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Aller au sommaire du numéro

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Recensions / *Book Reviews*

The Employee: A Political History

By Jean-Christian Vinel, Philadelphia, University of Pennsylvania Press, 2013, 336 pages. ISBN: 978-0-8122-4524-0.

In *The Employee: A Political History* Jean-Christian Vinel places the struggle over who is an "employee" at the heart of American ideological battles over the role of trade unionism. The book examines this struggle in the context of the right to collectively bargain in the United States. American employers have secured an expansive definition of who is a "supervisory employee", employees who are thereby excluded from the *National Labor Relation Act's* (the *NLRA*) right to collective bargaining. Employers have done so by arguing that proper corporate management requires unfettered loyalty from employees that exercise discretion—loyalty that is undermined and impeded by trade union representation. The significance of the supervisory exclusion, Vinel argues, is two-fold. On the one hand, it has impeded efforts to organize white-collar employees in the post-Fordist era. But it also holds a broader ideological significance, because it "suggests that agents of free enterprise cannot and should not be allowed to organize, and that this democratic freedom should be limited to "employees" of free enterprise, that is those who are "used" and exert little influence over the final result" (p. 233). The story of this exclusion forms the core narrative of this book.

Vinel situates the initial confrontation over the meaning of "employee" in organizing drives by industrial foremen during the New Deal era. The *NLRA* (also referred to as the "*Wagner Act*") was passed in 1935, in the midst of the transition to Fordist production methods. In tandem with scientific management techniques and Taylorist notions of assembly line production, the enactment of the *Wagner Act* instituted a profound change to the nature of industrial work in the United States. One of the most significant changes was to the work of industrial foremen, shifting their role from assembly line despot to frontline spokesperson for managerial policies, stripped of any significant discretion or personal authority. As their job tasks changed and authority was reduced, it was less and less clear whether foremen were employees or managers, and they, in turn, increasingly sought to bargain collectively.

The *Wagner Act* provided the right to collective bargaining for all "employees". For some, this terminology suggested a broad right available to all those who worked for wages. From the outset, however, managerial and confidential employees were excluded from the right to collective bargaining by policy of the National Labor Relations Board (NLRB, or the "Board"). The Board was less clear on the status of foremen, however, issuing changing rulings on whether or not they constituted "employees" until the mid-1940s. Employers responded decisively against the nascent trade unionism of industrial foremen. They argued that foremen were necessary to maintain order and discipline in industrial production. Foremen, employers argued, provided the link between upper management and assembly line workers; they were the face of management on the shop floor. This link would be severed if foremen were allowed to collectively bargain, because self-organization would create a conflict of interest for foremen that didn't exist for manual workers. Unlike manual workers, who sold only their physical capacity to work, foremen were required to exercise discretion. This discretion, employers argued, might not be used in a manner beneficial to the company if an institutionalized interest other than that of management was allowed to intrude on the relationship: "Quoting the Bible, businessmen repeatedly argued that they could not dispense with the foremen's full loyalty because 'a man can't serve two masters'" (p. 120).

In describing the legal and political history of foremen's trade unionism, Vinel takes on a second challenge, which is to resuscitate the reputation of American industrial pluralism. Chapter 5 seeks to counter critical theorists who argue that industrial pluralism served as a deradicalizing influence on American labour law. Vinel argues that in debates over the meaning of "employee" industrial pluralism provided a vision of trade unionism that challenged, even if ultimately unsuccessfully, the loyalty framework put forward by employers. As demonstrated in cases such as the *Union Collieries* and *Packard* decisions in the 1940s, industrial pluralist Board members such as William Leiserson, Henry Millis and Paul Herzog argued that a refusal to recognize foremen unionism was a recipe for industrial strife, a result the *Act* was meant to avoid. Industrial pluralists argued that it was not trade unionism that created a fundamental conflict between employer and employee interests. Rather collective bargaining was the method for resolving existing conflict in the workplace, and thus sustained rather than impeded the production process (p. 136). Based on this logic, any group of workers that wished to organize and collectively bargain should be permitted to do so.

