

**A Distant Mirror:
Lessons from “the Labor Problem” of the Nineteenth Century
for the Development of Environmental Politics Today**

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Abstract

This paper compares the development of an encompassing American “labor problem” a century ago and the development of an encompassing “environmental problem” since the mid-twentieth century. Similarities in these cases suggest ways to better understand environmental policy and politics today. Both labor and land (natural resources and the environment) are factors of production. Producers seek full control over these factors, but the destructive consequences of that control spark a counter movement against full producer control over those factors. In both cases, an initial upsurge in demands for labor and environmental protections produced restrictive policies. This initial policy surge made American labor policy comparable to leading industrializing nations in 1900 and a leader in environmental policy in the 1970s. But when these policies began to bite into producer autonomy and profits, producers mobilized against them with superior resources, using public relations, lobbying and litigation to slow, fragment and stop policy development. In both cases, federalism and the separation of powers advantaged producers in this opposition by fragmenting and impeding their opponents’ successes. The conflicts over the labor problem resulted in political polarization and a durable war of attrition over policy change – a situation which currently appears to characterize American environmental policy as well. In both cases, after early U.S. leadership, American policy has lagged behind comparable nations since producers to fight the loss of control. I draw several lessons from these cases, including the importance of conflicts over basic factors of production; mobilizing circumstances are often local but the most effective protections are national; that producers have structural advantages in these policy areas; federalism obstructs cooperation in these policy areas; and effective, durable policy institutions are critically important for the durability of policy efforts.

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At the start of the twentieth century, observers described “the labor problem” as the “central problem of the day.” This broad concept of a “labor problem” encompassed hundreds of challenges to producer control of a basic factor of production. Today, an encompassing “environmental problem” challenges producer control of land use and natural resources—another basic factor of production. In the United States, labor market and environmental politics played out in similar ways because both have challenged producer control of labor and land, two of the basic factors of production.

The labor problem pit employers’ untrammelled right to manage workers against resistance to the destructive consequences of long hours, low wages, joblessness, and insecurity for workers, families, groups and society. Similarly, the “environmental problem” pits producers’ unlimited right to use real property and natural resources against resistance to the destructive consequences of that use for humans, the earth, species, water and air. In the mid-twentieth century, Karl Polanyi documented a “great transformation” in modern history that transformed labor, land and capital into privately owned commodities, triggering opposition fueled by the destruction wrought by unchecked capitalist growth.¹ The backlash set off by that great transformation in American labor market policy provides us a distant mirror of the path of environmental politics today.

The past experience of the labor problem helps us draw lessons about the development of American environmental policy since the publication of Polanyi’s landmark book. Conflicts over the control of these basic factors of production drove their political development. In both cases, surging demands to restrict producers sparked pressures for government action. Strikingly, these demands yielded early policy successes comparable to those in leading industrialized nations. In both cases, a powerful producer backlash mobilized when the very successes of these restrictions began to cut into producers’ autonomy and profits. In both cases, producer backlash grew well-organized and very powerful. In both cases, producers developed three weapons to fight off labor and environmental restrictions: (1) public relations, (2) political pressure on policy makers, and (3) litigation. On the battleground of the American federal system and the national policy making process, this producer counterattack fragmented and delayed the policy response to demands for producer restriction, polarized public opinion and resulted in a war of policy attrition. In both cases, this producer backlash changed the U.S. from a policy leader to a policy laggard.

This paper proceeds in four steps. First, it outlines the key steps in the American policy response to “the labor problem,” from support for strong policies in the Gilded Age to a protracted war of attrition that continues today. Second, it outlines key steps in the American policy response to “the environmental problem,” from support for strong national policies in the mid-twentieth century to a protracted war of attrition that is evident today. Third, it analyzes the similarities and differences in the American policy response to the labor and environmental problems. The final section of the paper draws lessons about contemporary environmental politics from this comparison.

