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### The 1996 Don Wood Lecture in Industrial Relations

# THE NEW ECONOMY *and the Demise of Industrial Citizenship*

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# Introduction

It is a great honour to be invited to give the Don Wood Lecture. No one ought to respond to that honour by choosing a pessimistic title especially when — as I must confess — it contains an autobiographical allusion. Don Wood is a pretty modest person, not given to autobiography so far as I know, and certainly no pessimist. On the contrary, he is a man who has tried to make the world a better place by promoting teaching, research and publication in industrial relations. Anyone who sets out on a project like that has to be called an optimist.

I suppose that I too have tried my hand at saving the world through industrial relations, and that I too can be accused of optimism but — at least after this lecture — I doubt that I can be convicted of it. Certainly, the title of my lecture is not optimistic. I am not only talking about a ‘demise’ — a death — but more specifically about the demise of industrial citizenship, a thoroughly forward-looking concept, whose loss will provoke considerable grief. Why have I committed this trespass on your hospitality, and on the very convictions which motivate this Centre, most of you, and myself? The answer is simple. We are in a time of trouble, profound trouble: the plague years, the time of the New Economy. However, that is not quite the whole story — and here I leave myself open at least to a charge of aiding and abetting optimism. Times of trouble can be times of hope as well.

The thirties was certainly a time of trouble, of ruined businesses, unemployment, falling wages, indignity and privation, international tensions, flirtation with nasty political movements on the right and the left: quite enough to qualify as a time of trouble, on any definition. But it was also a time of hope. It was a time of new energy in the arts, architecture and technology; it was a time when neighbourhoods and families somehow survived by drawing upon reserves of personal resilience and generosity; it was a time when Keynesians and New Dealers, Canada's League for Social Reconstruction and like-minded reformers and social democrats around the world, argued for benign state intervention in the economy, not so much to destroy capitalism as to save it. And of particular importance for this narrative, the thirties was also a time when North American governments began to embrace collective bargaining, when the labour movement acquired the character and philosophy which carried it through three or four decades of fairly steady expansion and when management began to think creatively about how to survive and prosper — as it ultimately did — under this new regime.<sup>1</sup>

The sixties can similarly be read as a time of trouble and a time of hope. Certainly it was trouble for anyone committed to just about any conventional beliefs, any formal institution. Racism, patriotism, militarism, prudery, seniority, the old left, meritocracy and good manners were all impartially and thoroughly trashed; universities, religions, professions, political parties, families and the forces of state authority were all subject to devastating attacks from which they have never quite recovered. Nor was the workplace exempt. Many of these same attacks on old values and old institutions surfaced in the sphere of industrial relations. These were the years of rank and file militancy, of wildcat strikes and intra-union

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<sup>1</sup> Needless to say, not everyone takes such a positive view of the 1930s, and of what happened to labour law in subsequent decades. See e.g. J. Fudge, 'Voluntarism, Compulsion and the "Transformation" of Canadian Labour Law' in G.S. Kealey & G. Patmore (eds.) *Canadian and Australian Labour History* (Sydney: Australian-Canadian Studies); M. Barenberg, 'The Political Economy of the Wagner Act: Power, Symbol, and Workplace Cooperation' (1993) 106 *Harvard Law Review* 1379; K. Klare, 'Judicial Deradicalization of the Wagner Act and the Origins of Modern Legal Consciousness, 1937-1941' (1978) 62 *Minnesota Law Review* 265; K. Stone, 'The Post-War Paradigm in American Labor Law' (1981) 7 *Yale Law Review* 1509.

battles, of the unions' first destabilizing encounters with issues of generation and gender, race and robotics.

Still, in a way, the sixties and early seventies were times of hope as well, especially in labour-management relations. The decade or so from the appointment of the Woods Task Force<sup>2</sup> through to the end of Paul Weiler's brilliant but brief experiment with the B.C. *Labour Code*,<sup>3</sup> was a period of high optimism and great technical achievement within the industrial relations community. New labour and social security legislation, a new technology of dispute resolution, new arbitral jurisprudence, new labour and management structures, new personalities — all of this added up to the promise of a new era in labour management relations, operating under the benign and progressive supervision of labour law and industrial relations experts.<sup>4</sup>

In 1967 — early in this era and in my own career — I wrote an over-wrought and jejune article entitled 'Developing Industrial Citizenship: A Challenge for Canada's Second Century',<sup>5</sup> whence the title of this lecture. In that article, I argued that Canadian workers were beginning to amass an array of employment-related rights and privileges, substantive and procedural, based on legislation and collective agreements and shop floor custom, which would ultimately give them a right to economic security. I predicted that:

...citizens of the industrial community will gradually come to enjoy protection against the erratic action of a particular employer or the economy as a whole, in much the same way as citizens of the general community gradually came to enjoy protection against arbitrary government action.<sup>6</sup>

This great advance, I further predicted, would come at a price:

In exchange for protection against the extreme fluctuations of an enterprise economy [workers will be] increasingly required to surrender [their] own freedom to create crises for the community. . . . [R]egulation of the labour sector is an intrinsic part of the overall task of producing a well-modulated economy.<sup>7</sup>

And finally, because this article appeared in the *Canadian Bar Review*, I had a word or two to say about law. I argued that we were well on our way to recognizing that the new and distinctive rights and duties of

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<sup>2</sup> The federal Task Force on Labour Relations (Woods Task Force), appointed in 1966, issued its report in 1968. *Canadian Industrial Relations*, The Report of Task Force on Labour Relations, Ottawa, Privy Council Office, December 1968.

