for strong labor laws, even though there may be little difference in support for unions in general. The available evidence for each of these possibilities is limited. However, the Lipset and Meltz data indicate that Canadians do evince somewhat greater support for government intervention. For example, they reported that while 52 percent of U.S. respondents agreed that government should seek to preserve society’s morality, 73 percent of Canadian respondents did (1998:17). The Lipset and Meltz data also suggest somewhat greater support for stronger labor laws in Canada, with 40 percent of U.S. respondents indicating that it should be legal to hire replacement workers compared with 32 percent of Canadian respondents (1998:16). Consistent with these findings, Taras (1997) demonstrates that there has been stronger support for administrative law in Canada than in the United States, which helps to explain why the authority of labor boards is stronger.

In support of the union organizing thesis, there is substantial evidence that, during the 1980s and into the 1990s, Canadian unions were involved in a much higher number of certification applications and their success rates were substantially higher, so their membership gains from new organizing were substantially greater than in the United States (Rose and Chaison 1990; Meltz and Verma 1996). There is also reason to believe that this may reflect deliberate strategies of major unions (Yates 2000). Yet there is little evidence that cross-national differences in organizing success reflect

differences in these strategies (Bruce 1994). It is also plausible that the higher membership gains of Canadian unions reflect more favorable labor laws (Rose and Chaison 1991b). As Farber (2001) has demonstrated, the probability of organizing success is related to the level of certification applications. Thus, even if Canadian unions have been more aggressive at organizing, this has been because the likelihood of success has been greater, providing unions with greater inducement to adopt such a strategy.

As for the management-resistance thesis, there is some indirect evidence that employers are more resistant to unions in the United States than in Canada. Lipset and Katchanovski (2001:234) find that 37 percent of unionized U.S. workers in the Lipset and Meltz data set report very widespread employer resistance to unions, whereas only 22 percent of their Canadian counterparts do so. Yet, consistent with the quote at the beginning of the preceding section, surveys of employers suggest no cross-national differences in the degree of employer hostility to unions (see Kumar 1991:48–50; Troy 1992:11–2; Saporta and Lincoln 1995; Taras 2001:156; Lipset and Katchanovski 2001),<sup>22</sup> and Canadian evidence suggests that employer values and beliefs about unions in any case may be of limited importance to their behavior after controlling for context variables (Godard 1997b:220). Even if employers are different and this matters, it is likely that this is in part in reflection of labor law strength (Rose and Chaison 1991b, 1996:92). Stronger labor laws may both confer a greater legitimacy on unions and create an environment in which virulent anti-union actions and hence attitudes are more likely to be considered counterproductive by employers.

Finally, while there is some evidence that expected union wage premiums have made a difference to employer resistance levels in the United States (Freeman and Kleiner 1990), it is clear why Canadian unions, *a priori*, would have a lesser economic effect. One possibility, however, is that the traditionally higher average wage premium in the United States reflects weak labor laws. Labor laws are likely to matter most in workplaces where workers lack sufficient resources and bargaining power to fight back and where wage premiums would be lower if a union was able to organize. Thus these “low premium” workplaces are less likely to be organized under weak labor laws, such as those found in the United States. Moreover, the costs of antiunion behavior are more likely to exceed the benefits in these workplaces to the extent that labor laws are strong.

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<sup>22</sup> These studies tend to suffer from important limitations and hence should be treated with caution. For example, the Taras study compares managers of U.S. firms in Canada with their Canadian counterparts and is based on a small sample ( $N = 102$ ). The Lipset and Katchanovski analysis appears to include all employees in supervisory or managerial positions, many of whom may have no involvement in their employer's labor policies.



It follows that if they apply, these additional explanations complement more than they compete with labor law in accounting for the different fortunes of U.S. and Canadian unions. While the social values and union philosophy explanations help to account for stronger labor laws in Canada<sup>23</sup> and may operate through their implications for these laws, the union organizing and management-resistance explanations likely reflect, and hence may be viewed as outcomes from, these stronger laws. In this respect, stronger laws may have important indirect as well as direct effects.

This is not to suggest that these more societal explanations should be ignored. Not only may they have some independent effects, they also point to the need to pay greater attention to the determinants and effects of labor laws rather than viewing these laws in isolation. However, it would appear that labor laws are of core importance.

### Discussion: Are Canadian Style Reforms Really the Answer?

A number of factors may be identified to explain why union density varies across nations and over time (see Wever 1998:390–1). However, the analysis so far suggests that, at least in liberal market economies such as Canada and the United States, states can continue to play an important role through the types of labor laws adopted and that this probably provides the primary explanation why union density in Canada has remained double that of the United States. This, in turn, suggests that the adoption of Canadian-style labor law reforms could be critical to the future of the U.S. labor movement. However, there are a number of reasons why such reforms may not be sufficient in themselves.