The Labor Problem²

Emergence. Countless conflicts between workers and employers stippled the map of industrializing America a century and a half ago. Incessant change transformed work relationships. Thousands of grievances flared up in widespread places. These conflicts involved women and children in textile factories and sweatshops, construction workers and machinists in cities large and small, and workers in mines, on railroads, in offices, in factories and machine shops, even in prisons. By the end of the Progressive era, American state governments responded with dozens of laws and institutions that published labor statistics, regulated hours, pay, and working conditions, set rules for trade union behavior, provided vocational training and required employer compensation for work accidents.

Step back from these dots of detail and you can perceive the overall picture these points reveal: a society-wide battle for control between workers against the employers. This was “the labor problem,” a phrase that emerged in the mid-nineteenth century among scholars, journalists, businesses, churches, and reformers. “The labor problem,” summed up the “the general struggle of labor and capital over the control of production and the distribution of income and the conflict engendered by this struggle.”³ For lawyer and scholar Albert S. Bolles, the conflict between “the working-man and his employer...is the great social problem of the age.”⁴ In his first annual message to Congress in 1901, President Theodore Roosevelt emphasized that

The most vital problem with which this country, and for that matter the whole civilized world, has to deal, is the problem which has for one side the betterment of social conditions, moral and physical, in large cities, and for another side the effort to deal with that tangle of far-reaching questions which we group together when we speak of "labor."⁵ Newspapers and magazines brought these conflicts to life with vivid line drawings and graphic photographs of labor clashes in Homestead, Pullman, and Ludlow and of the tragedies of sweatshops, child labor, meatpacking, and mining.

Resistance to Producer Prerogatives. As in other industrializing nations, American trade unions and reformers advanced a forceful agenda to protect the interests of workers by restricting employer discretion. Overarching labor organizations, such as the Knights of Labor and the American Federation of Labor (AFL), vigorously pressed for priorities such as the eight hour day, an end to competition from convict labor and immigrants, especially Chinese contract labor, and government bureaus of labor that could reveal the secrets of employer-controlled wages, work hours and working conditions.⁶ The AFL consistently supported many specific public programs and initiatives, though it resisted an independent labor party with worker rights platform.⁷ A host of new professional and reform organizations, such as the National Consumers League, the National Municipal League, the National Governors’ Association, the American Association for Labor Legislation, and the National Conference of State Boards of Health joined the fight for specific labor laws at all government levels. By sharing intelligence and tactics across the states, these organizations gradually defined the battle over the labor problem and made it more prominent on the policy agenda across the nation.⁸

Federalism and the Upsurge in Labor Market Policy. At least until the turn of the twentieth century, strong political incentives to support these measures transcended party lines and produced results. In this era of intense party competition, politicians of any party could compete for the votes of the rising labor movement.⁹ Naturally, demands for action gravitated to state governments, because state officials had the most authority to respond to these demands. As interpreted until 1937, the U.S. Constitution prohibited the federal government from interfering in markets within state boundaries – including labor markets. Thus unions and reformers pressed the states to create new institutions and to regulate hours, wages and working conditions.

Table 1 shows that states enacted substantial legislation to address “the labor problem” between the Civil War and the 1920s.¹⁰ The table compares the dates of labor market policy initiation in the U.S national government, the initiating U.S. state, and in three large industrializing nations of the nineteenth century. These laws include legislation establishing eight hours the legal workday, eight hours as the legal workday on state government work, bureaus of labor statistics, public employment offices, factory inspectors, trade union incorporation, state arbitration laws, and limitations on employers' liability defenses.

Table 1: Dates When Governments Initiated the Use of Labor Market Instruments

	US State	US National	Britain	France	Germany
1. Regulation					
Factory Inspectors	1877 (MA)	1970	1833	1874	1878
Minimum Wage	1912 (MA)	1938	1909	1950	none
Eight-Hour Workday Law	1867 (IL)	1938	none	1919	1918
2. Labor Market Management					
Labor Statistics Bureau	1869 (MA)	1885	1893	1891	1902
Public Labor Exchanges	1890 (OH)	1933	1909	1911	1914
3. Governing Trade Unions					
Mediation and Conciliation	(1886) (MA/NY)	1888* 1913	1896	1854	1890
4. Work Insurance					
Workers' Compensation	1911 (10)	none	1897	1946	1884
Unemployment Insurance	1932 (WI)	1935	1911	1914	1927

* Common carriers (railroads) only.