<sup>3</sup> The *Labour Code* of British Columbia, (B.C.) (2nd Session) 1973, c. 122, was enacted by the province's first New Democratic government, and amended two years later, *Labour Code of British Columbia Amendment Act*, (B.C.) 1975, c.33. Its principal author was Paul Weiler, who became chair of the B.C. Labour Relations Board. The defeat of the NDP in 1975 was followed in 1977 by extensive amendments of some of its most innovative features, *Labour Code of British Columbia Amendment Act* (B.C.) 1977, c. 72. In 1978 Weiler resigned. He is now a professor at Harvard Law School. See P. Weiler, *Reconcilable Differences: New Directions in Canadian Labour Law* (Toronto: Carswell, 1980) and J.M. Weiler & P.A. Gall, eds., *The Labour Code of British Columbia in the 1980's* (Vancouver: Carswell, 1984).

<sup>4</sup> I offered a retrospective view of the Woods Task Force and of the era in H.W. Arthurs, 'Understanding "Understanding": Industrial Relations Research and Policy in Canada from 1969 to 1984 . . . and Beyond' (1984) 39 *Relations Industrielles* 753.

<sup>5</sup> (1967) 45 Can. Bar Rev. 786.

<sup>6</sup> At p. 812

<sup>7</sup> At p. 812-3.

industrial citizenship required to be administered by a distinctive system of labour tribunals, with distinctive procedures and distinctive legal rules. Law — the general law of contracts and constitutions and torts — had no constructive role to play in the labour sphere. (I persevere in this particular heresy, but that is another story.)<sup>8</sup>

How could even a young law professor be so far off the mark, in so very few words? My article failed to attract much attention at the time — probably just as well, as things turned out. However, in more recent times, it has earned me a few sneers from critical legal scholars,<sup>9</sup> and an odd, nostalgic reproach from Paul Weiler, then and now one of our best labour lawyers.<sup>10</sup> To everyone who initially ignored me, to recent finger-waggers, and to my older and wiser self, I would still argue that the development of a concept of industrial citizenship actually was a good idea at the time — a plausible and useful idea — but that it has been confounded by subsequent developments which I am going to refer to collectively as the New Economy.

## The New Economy

The New Economy, as I define the term, involves the convergence of three distinct but related developments: technological change and consequent changes in the organization of work; globalization, and diminished tolerance for state intervention in the marketplace. These developments, each of them long in the making, converged especially during the 1980s and into the 1990s. Although historically and analytically distinct, they are mutually reinforcing; in tandem they have changed the political economy of Canada and of most countries. However, as I will try to show, each has its own trajectory and each engenders its own responses.

My main task this evening, then, is to take you on a quick tour through the New Economy, pointing out along the way what it seems to portend for the future of industrial citizenship. At the end of the tour, I am going to propose a proposition: as goes industrial citizenship, so goes the discipline of industrial relations in general. This is at best a debatable proposition, and you may conclude that I have confused autobiography with history. We shall see. Our first stop on the tour is, metaphorically speaking, an archeological site: the mass production factory, organized on fordist lines.<sup>11</sup> In this paradigmatic workplace of sixty, even thirty, years ago, semi-skilled industrial workers - mostly male, mostly white - produced relatively standard products such as cars or consumer electronics. The structure and pace of industrial production defined the conditions of employment. Because products were relatively standard

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<sup>8</sup> H.W. Arthurs, 'The Law of the Shop: The Debate over "Industrial Pluralism,"' (1985) 38 *Current Legal Problems* 83 and 'Labour Law without the State?,' (1996) 46:1 *U. Toronto L.J.* 1.

<sup>9</sup> J. Fudge & H. Glasbeek, 'The Legacy of of PC 1003,' (1995) 3 *Can. Labour & Employment L.J.* 357.

<sup>10</sup> P. Weiler, 'The Charter at Work: Reflections on the Constitutionalizing of Labour and Employment Law,' (1990) 40 *U. Toronto L.J.* 117.

<sup>11</sup> For a discussion of fordist and post- and neo-fordist modes of production, see e.g. R. Boyer, *The Search for Labour Market Flexibility* (Oxford: Clarendon Press, 1988), J. Holmes, 'New Production Technologies, Labour and the North American Auto Industry' in S. Tolliday & J. Zeitlin (eds.), *Between Fordism and Flexibility* (Oxford: Polity Press, 1986) and S. Wood, *The Transformation of Work? Flexibility and the Labour Process* (London: Unwin Hyman, 1988).

and production runs were relatively long, workers could be trained for specific tasks, and assigned routine jobs which would remain more-or-less unchanged at least for the duration of a two or three year collective agreement. Fluctuations in consumer demand would be met primarily by increasing or decreasing production, say by adding or subtracting a second or third shift, rather than by creating variant or entirely new products to respond to changing market signals.

Since work forces remained relatively stable, employers had some incentive to amortize their investment in human capital over fairly long periods and to reap the benefits of stability provided by long-term collective agreements. Workers gained by having reasonable prospects of long-term jobs. Unions gained as well. Long-term employment enabled them to organize by building on job-based affinities and allegiances, to negotiate long-term collective agreements which would frame up working conditions in some detail, to use seniority rights as a device to allocate opportunities and entitlements, and to develop financial and political support for a state-sponsored safety net to catch the casualties of cyclical unemployment, illness and old age.

In the New Economy, things have changed considerably. New technologies have transformed traditional modes of production and the organization of work. Many fewer workers are needed to produce goods, for a start and — by the way — fewer of them are white, male or semi-skilled. New manufacturing techniques make possible short, variable production runs, permitting industry to respond more quickly and subtly to consumer signals. The desired variations in production requirements are achieved efficiently by mobilizing a network of just-in-time suppliers and contractors with specialized know-how and access to a 'reserve army of labour' which can absorb large fluctuations in the shifting requirements for parts and services. And improved information technologies permit much greater control over quality, inventories, costs and profits, which in turn generates constant pressures for better performance in each of these areas.

All of this, as you can imagine, has had profound effects on the labour market, and especially on job security. In crude terms, over the past thirty or forty years, employment in the manufacturing sector has fallen from 40 percent to 20 percent of the workforce; union membership has fallen in the United States from over 30 percent to under 15 percent (depending on how you count it) and has been sustained at over 30 percent so far in Canada largely by high levels of public sector unionism. Moreover, there has been a qualitative change in employment within the manufacturing sector: a relatively small core of mostly 'good' job opportunities and a sustained union presence is to be found within the major firms, but this core is surrounded by a periphery of mostly 'bad' jobs provided by suppliers, feeder plants, and contractors, most of which are not unionized.