In particular, although Canadian density is roughly double that of the United States both overall and in the private sector, the Canadian labor movement still represents less than one out of every five private-sector workers (Adams 1993), and private-sector density has continued to decline over the past decade, even if at a comparatively slow rate. It may be argued that this, in part, reflects weaker laws in some jurisdictions than others and that density would be higher if these jurisdictions had the strong laws found in others. For example, the two provinces that, as of 2000, banned the use of temporary strike replacements *and* allowed card certification—Quebec

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<sup>23</sup> A related and major factor has been differences in political organization and strategy, particularly the lack of a Social Democratic/Labor Party in the United States (see Rogers 1993; Adams 1989). For a more thorough analysis of why Canadian and U.S. labor laws differ, see Taras (1997). For an excellent analysis of how these differences have evolved, see Logan (2001).

and British Columbia—had private-sector density levels of, respectively, 23.7 and 21.8 percent. However, even if all jurisdictions had the same density as Quebec, three out of every four private-sector workers would remain unrepresented. From a U.S. perspective, this would still represent a major improvement, and it may even be too conservative a figure if LFS data underestimate union membership, as would appear to be the case (see footnote 5). Yet it suggests that even though adoption of Canadian-style laws could prove an important step in reversing the fortunes of the U.S. labor movement, they would not be sufficient to restore unions to a level that even approximated the levels of the 1950s and 1960s, at least in the private sector.

One important reason is that there are a number of additional limitations to the Canadian system, limitations that also generally apply to the United States. These include the residual rights doctrine (Godard 1998, 2000:315–8), a decentralized bargaining structure (Western 1997; Rose and Chaison 2001:49; Wial 1994), laws against striking during term (Haiven 1995) and (until 2002<sup>24</sup>) against secondary picketing (Heckscher 1996; Strauss 1995), a lack of statutory representation rights in non-union workplaces (Adams 1995), and the majority requirement for certification (Adell 1986; Gould 1993; Ewing 2002:144–5). Although the latter two of these limitations may have direct implications for density by reducing the ability of unions to serve members in uncertified workplaces, the others may have indirect ones by reducing the likely effectiveness, demand for, and survival of unions, especially in sectors such as trade, accommodation, food services, and banking and financial services that are highly competitive and in which unions otherwise have low bargaining power—the very sectors assumed under the DD&C thesis to be inimical to unions. These and other limitations may limit the prospects for union growth substantially, at least beyond current Canadian levels, thus requiring labor law reforms that go beyond the current Canadian system.<sup>25</sup>

Much also may depend on union strategies. There is now an extensive literature suggesting that union organizing strategies matter (e.g., Bronfenbrenner and Juravitch 1998; Clawson and Clawson 2000:106–9). There is also a growing literature on the need for a “new” unionism (e.g., Heckscher 1988;

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<sup>24</sup> This ban was lifted by a Supreme Court of Canada decision in early 2002. See footnote 26.

<sup>25</sup> Possible reforms include the adoption of, respectively, union consultation or even co-decision rights on selected issues (as in the United Kingdom for redundancy and training issues; Wood and Godard 1999), contract extensions to non-union employers (as in France and a few Quebec industries) or mandated industry-wide bargaining (as in Germany), reduced restrictions on strike activity (as in the United Kingdom prior to the Thatcher era), provision of universal representation and due-process rights on selected issues (as in the United Kingdom for discipline and dismissal), and provision for minority union representation systems. Adams (1993, 1995) advocates elimination of the certification process altogether, on the grounds that it fosters undue employer resistance and employee reluctance to join a union.

Fletcher and Hurd 1998; Turner and Hurd 2001; Bamberger, Bacharach, and Sonnenstuhl 2001) and on broader representation strategies (Wever 1998). These and other alternative “self help” strategies have, to date, done little to reverse density decline in the United States (Rose and Chaison 2001; Katz 2001). In view of the daunting task facing the U.S. labor movement, they are also unlikely to do so in the future, at least unless the costs of organizing are reduced or the probability of success is increased (Western and Farber 2001). Labor law reforms can be expected to achieve both these outcomes. It is arguable, however, that such strategies could prove critical to the ability of the labor movement to capitalize on labor law reform. Labor law cannot “cause” union growth. Rather, it can only establish conditions conducive to this growth.

State policies represent yet another important factor. An argument of this article has been that state policies since the early 1980s have been inimical to union growth, especially through their implications for economic conditions. The effects of these conditions on union density appear to have been lower in Canada than in the United States, thus suggesting that they have been blunted by stronger labor laws. However, the analysis also suggests that under such conditions, strong laws can only help to slow decline, not reverse it, at least once density is at current Canadian levels. Rather, it is likely that the true potential of labor law reforms is only likely to be realized under positive economic and hence organizing conditions. In other words, it is likely that under positive conditions, labor law reforms would not just blunt decline but rather would facilitate growth beyond current Canadian and even postwar levels. Of particular importance may be policies that protect employers from undue market pressures and ensure some degree of job security for workers.