Source: David Brian Robertson, *Capital, Labor and State: The Battle for American Labor Markets from the Civil War to the New Deal* (Lanham, MD: Rowman & Littlefield, 1999), 9.

Up to about 1900, these efforts succeeded as well in the United States as they did in other industrializing nations, when laws in industrial states are taken into account. Over ninety percent of the U.S. workforce lived in states with a bureau of labor statistics, and seventy percent live in states with a factory inspection law.¹¹

By 1900, the rapidly growing AFL posed a strong and credible challenge to employers' prerogatives in the labor market.¹² Comparative statistics, though necessarily rough estimates, suggest that American unionization rates did not differ substantially from those in Britain or Germany around 1900. AFL leaders envisioned a fully organized union shop economy that would place unions in control of the terms of labor in capitalist production.¹³

The Mobilization of Policy Opposition. But the advance of these employer restrictions reached a boiling point for American employers by the turn of the century. Motivated by profits, survival, principle, or pride, employers instinctively battled the union shop challenge to their control of labor. Employers in all industrializing nations also were antagonistic to unions, but American employers were exceptionally successful because of two distinguishing features of the American economy after 1900: the autonomous power of the large manufacturing corporation and the fierce opposition of smaller employers.

The Large Corporation. While American state governments were addressing the labor problem, they were presiding over the development of large corporations that could exercise more unilateral power over prices, production, and labor markets than cartelized employers in Europe.¹⁴

Unlike Europe, where national governments allowed companies to collaborate to control prices and production, American state anti-trust laws prohibited two manufacturers in a state from setting prices and production of a given product, like steel or refined oil. But states permitted manufacturers to absorb competitors into a single corporation that *could* set prices and production. Reinvented as a single corporation, a “trust” could transform itself from an illegal combination into a single, legal enterprise chartered by a state government. New Jersey chose to compete to attract incorporations by luring businesses from nearby with corporation laws much more favorable to business than the anti-trust laws in those states. Nationwide, twenty-nine competing industrial companies consolidated into larger corporations from 1895 through 1898, sixty-three in 1899, and fifty-seven more between 1901 and 1903. All of the largest of these newly consolidated corporations – including U.S. Steel, American Sugar Refining, and Standard Oil – incorporated in New Jersey.¹⁵ By 1904, corporations controlled at least one-half of output in seventy-eight industries in the United States.¹⁶ The large manufacturing corporation became a distinguishing feature of the American economy in the twentieth century.

The size of industrial giants like U.S. Steel and the Ford Motor Company, in combination with American federalism, allowed these employers to wield incomparable labor market power. These huge corporations enjoyed huge advantages resisting unions and legal limitations on their prerogatives. First, U.S. Steel and other corporations with plants in different states could defeat unionization drives by shifting production to plants with weak or no unions. Second, the large corporations initiated new, deskilled mass production techniques that often destroyed the market value of the craft skills upon which the union shop strategy depended. The Ford Motor Company embodied the deskilling strategy.¹⁷ Third, some large firms developed corporate welfare programs that diminished the attraction of union shop benefits.¹⁸ Finally, corporations had enormous resources to use influence legislators who considered new labor laws, public executives who administered laws, and courts that judged disputes about laws.

Smaller Employers’ War on Unions. Caught between the growing power of the corporations and the AFL’s union shop drive, smaller manufacturers became exceptionally ferocious opponents of interference with their prerogatives. This intense hostility became a second distinguishing feature of the battle for American labor markets.¹⁹ The leaders of the counterattack against unions demanded the “open-shop” in which unions were powerless to make meaningful restrictions on employer prerogatives. These open-shop leaders were employers who saw unions as enemies who aimed to seize effective control of the businesses they were building.²¹ St. Louis stove manufacturer James Van Cleave called the AFL boycott of his stove company as a “dastardly effort ... to assassinate our business.”²²