One can tell a similar story about the service sector, except that it has expanded even more rapidly than manufacturing has contracted. However, as in manufacturing, a large periphery of bad jobs surrounds a shrinking core of good jobs. Technology-driven productivity gains have displaced large numbers of relatively unskilled workers from the formerly privileged domains of clerical employment. Flexibility is achieved by outsourcing even quite sophisticated forms of technical work — often to ex-employees now installed at their home computers and functioning as 'consultants' and 'contractors.' And union membership, always anaemic amongst service workers, is still negligible, except in the public sector. To complete the story, middle and even senior managers and professionals have suffered a similar fate: made

first smart, then lean, then redundant; delayed and then downsized; and ultimately despatched to retirement or to embattled lives as the condottieri, the free lances, of millennial capitalism.

It is clear, then, that the technology of the New Economy, and the organization of work which it has spawned, both contribute to an environment which is quite inhospitable to the concept of industrial citizenship. That concept, which seeks to build upon the work-related entitlements of semi-skilled, semi-tenured industrial workers, is unlikely to have much salience in a New Economy characterized by the decline of mass industrial production, of semiskilled work and of job security.

That is our little archeological visit to the dreary ruins of fordism. By way of relief, we are now going to explore the broad, sunlit uplands of the New Economy — globalization. It is commonplace today that capital, intellectual property, services, manufactured and semi-processed goods move more and more freely across national boundaries. And these globalized factors of production are more and more frequently organized within, or on behalf of, that characteristic global structure, the transnational corporation. That is what we celebrate as globalization. Of course, refugees, sex tourists, acid rain, drugs and terrorism also move more freely across national boundaries: but that is not the kind of globalization which brings on hot flushes in the editorial rooms of the *Report on Business* or the *Wall St. Journal*.

Globalization, we are often told, has trumped the power of the state. The state can no longer regulate currency trading, interest rates, financial markets, or cultural industries. Or more accurately: the state can regulate — but subject to three important constraints. First, new terms of international trade embodied in the General Agreement on Tariffs and Trade (GATT), or in the treaties establishing regional associations such as the North American Free Trade Agreement (NAFTA) and the European Union (EU), do forbid some kinds of regulation and require others. Second, if the state does regulate, it runs the risk of displeasing currency speculators and bond traders, of losing investment and jobs. It will think twice, in most cases, before running any such risks. And third, new technologies and new business structures have certainly reduced the functional capacity of states to impose their policies on markets, corporations and the industrial relations system in particular. Transnational companies can, to a considerable extent, avoid regulation by shifting production or otherwise arranging their affairs so as to put themselves beyond the reach of interventionist states. In fact, by simply musing out loud about an exit strategy, business in general is able to rein in aggressive state regulation.

In this kind of world, it is theoretically possible to imagine the emergence of a kind of global industrial citizenship, a set of juridical and economic protections for workers who are part of the global economy or are associated with a transnational company. In fact, we hear talk that the new World Trade Organization (WTO), successor to the GATT, may outlaw 'social dumping' and deny access to world markets to goods produced under substandard labour conditions. So far, however, the emergence of supra-state regulation - by the WTO, for example — seems a remote possibility. Nor is there much reason for optimism even about regionally-based forms of industrial citizenship. Despite the existence of strong national traditions of building a social market in Germany, Scandinavia, France and elsewhere, the European Union has had enormous difficulty in addressing labour market issues on a transnational basis.<sup>12</sup> And NAFTA, our own feeble imitation of the European Union, does not even try to address these issues.

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<sup>12</sup> See e.g. R. Blainpain, *Labour Law and Industrial Relations of the European Community* (Deventer: Kluwer, 1991) and W. Streeck & P. Schmitter, 'From National Corporation to Transnational Pluralism: Organized Interest in the Single European

Of course, we do not have to depend on states or on transnational regime such as WTO, the EU or NAFTA. In principle, transnational corporations could adopt their own codes of good employment practice, either out of a sense of social responsibility, or for fear of negative publicity, with or without the tutelage of the International Labour Organisation (ILO) or some other international agency. In fact, some transnational corporations have adopted such voluntary codes and have actually improved their employment practices<sup>13</sup> more are thinking of doing so; and both the EU and Organisation for Economic Co-operation and Development (OECD) have tried to promote this strategy by developing model codes for transnationals.

But however promising, the approach is problematic: the best companies may adopt codes; the worst will not; and in the competitive global marketplace, the worst may make it impossible for the best to abide by their own high standards. Moreover, self-regulation — however well-meant — does not yet constitute democratic regulation. Labour standards — like consumer standards and environmental standards — ought to be made and enforced through democratic institutions.

There is a further problem with the notion of global, or even regional, industrial citizenship. Most ordinary workers and most trade unions do not yet participate in what might be called an integrated global or regional labour market. To the extent that such a market exists, it exists only for a tiny cadre of highly privileged workers — senior executives, professionals, athletes and entertainers — who in fact do enjoy something resembling transnational industrial citizenship.

However, most ordinary workers are in a very different situation. They participate in national and local economies, which are at various stages of development, and they have had various experiences of globalization. Apart from a privileged techno-elite, most workers in the mature industrial and post-industrial economies have lost income, security and power. As they see it, their plight is attributable to globalization, and specifically to the loss of jobs to workers in the newly industrialized countries. However, workers in these countries have paid a stiff price for whatever gains they may have made. Globalization and industrialization have been profoundly destabilizing for them and their communities. They have often been made to suffer disgraceful exploitation and corruption, intense repression and the serious disruption of local economies, environments and social relations. It is not at all clear to them, moreover, why they should suffer so that people in the wealthier parts of the world can buy cheap jeans or toys or computers.