Where they failed in convincing the courts of their need for untrammelled loyalty, employers succeeded in convincing legislators. The 1947 *Taft-Hartley* amendments to the *NLRA* included an express statutory exclusion for supervisory employees. Section 2(11) of the *Act* provided that an individual was a supervisory employee if, in the interest of his or her employer, they have the authority to either hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, discipline, adjust the grievances of, or responsibly direct other employees, where the exercise of this authority is of a "merely routine or clerical nature, but requires the use of independent judgment." (*NLRA* s. 2(11)). With the adoption of the supervisory employee exclusion, the idea that the *NLRA* provided a universal right to collective bargaining was severely undermined.

The Taft-Hartley exclusion of supervisory employees was very much rooted in the logic of industrial production. Over the ensuing decades, however, white-collar knowledge-based work would emerge as a leading source of employment in the post-Fordist era. For a system of labour law founded on strict distinctions between employees and management, knowledge workers confounded easy categorization. Such workers often held significant autonomy, and participated in corporate production decisions, even where they did not directly supervise other workers. Where did they fit in labour-management relations? Vinel argues that the NLRB in the 1960s approached this question with on an activist edge, once again promoting the idea of industrial democracy and citizenship founded on an individual right to unionize: "Chameleon-like, industrial pluralism appears bland against the grand reformist schemes of the 1930s, but in view of the stakes inherent in the definition of "employee" and "manager", in a context of growing anti-unionism [in the 1960s] it takes on much brighter colors" (p. 185). Conceiving of collective bargaining as promoting social harmony and democratic economic participation, industrial citizenship reemerged as the central ideological challenge to the growing attack on the value of trade unionism.

Unsurprisingly, the efforts of the NLRB in the 1960s and 1970s proved unsuccessful. Vinel traces the case of *Bell Aerospace* buyers, employees who set prices and organized company purchases of aerospace technologies. After initial certification by the Board, the Supreme Court struck down the decision in 1970. Rather than a universal right to freely associate, conservative members of the Court, joined by at least one notable liberal jurist, painted a picture

of the *Wagner Act* as a historically specific economic bargain designed to allow collective bargaining only for those workers in need of protection from the harsher edges of capitalist production. Only workers who worked with their hands (rather than their minds) were in need of such protection. In doing so, the Supreme Court enunciated a sweepingly wide test for the "supervisory employee" exclusion, to include those who formulate and/or effectuate management policies by expressing and implementing employer decisions.

The book ends with a consideration of the unionizing efforts of nurses, who have been at the core of the American labour movement's white-collar membership since the 1960s. Vinel argues that nurses' militancy has been viewed as a particular threat by private sector hospitals because of the for-profit model implemented in the health care sector since the 1980s. Nurses' loyalty tends not to be towards employers but rather towards their patients, and their trade unionism is often motivated as much by patient care concerns as for their own working conditions. It is perhaps unsurprising, therefore, that the neoliberal era battle over the supervisory exclusion arose in regards to the work of "charge" nurses. In the early 2000s, the NLRB issued a ruling allowing charge nurses to unionize. The Board held that although a charge nurse was responsible for assigning patients to other nurses, their responsibility to assign work arose by virtue of their superior skill and training, rather than from acting as managerial representatives. Here the Board relied on a distinction between judgment exercised in the interests of patients, and judgment exercised in the interests of employers. The Supreme Court, by then composed of a thoroughly conservative majority, rejected this distinction, holding that "independent judgment" is any exercise of judgment largely free of employer constraints. The Court thus provided direction on the way in which the Board was to interpret the supervisory exclusion, a task it performed in handing down three decisions relating to nurses in 2006. In the *Kentucky River* cases, the Board held that "directing" included even a single order to perform a discrete task, and that "independent judgment" meant the exercise of judgment free from detailed instruction. The result was to now exclude any worker who assigned or directed the work of others, even in a single instance, on the basis of their professional knowledge and skill, irrespective of its relationship to human resources policies.