There are a number of other ways state policies potentially may enhance density (Gross 1994; Godard 2002a). For example, government pressures and normative support for collective bargaining appear to have played an important role in the success of the British labor movement in the 1950s through to the 1970s, when unions had few legal protections (Davies and Freedland 1983; Adams 1994; Howell 1995). Policies giving unions an enhanced role in national economic and social affairs, as in some European nations, could have similar effects through their implications for union visibility and legitimacy (Western 1997). Not only might this enhance the degree of normative support for and hence compliance with strong labor laws (Heery 2001), it also might increase the level of demand for union representation.

The conclusion to be drawn, therefore, is that Canadian-style labor law reforms, as their proponents argue, may be important and perhaps essential

to the future of the U.S. labor movement, potentially enabling U.S. density to reach or even exceed Canadian levels. However, these reforms may not be sufficient for the kind of long-term growth and vitality sought by most of their proponents, at least in the private sector. Additional legal reforms may be required, and much may depend on union strategies. Perhaps most important in the present context, broader state policies may make a major difference not just for the effectiveness of legal reforms but also for the creation of a normative environment conducive to union growth.

The prospects for both labor law reforms and broader state policy reforms are weak at the present point in time (Getman 2001; Rose and Chaison 2001). The likelihood of effective reforms in the United States also may be limited by more deeply ingrained legal, administrative, and political values (respectively, Brody 2001; Taras 1997; Lipset and Meltz 1998). Much may depend therefore on the ability of labor to mobilize the relatively high latent public support for unions suggested by surveys (e.g., Lipset and Meltz 1998), which in turn may depend on the development of an alternative policy paradigm that incorporates a central role for labor (Godard 2002a, 2002b; Hirsch and Schumacher 2001). However, the analysis in this article indicates that state policies, and in particular laws, matter at least as much as do the anonymous market forces central to the DD&C thesis and that the pursuit of labor law reforms still represents a worthwhile and probably critical strategy if U.S. unions hope to improve their fortunes.<sup>26</sup> It also suggests that it is politics, not economics, that ultimately matters most to the future of labor movements in liberal market economies.

## Conclusions

The analysis in this article has found some support for the density decline and convergence thesis. There has been a decline in union density in Canada, especially in the private sector. There is also some possibility that this decline could increase in the future. To date, however, it has been at a slower rate than in the United States, suggesting little evidence of convergence. Moreover, much of the decline in private-sector density appears to have

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<sup>26</sup> The emergent "human rights strategy" (Human Rights Watch 2000; Wheeler 2000; Adams and Friedman 1998) could serve as an important vehicle as long as the "end game" is labor law and policy reform. Of note, it has recently received important judicial support in Canada. In *Dunmore v. Ontario*, the Supreme Court of Canada recently ruled that it is contrary to the right to free association to exclude workers from labor law coverage on the grounds of their occupation. In *Pepsi-Cola Canada Beverages Ltd. v. Retail, Wholesale, and Department Store Union, Local 558*, it ruled that bans on secondary picketing are contrary to the right to freedom of expression.

occurred in the late 1970s and early 1980s, which was a period of economic transition. Since then, there has been some decline, but it has been concentrated in two years (1992 to 1993 and 1998 to 1999). It also appears to reflect harsh conditions created by government economic policies and, in recent years, anti-union labor law changes and policies in the Ontario jurisdiction, which accounts for about a third of the Canadian labor force. It thus would seem that the union decline that has occurred may be attributable ultimately to political more than market forces. There is also little basis for arguing that convergence will occur in the future, at least due to market forces alone.

A number of factors might be drawn on to explain why there has been much less decline in Canada than in the United States and why in particular normal market forces do not appear to have mattered to the same extent as in the United States. However, labor law would appear to represent the most important one. Instead of market forces undermining the effects of labor law, it seems that labor law has undermined the effects of market forces. Labor law does not work in a vacuum—lower levels of employer resistance, more social democratic values, a tradition of “social unionism,” and superior organizing efforts also may have mattered in Canada. However, to the extent that they have, it likely has been in large part as either a cause or an effect of stronger labor laws.

A major implication of these findings is that Canadian-style labor law reforms could be critical to reversing the decline of the U.S. labor movement. This is not only contrary to the density decline and convergence thesis; it also lends succour to advocates of labor law reform. Any such reforms may not be sufficient to generate the level of growth and vitality envisioned by their proponents, especially if implemented in isolation from legal reforms that go beyond the Canadian “system” and, more important, broader policy reforms. Nonetheless, the assessment of U.S.–Canadian differences in this article indicates that labor laws and hence states matter.

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