Whatever might be the reality, whatever might be its long-term blessings, these different perceptions of globalization do not create the best conditions in which to promote global solidarity among workers around the notion of a shared industrial citizenship. Workers in different economies, and in different

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Market' in W. Streeck (ed.), *Social Institutions and Economic Performance: Studies of Industrial Relations in Advanced Capitalist Economies* (London: Sage Publications, 1992).

<sup>13</sup> H. W. Baade, 'The Legal Effects of Codes of Conduct for MNEs' (Paper presented at the International Symposium on Legal Problems of Codes of Conduct for Multinational Enterprises, Center for Interdisciplinary Research, University of Bielefeld, 1979) [unpublished]; L. Compa & T. Hinchcliffe-Darricarrere, 'Enforcing Labour Rights through Corporate Codes of Conduct' (1993) 33 Colum. J. Transnat'l L. 663; L.J. Marks et al., 'International Ethical Concerns of US Executives: A Potential Barrier to Investment in Some Developing Country Markets' (1992) Foreign Tr. Rev. 253; D.H. Pink, 'The Valdez Principles: Is What's Good for America Good for General Motors?' (1990) 8:1 Yale L. & Pol'y Rev. 180.

countries, see 'the other' as the problem, not the solution - to some extent with good reason. Nor do institutional links exist which can be used to overcome these perceptions, even amongst workers in the advanced economies, let alone between them and those in economies which are less so. Trade unions tend to be resolutely national in their character and structures. Even if they were more internationally-minded, they are too weak just now to muster the resources for effective transnational organizing and bargaining. And finally, labour law and employment regimes do not seem to travel easily from one country to another; they are too deeply embedded in local politics and culture.

To sum up: globalization as it is experienced in the New Economy means globalization of finance and production; it does not mean globalization of employment law or of labour-management relations, and certainly not globalization of industrial citizenship.

Now, the third stop on our tour. I would like you to join me in the dignified - but decaying - precincts of the state. From the 1930s to the 1960s and 1970s, it was widely understood that the state and civil society needed each other. Civil society needed the state as a vehicle to achieve the shared aspirations of its individual members; the state needed civil society to ensure their democratic consent and productive participation. But now, in the New Economy, what was once understood is vigorously denied. There is no such thing as society, Margaret Thatcher taught us, only individuals; civil society does not need democratic consent or civic participation, only the market; and the state is the enemy of the common good, not a means of achieving it.

The Thatcherite critique of the activist state was strident, but not necessarily effective. Much more telling was the critique of alienation, of disaffection. The fact is that many of the strategies of state intervention failed to achieve their high ambitions: the welfare system, urban planning, public education - and arguably collective bargaining. Consequently, many constituencies of the activist state felt themselves betrayed or deceived: the poor, women, environmentalists, racial, ethno-cultural and national minorities. Globalization apart, technology apart, Thatcherism apart, belief in state action, has ebbed, and with it, belief in the importance and efficacy of electoral politics.

Declining confidence in, commitment to, and participation in the activist state has particular importance for the concept of citizenship. All forms of citizenship imply membership of something. That 'something,' for a very long time, has been not only civil society but also a state which is actively committed to the welfare of its members. True: citizenship was contested, and it did not come early or easily to the lower orders. But almost from the beginning of the industrial revolution, long before British workers acquired the right to vote, they began to enjoy rudimentary workplace protections. Over 150 years, these protections matured into the structures of the modern, democratic welfare state, structures which seemed indestructible.

Indestructible they are not. Political citizenship has little significance in the New Economy, in which states are viewed at best as the midwives of new regional and global trading arrangements, and at worst, as anachronisms, as obstacles to technical innovation, universal culture and entrepreneurial freedom. Nor does citizenship in civil society seem much more promising. Robert Putnam<sup>14</sup> and others<sup>15</sup> have

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<sup>14</sup> R.D. Putnam, 'Bowling Alone: America's Declining Social Capital' (1995) 6 *Journal of Democracy* 65.

<sup>15</sup> R.B. Freeman & J.L. Medoff, *What Do Unions Do?* (New York: Basic Books, 1984); T.C. Kohler, 'Civic Virtue at Work: Unions as Seedbeds of the Civic Virtues' (1995) 36 *Boston College Law Review* 279.

suggested that unions have been one of the principal vehicles of civic participation for working people. But as Putnam points out in his well-known article, 'Bowling Alone,' all forms of civic participation are in decline in the United States. This decline has also occurred in Canada and in most advanced industrial societies, I would suggest, and everywhere unions seem to be increasingly enfeebled and marginalized.

The decline of citizenship in both the state and civil society has obvious implications for industrial citizenship, which was the joint project of both. The concept of industrial citizenship rested on three fundamentals: long-term jobs in an expanding enterprise economy, promoted and stabilized by state sponsored Keynesian strategies; a social safety net for the unemployed and unemployable paid for by both employers and employees, through payroll contributions and taxes; and a regime of work-related rights — health and safety and protection against discrimination — provided primarily by private employers but enforced, if needs be, by state regulatory agencies. In the New Economy, none of these fundamentals is secure. Full employment is seen as an obstacle to growth; public expenditures must be suppressed because they generate unacceptable tax burdens; and state regulation of the workplace constrains entrepreneurial freedom and impairs efficiency. In sum, in the New Economy, industrial citizenship seems to be a metaphor of declining power, a status of much-diminished importance.