As described in the Epilogue, the *Kentucky River* decision "signaled the death of the faith in social harmony that had given birth to the New Deal labor regime" (p. 227). The *Kentucky River* cases therefore represent the culmination of employers' efforts to cement a vision of efficient production that requires full employee loyalty. Paradoxically, these cases arose at a time when human resource professionals and employers were increasingly deploying team-based concepts in the workplace, and organizing themselves into flat managerial structures. Everyone is now an associate, a partner, or a boss. From the most insecure jobs to the highly paid executive, we are all to take responsibility for our corner of the workplace; loyalty to our own self-fulfillment now happens in the interests of the employer. The language of social harmony has thus now been revived and coopted by employers, when it can be deployed without a serious threat of trade unionism. Vinel concludes by suggesting that any hope of expanding the right to collectively bargain in the United States depends on the ability of liberals and progressives to reclaim the concept of social harmony and industrial democracy, so as to challenge the existing employer-driven concept of loyalty in employment.

This is a book well-worth reading. Its strength is in the linkages it makes between different strands of industrial relations theory, law, labour and political

history. In regards to particular historical moments, this synthesis is often fascinating and insightful. One minor complaint is that because analysis within each era is not always chronologically presented, the reader is sometimes left to struggle with the order of events, and with the relationship between topics under discussion. At a substantive level, Vinel suggests that the industrial pluralist vision of workplace citizenship is the most effective frame for advancing labour rights. But given that this vision has repeatedly failed to make inroads into the ideology of loyalty and efficiency, as Vinel himself so successfully demonstrates, it is not clear how industrial pluralism can help the American trade union movement break out of its current morass. Nor does Vinel address the critique that the weakness of American labour law can be traced, at least in part, to the proceduralist focus of industrial pluralism. In the end, Vinel very successfully fulfills his first task of demonstrating the central importance of the question of who is an employee under American labour law, but is less convincing in rehabilitating the role of industrial pluralism for the current century.

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D'où vient l'emploi ? Marché, État et action collective

par Frédéric Hanin, Québec, Presses de l'Université Laval, 2e édition, 2014, 232 pages. ISBN 978-2-7637-1653-4.

Il s'agit ici d'un ouvrage destiné aux étudiants en relations industrielles qui vise à leur faire mieux comprendre le marché du travail et les relations d'emploi. Ce livre adopte souvent une approche historique, citant certains auteurs en économie du travail, cela afin de mieux situer les perspectives avancées. Dans le premier chapitre déjà, l'auteur établit tout d'abord les liens entre l'analyse économique et les relations industrielles: puis, il choisit le cadre théorique de la régulation pour situer les analyses de l'emploi et des relations industrielles. Il traite ensuite des dimensions et paradigmes de la régulation, exposant des éléments d'histoire de la pensée économique, notamment l'évolution des théories de la valeur du travail.

Cet auteur se situe clairement dans le champ de la pensée économique: se rangeant du côté des hétérodoxes, il invite ses lecteurs à sortir de la pensée unique, s'associant ainsi à ce mouvement important d'économistes qui remettent en cause l'enseignement de l'économie fondé sur la théorie néo-classique, un courant toujours dominant dans les départements de science économique, mais clairement peu approprié pour des étudiants en économie du travail ou en relations industrielles. L'auteur rappelle qu'il souhaite aider ses étudiants à comprendre l'actualité économique du monde du travail, à développer leur réflexion personnelle, tout en comprenant le rôle des politiques publiques de l'emploi dans nos sociétés. Ces objectifs expliquent que l'ouvrage cherche d'abord à être pédagogique, s'adressant aux étudiants de premier cycle en relations industrielles, mais pouvant aussi rejoindre des personnes qui s'intéressent à l'emploi et aux relations de travail, et qui cherchent à mieux comprendre les enjeux économiques sur ce plan.

Cet ouvrage, qui se divise en trois parties, traite successivement de la régulation par le marché, de la régulation par l'État et, finalement, de la régulation par l'action collective.

Dans la section sur la régulation par le marché, l'auteur analyse la relation d'emploi, vue sous l'angle du marché et de la genèse du « marché » du travail. La théorie néoclassique est ici exposée, entre autres les questions d'équilibre général, d'équilibre partiel, de productivité, etc.; puis, des éléments touchant la règlementation des salaires, en particulier le salaire minimum, sont abordés. L'auteur passe ensuite aux indicateurs de l'emploi, aux catégories