And there is worse to come. I have described industrial citizenship as a status which emerged in the context of the modern welfare state and modern industrial society. However, 'industrial' and 'modern' are both passé: we are all post-industrial now, and post-modern to boot. This brings into focus two problematic aspects of industrial citizenship: where do we find it and how do we protect it? In what might be termed the 'strong' version, industrial citizenship would derive from constitutional rights, or at least from a comprehensive legal code;<sup>16</sup> in less strong versions various statutes would provide a framework and a fail-safe mechanism for entitlements which would derive primarily from collective agreements and industrial custom. However, post-modernity has made us alert to the contingent nature of all deep structures of social life, and has made us especially skeptical about those which justify power and project authority. Inevitably, therefore, we have become skeptical about both law and custom. Disquiet about law as a vehicle of social order, much less of social justice or social transformation, naturally extends to labour law, and more specifically to the notion that industrial citizenship might take the form of legal entitlements.<sup>17</sup>

That postmodernism should have undermined confidence in the power of law and in the prospects for industrial citizenship, may seem ironic, counterintuitive — even downright wrong — given that the *Charter of Rights and Freedoms* has dominated so much of our legal and political discourse in this postmodern age. Indeed, at first blush, the Charter might seem to provide a sturdy fourth, juridical fundament for industrial citizenship. After all, the Charter's promise of freedom of association might easily have been interpreted to include freedom to form trade unions, bargain collectively or strike — all steps which might arguably hasten the assertion of citizenship rights. Moreover, the Charter's guarantees

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<sup>16</sup> D. Beatty, *Putting the Charter to Work: Designing a Constitutional Labour Code* (Montreal: McGill-Queens University Press, 1987); P. E. Trudeau, 'Economic Rights' (1962) 8 *McGill Law Journal* 121.

<sup>17</sup> I have reviewed some of these problems in H.W. Arthurs, 'Landscape and Memory: Labour Law, Legal Pluralism and Globalization,' in T. Wilthagen & R. Rogowski (eds.), *Labour Law Theorizing in an Age of Globalization* (Deventer: Kluwer, 1997 forthcoming).

of mobility and equality rights and of security of the person might have been stretched to encompass protection against insecurity of employment, which is also essential to industrial citizenship.

However, things have not worked out that way. Perhaps it is just coincidence, but the advent of the Charter coincides almost exactly with the onset of the most insecure and regressive era Canadian workers have experienced since the thirties. Or perhaps it is not coincidence: some observers argue that the Charter has helped to confer respectability on the individualistic, anti-collectivist, anti-state rhetoric of the New Economy.<sup>18</sup> Perhaps this argument goes too far, but it is difficult to imagine 'putting the Charter to work'<sup>19</sup> to construct a regime of worker rights and entitlements. Certainly, there is nothing in our experience to date to justify placing much faith in the Charter: Charter litigation has in fact frequently explored issues of industrial citizenship but so far it has neither produced positive outcomes for would-be industrial citizens nor, I would have to concede, done them much direct harm.<sup>20</sup> I leave the legal precincts of state action with a characteristically enigmatic post-modern farewell: since law is socially constructed and deconstructed, since law is contestable and contested, the Charter is unlikely to tame the New Economy by reviving the now-destroyed political and economic structures within which industrial citizenship began to emerge.

I am sure that you can see, then, how very wrong I was in predicting that industrial citizenship was the challenge for Canada's second century — if indeed Canada has a second century which, as things have turned out, is also something I ought not to have taken for granted.

At about this point in my analysis, you may feel that I have penetrated so far into the Temple of Gloom that I will never emerge. But do not despair. The logic of my initial premise — that all times of trouble are times of hope — will somehow get me out alive. In the next section of my analysis, I am going to do my best to be optimistic about the prospect of resurrecting industrial citizenship, and all that it implies.

## **Beyond the New Economy: The Prospects for Industrial Citizenship**

I am going to propose three possible scenarios for the future of industrial citizenship, each of which holds some hope for at least some people, even if not all of them holds hope for everyone.

First, there is what I will call the Athenian scenario. This scenario accepts at face value the claims of those who are generally supportive of the New Economy, who can imagine that a single-minded focus on the creation of wealth through technology will ultimately create a global society in which everyone is

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<sup>18</sup> M. Mandel, *The Charter of Rights and the Legalization of Politics in Canada* (Toronto: Thompson, 1994); H.J. Glasbeek & M. Mandel, 'The Legalization of Politics in Advanced Capitalism: The Canadian Charter of Rights & Freedoms' (1984) 2 *Socialist Studies* 84.

<sup>19</sup> Beatty, *supra*, note 16.

<sup>20</sup> Unions win some 'notable' victories such as *Lavigne v. OPSEU* (1991), 81 DLR (4th) 545(SCC) (political dues case) and suffer some 'notable' reverses *RWDSU v. Dolphin Delivery* (1986), 33 DLR (4th) 174 (SCC) (free speech picketing) but the net effect of both is that life simply continues as before. See generally P. Weiler, *supra*, note 10

better off, and that radical reduction in the role of the state will unleash all forms of human creativity. The result of this scenario — in my view a rather unlikely one — is that we will have something approaching an Athenian democracy, which is to say that we will have a golden age of civic participation, of brilliant entrepreneurs and empowered citizens, of scientists and artists, of peace and economic growth. But of course, as the reference to Athens suggests, we will have all of this for a privileged few, for a short while, against the background of recurring conflict involving envious neighbours abroad and the discontented classes at home.<sup>21</sup>

Second, there is what I will call the Doomsday scenario. This scenario is a little more likely. As described by two leaders of the World Economic Forum - not notorious for its pessimism about the New Economy:

Economic globalization has entered a critical phase: A mounting backlash against its effects, especially in the industrial democracies, is threatening to disrupt economic activity and social stability in many countries. . . . [T]he human and social costs of the globalization process . . . test the social fabric of the democracies in an unprecedented way. . . . Public opinion in the industrial democracies will no longer be satisfied with articles of faith about the virtues and future benefits of the global economy. It is pressing for action.<sup>22</sup>

Indeed, people are taking action not only in the industrial democracies but around the world which they believe, rightly or wrongly, will protect the quality of their life and the future which they want for their children. Some of that action is potentially revolutionary: the support of southern working class voters for the bizarre Pat Buchanan, the desperate uprisings first in Chiapas and then in other Mexican states, the strong electoral support for retro-Communists in Russia and other East European countries. Some of it is merely sullen or solipsistic: the displaced anger of suburban, middle-class Canada against immigrants, the poor and racial minorities, the widespread abandonment of traditional electoral politics in favour of populist cargo cults and their electronic plebiscites, free-lunch public services and dumbed-down government. And some of it is, frankly, no more than acceptance of the least worst alternatives available, people quietly resigning themselves to economic exclusion — by going bankrupt or losing their homes, by accepting early retirement or redundancy, by accepting wage cuts and reduced benefits, by taking work wherever they can find it — often in the informal economy or by migrating from their homes to other countries or communities or to life on the streets.<sup>23</sup>

This is pretty apocalyptic stuff, of course, and we have heard it all before. We heard it in the thirties, when anger and despair ultimately produced some innovative measures to rejuvenate the economy and reform society. If these measures did not actually achieve a fundamental transformation of capitalism, at least they pulled us back from what seemed like near-certain chaos. Similarly, the sixties. Revolution was in the air (along with blue smoke). It seemed as though we were experiencing the end of all forms of oppression and exploitation, starting with homework and ending with the military industrial complex. In

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<sup>21</sup> S. Sassen, *The Global City* (New Jersey: Princeton University Press, 1991).

<sup>22</sup> K. Schwab and C. Smadja, founding president and managing director respectively of the World Economic Freedom (Globe and Mail, Feb 16, 1996, p. B10.)

<sup>23</sup> See e.g. S. Sassen, 'The Informal Economy: Between New Developments and Old Regulations' (1994) *Yale Law Journal* 2289.

fact, as things turned out, all the energy and idealism of the sixties metamorphosed into some relatively modest reformist projects including environmentalism, the women's movement and consumer rights - and some of these, alas, may turn out to be less durable than they first seemed.

These experiences of overestimating the decline and fall of almost everything lead me to my final scenario, a Back-to-the-Future scenario, in which the powerful forces of the New Economy are tamed slowly over many years, tied down finally by the lilliputian constraints of small reforms and minor adjustments. These, I suspect, will not closely resemble our familiar institutions and present arrangements. However, new ideas, new values, and new arrangements to express them might — just might — help us to recover what was essential and attractive in the notion of industrial citizenship.

Let me offer a few examples, little fragments of evidence, to demonstrate that there really may be something in this. First, we are seeing a renewal of attempts to put a human face on corporate capitalism, one manifestation of which is the so-called stakeholder movement.<sup>24</sup> The notion that corporations have a responsibility to make business decisions with due regard for the interests of their workers and others directly affected is only modestly radical, if you think about it, and quite consistent with the rhetoric and values of late 20th century capitalism. However imprecise the idea may be, it is surely significant that Tony Blair, leader of the British Labour party, has said that he wants the United Kingdom to become a 'stakeholder society.' Second, there is a decent body of research which suggests that the logic of some forms of high tech production demand trust relations, a strong civic infrastructure and therefore a high degree of security for workers and their communities.<sup>25</sup> In fact, some authors take the matter one step further and argue that high levels of prosperity correlate positively with respect for labour standards.<sup>26</sup>

Third, we have been engaged, for twenty years or more, in workplace experiments which aim to provide greater meaning to work and a stronger voice to workers, two key components of industrial citizenship. In some cases, perhaps, these experiments are no more than disingenuous tactics to deceive and coop workers, while others are sincere attempts to empower them. Such experiments include sub-syndicalist forms of representation, quality circles, devolution of decision-making authority and a host of other new ways of organizing work relations.<sup>27</sup>

Finally, there is some evidence that even global capitalism is coming to accept that it needs social stability. Stability is threatened by deteriorating conditions both in the manufacturing zones of newly-

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<sup>24</sup> See Special Issue, 'The Corporate Stakeholder Debate: The Classical Theory and its Critics' (1993) 43:3 U. Toronto L.J. 1, and see esp. K. Stone, 'Policing Employment Contracts within the Nexus-of-Contracts Firm' 43 U. Toronto L.J. 353 and other contributions in Part 5: 'Alternative Approaches to Labour Participation.' Will Hutton, *The State We're In* (London: Jonathan Cape, 1995) esp. c. 5, Stakeholder Capitalism.

<sup>25</sup> See e.g. R. Putnam, *Making Democracy Work: Civic Traditions in Modern Italy* (Princeton NJ.: Princeton University Press, 1993); E. Fukuyama, *Trust: The Social Virtues and the Creation of Prosperity* (New York: The Free Press, 1995); E.H. Lorenz, 'Trust and the Flexible Firm: International Comparisons' (1992) 31:3 *Industrial Relations* 455.

<sup>26</sup> See W. Sengenberger & D. Campbell (eds.), *International Labour Standards and Economic Interdependence* (Geneva: ILO, 1994). A recent OECD study makes the more limited but still important claim that there is a 'mutually supportive relationship between sustained trade reforms and improvements in association and bargaining rights. . . .' OECD Directorate for Education, Employment, Labour and Social Affairs, *Trade Employment and Labour Standards: A Study of Core Workers' Rights and International Trade* (Paris: OECD, 1996) at 43.

<sup>27</sup> See e.g. A. Hyde, 'Employee Caucus: A Key Institution in the Emerging System of Employment Law' (1993) 69: 1 Chi.-Kent L. Rev. 149; K. Klare, 'Workplace Democracy and Market Reconstruction: An Agenda for Legal Reform' (1988) 38:1 Catholic U.L. Rev. 24; K. Stone, 'Labour and the Corporate Structure: Changing Conceptions and the Emerging Possibilities' (1988) 55 U. Chic. Law Rev. 73.

industrialized countries and in world cities, such as New York, which house corporate head offices and the professional and technical cadres which are essential for their work.<sup>28</sup> However, stability cannot be preserved, in the long term, by coercive measures; it needs to be grounded in some sort of social contract, at the centre of which must be decent working and living conditions.<sup>29</sup> Similarly, global capitalism may be coming to accept the need for transnational regulation, in order to protect itself from the consequences of fraud, corruption, reckless improvidence and wild speculation. The collapse of Barings Bank and the Mexican peso, to take two examples, imposed on investors huge losses of both money and confidence. And finally, some social movements — the women's movement, the environmental movement, the human rights movement, but not yet the labour movement — have developed a capacity for transnational mobilization and harassment. Sooner or later, global capitalism will have to come to terms with these movements, if only to avoid unexpected disruptions of trade in its most valuable markets. Thus, self-interest, not altruism, may one day lead global capital to support both a degree of regulation in the New Economy, and a measure of social justice for workers at home and abroad. Conceivably, these shifts in corporate attitudes may one day breathe new life into the old ideals of industrial citizenship.

## Conclusion:

### What Does This Mean for Industrial Relations?

I hope that by now — as my conclusions heave slowly into view — my central argument is beginning to become clear. I have argued that industrial citizenship will not be conjured up by the writings of clever young law professors, nor by the proliferation of collective agreements and shop floor practices, nor even by the enactment of laws or the efflorescence of constitutional doctrine — though all of these have some contribution to make. Rather, industrial citizenship — the concept of a just and decent regime for citizens at work — will be made or unmade by the dominant forces of the New Economy. It will be ground out between the huge millstones of the global and the local, the market and democratic politics, technology and social relations.

As with industrial citizenship, so with all the data and doctrines, disciplines and professions which gather under the broad tent of industrial relations. As the forces of the New Economy reshape industrial relations — and much else — there is a growing irrelevance to old debates over legal doctrines, job training, management theories and strategies of dispute resolution. This is not to say that next week or next year we will repeal the *Canada Labour Code*, dam up the mighty outpouring of labour statistics and arbitration awards or cancel all Masters degrees in Industrial Relations. Obviously, the old structures and the need to understand and operate within them will persist for some time. In some sectors of the economy, they may even retain considerable vitality. However, it has become increasingly clear that tinkering with the existing regime of collective bargaining and social security will not advance things very much.

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<sup>28</sup> Sassen, *supra* note 21.

<sup>29</sup> See e.g. R. Simeon, *In Search of a Social Contract: Can We Make Hard Decisions as if Democracy Matters?* (Toronto: CD Howe Institute, 1994); D. Trubek, 'Social Justice "After" Globalization — The Case of Social Europe,' Paper presented at the 8th International Conference on Socio-Economics, Geneva, July, 1996 (unpublished, 1996).

Of course, many of us will not be able to avoid tinkering — some of us for grades, some for money, some under compulsion of circumstances. But this is merely a description of our daily work, not a prescription for how to go about understanding industrial relations, establishing effective public policies or developing viable institutional arrangements. If we want to apply ourselves to these larger, more difficult tasks, we surely need a new frame of reference. I have tried to show how the New Economy has served me, personally, as I grope my way towards a more plausible and comprehensive analysis than the one I published thirty years ago in the *Canadian Bar Review*. Some scholars are way ahead of me, I have no doubt; they have conducted their own *recherches du temps perdu*, developed their own new conceptual frameworks, proposed their own visions of things to come. However, others are clearly not.

Let me offer two cautionary tales to illustrate what happens when scholars and policy makers fail to address the radical shifts which have occurred in the underlying assumptions of our industrial relations system. The first of these tales is quite short. As we all recall, Bill 40 — the NDP's 1992 amendments to the *Ontario Labour Relations Act*— engendered enormous controversy.<sup>30</sup> Why is a bit of a mystery. In most respects, the NDP's amendments were nothing more than a labour lawyer's laundry list of modernizing provisions which had been enacted in other provinces over the past twenty years or so. Many of those provisions — though certainly not all — favoured unions; but mostly they did so at the margins, by making the labour board more efficient and responsive, rather than by directly addressing the power balance between labour and management. Even the highly publicized striker-replacement ban had much more symbolic significance than practical importance. This provision had been used infrequently in provinces where it had been previously enacted, and in Ontario during the three years it was in force, it was invoked only rarely.<sup>31</sup>

Yet despite the advent of the New Economy, Bill 40 was grounded entirely on the assumptions of the old industrial relations system. Its starry-eyed supporters, who believed that Bill 40 was going to usher in something resembling industrial citizenship, or possibly the Kingdom of Heaven, were rather naive. On the other hand, I am sorry to say that their naiveté was exactly matched by the cynicism of those who first opposed Bill 40 as a fundamental threat to Ontario's economic future, and then repealed it three years later,<sup>32</sup> in order to show that Ontario was 'open for business.'

What caution do I mean to convey by this cautionary tale? *Mea culpa* would about sum it up. I did not contribute much to public understanding during this whole episode nor — with a few honourable exceptions — did most other labour law and industrial relations scholars. If I were doing it all over again — as in a sense I am — I would say something like this. Ontario's economic problems are largely caused by

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<sup>30</sup> *Labour Relations and Employment Statute Law Amendment Act*, S.O. 1992, c. 21; see H.C. Jain & S. Muthuchidambaram, *Ontario Labour Law Reform: A History and Evaluation of Bill 40* (Kingston: IRC Press, 1995); B. Rae, *From Protest to Power: Personal Reflections on a Life in Politics* (Toronto: Viking Press, 1996) at 207 ff; P. Monahan, *Storming the Pink Palace: The NDP in Power, A Cautionary Tale* (Toronto: Lester Publishing, 1995) at 126 ff; T. Walkom, *Rae Days* (Toronto: Key Porter Books, 1994) at 124 ff.

<sup>31</sup> The consequences of a ban on striker-replacements have been hotly debated in the literature: see Crampton, Gunderson and Tracy, 'The Effects of Collective Bargaining Legislation on Strikes and Wages' (University of Maryland, unpublished, 1994); Schnell and Gramm, 'The Empirical Relations Between Employers' Striker Replacement Strategies and Strike Duration,' (1994) 47 *Industrial and Labor Relations Review* 189; B. Langille, 'Has Ontario's Anti-Scab Law Made any Difference - Legally, Economically or Otherwise?,' (1995) 3/4 *Canadian Labour and Employment Law Journal* 461.

<sup>32</sup> Bill 40 was repealed in October 1995, by the *Labour Relations Act*, S.O. 1995, c.1.

the impact of the New Economy, few of which have much to do with the *Labour Relations Act*. While it is obviously a good idea to bring the Act up to date, and to make its administration fair and efficient, this will do very little to arrest the marginalization of the labour movement or to cure the incapacity of the collective bargaining system to cope with the jobs assigned to it. Therefore, given the limited practical consequences of all labour legislation, proceed cautiously, and seek consensus. After all, successful strategies to improve Ontario's fortunes depend upon building broad support in favour of positive, long-term structural changes, and support is going to be hard to come by if Bill 40 provokes a knock-down drag-out fight. And just to demonstrate my impartiality, after the NDP rejected the advice I never gave them, I would then have said pretty much the same thing to the Tories, who would also have rejected it.

My second cautionary tale is a little longer and a little more complicated. If most of us were asked what effect NAFTA has had on our industrial relations system, we would likely answer 'not very much.' After all, the Labour Side Accord ensures that NAFTA will not change domestic labour laws. It exhorts each of the three signatories — Canada, Mexico and the United States — to adhere to their own statutory arrangements, although it makes no serious attempt to force them to do so.<sup>33</sup> In the case of Canada, even this minimal obligation is further diluted. A special proviso requires that individual Canadian provinces must accede to the Side Accord in order to be bound by it.<sup>34</sup> Only Alberta has acceded, to the best of my knowledge, so along with the federal government, only Alberta is bound. So far so good: industrial relations scholars can ignore NAFTA because NAFTA ignores industrial relations.

Or does it? And can we? NAFTA — the main agreement, not the Side Accord - did not begin the process of continental economic integration; that has been proceeding apace for a very long time. But NAFTA has helped to accelerate and legitimate that process.<sup>35</sup> It has made Canadians more aware of the extent to which their economic fate, and hence their political fate, is tied to that of their dominant neighbour. NAFTA has thus undermined our willingness and possibly our capacity to defend or advance what I have called industrial citizenship.

Agricultural supply management schemes, publicly funded health care, and Canadian ownership requirements in key sectors such as banking and cultural industries are all vulnerable to attack under NAFTA to the extent that they can be characterized as illicit subsidies for Canadian industries. Never mind that NAFTA does not appear to offer good grounds for striking down any of these important Canadian public policies, or others which framed up the post-war welfare state. Good grounds are not needed: if we are desperate enough to retain NAFTA because it provides access to the huge American market, we are not likely to stand on our rights too long or too resolutely. And to the extent that we retreat from our policies in these areas, we further undermine — directly or indirectly — the economic and political structures within which industrial citizenship had emerged.

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<sup>33</sup> For a more positive view of the potential of NAFTA to enhance labour's rights, see L. Compa, 'Enforcing Worker Rights under the NAFTA Labor Side Accord' (1994) Proceedings, American Society of International Law 535 and R. Adams & P. Singh, 'Early Experience with NAFTA's Labour Side Accord' (unpublished paper, Annual Conference, Canadian Industrial Relations Association, June 1996).

<sup>34</sup> North American Agreement on Labor Cooperation, 13 September 1993, Canada-United States-Mexico, Part Two, Annex 46.

<sup>35</sup> See generally M. Cook & H. Katz (eds.), *Regional Integration and Industrial Relations in North America* (Ithaca: ILR Press, Cornell University, 1994).

NAFTA has also helped to reshape the behaviour of Canadian corporations, both the subsidiaries of transnational firms, and those which are Canadian in origin. Long before NAFTA, both transnational and Canadian-based corporations could shift production and jobs from Canada to Mexico or to low-wage areas of the United States; many did so. But NAFTA has made it easier for companies to move, and more to the point, NAFTA has made Canadian workers and managers more aware of, more fearful of, the risks. Long before NAFTA, American-based multinationals could operate in Canada, with or without a Canadian subsidiary. But computers and communications technology have extended the span of head office control, at the same time as NAFTA was reinforcing the logic of continental integration. This has accelerated the reabsorption of Canadian subsidiaries into their U.S. parent firms, with the result that Canadian board members are becoming scarcer on the ground, and Canadian senior managers are exercising dwindling authority, even within such traditional domains of local expertise as industrial relations and marketing. The combined effect of all these changes is to make us more and more vulnerable to decisions made abroad, decisions which may profoundly affect Canadian labour, Canadian management and Canadian communities.

And what is the caution of this second cautionary tale? Those of us who teach, preach, study or practise industrial relations are all inevitably, directly and deeply involved with NAFTA and, by extension, with all aspects of the New Economy. That is why we have to keep in mind that strikes over outsourcing are not just about strikes nor just about outsourcing: they are about flexible manufacturing. That is why we have to remember that concession bargaining is not simply about bargaining nor about concessions: it is about the inexorable restructuring of the Canadian economy. That is why we have to recall that our tussles over who should control labour market policies are not ultimately about productivity or fair shares or the constitutional politics of the Canadian federation: they are but one manifestation of the assault on the nation state by the combined forces of globalization, neoconservatism and regionalism.

For all of these reasons, I have used the occasion of this lecture to remind myself — and to remind you on the ricochet — that industrial citizenship is not about industry, and it is not about a new legal metaphor or technical concept of status. It is not even about specific job-related benefits available to those fortunate enough to hold down jobs. No: industrial citizenship is about something more. It is, finally, about the attempt to make the New Economy less volatile and brutal, so as to ensure a modest measure of security, dignity and justice for us all. So long as we aspire to these values, so long as we struggle to find practical means to realize them, reports of the demise of industrial citizenship may indeed be premature.



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