Many of these leaders consolidated their efforts in the National Association of Manufacturers (NAM), the spearhead of national anti-union campaigns. “Employers must be unmolested and unhampered in the management of their business,” declared the NAM.²³ The president of the NAM declared in 1903 that “Heretofore organized labor has had only the individual employer to combat, but its growing power now demands a counter-organization strong enough to resist its encroachments.”²⁴ George H. Ellis explained that the NAM was not antagonistic to unions, but rather “[w]e are antagonistic to the control of our business by these unions.”²⁵ The NAM explicitly declared the Association’s determination to protect employers’ unlimited right to hire and fire employees and to set wages and hours. The organization grew rapidly after 1902.²⁶

Anti-union employers used three strategies to defend their labor prerogatives: public relations, pressure, and litigation. First, they used **public relations** to win the war for elite and public opinion. In 1903, the NAM President conceded that unions had been winning the battle for public support, and told members that the “chief work ... of this Association is an educational one -

- the molding of public opinion.” The NAM characterized the AFL as a menacing “trust,” like the Rockefeller and Carnegie trust, and organization that betrayed American values. These groups targeted opinion leaders in government, universities, churches, and industry with a range of publications, bulletins, briefs, judicial opinions, and congressional testimony to thousands of firms, trade associations, newspapers, colleges and universities, and judges.²⁷ The open shop employers vigorously attacked not only unions but also even conservative reform organizations like the National Civic Federation and the Theodore Roosevelt administration for urging peace between employers and unions.²⁸

Second, these employers targeted intense **lobbying** pressure against the pro-labor legislative agenda. Employer groups coordinated efforts to deluge Congress with anti-labor policy telegrams. Individual employers and NAM officials, working with “untiring persistency and unwavering earnestness” began to testify regularly against federal labor legislation regularly in the early 1900s.²⁹ The NAM appointed James Emery as its chief Washington lobbyist in 1907,³⁰ and the following year an overarching lobbying organization (the National Council for Industrial Defense).³¹ The NAM worked closely with House Speaker Joseph Cannon (R-Illinois) and House Judiciary Committee Chair Charles Littlefield (R- Maine) to bottle up AFL-endorsed labor legislation. The organization took credit (and received grudging credit from the AFL) for blocking federal labor laws.³² State employers’ groups, notably in Illinois, also gained a reputation for influential opposition to labor legislation.³³

Third, the NAM and its allies aggressively **litigated** in courts to disarm unions and to block the implementation of unfavorable laws. Smaller employers asked courts to enjoin strikes, picketing and boycotts; this strategy required minimal little employer investment (affidavits could be prepared quickly and simply) and no cooperation with other employers.³⁴ The most notable anti-union judicial decisions of this period resulted from the smaller employers strategic and highly publicized challenges to the closed shop: *Loewe v. Lawlor* and *Buck’s Stove and Range*.³⁵ These cases drained union resources and time.

How Federalism Advantaged Union Opponents. The American federal system gave employers an advantageous field for resisting, delaying and weakening policies aimed at protecting workers. The 1787 Constitution amputated many state powers that other industrializing nation-states used to protect workers with minimal damage to employers’ interests. These policy tools included printing money, taxing imports, and restricting trade. National governments in other countries used these tools to delay, shift, or even conceal the adverse economic impacts of labor protections. But the U.S. Constitution denied American states these policy tools. Without these tools, states—the primary policy arena for labor issues – faced the harsh reality of interstate economic competition: any policy that threatened businesses or interfered with markets had much more immediate, visible, and politically costly effects than the same policies enacted by a national government that could make use of the full range of economic tools.

Exposed to national market competition from enterprises and governments in other states, state policy-makers came under intense pressures to protect instate employers and facilitate market-driven economic growth. This competitive American federalism encouraged a patchwork of labor laws that tended to be strong where labor was strong enough to offset employer opposition (such as New York and Massachusetts) and weak elsewhere. Even in the most industrialized states, employers warned that labor legislation threatened business, jobs, and taxes in the state. A manufacturer critical of Massachusetts’ Progressive-era labor and social policies complained about the loss of textile mills to the Carolinas and Georgia. Tartly, he wrote that “[f]or the last generation, Massachusetts has allowed itself to become the social laboratory in which all kinds of freak legislation has been tried out for the benefit of the rest of the country.”⁴⁰

State policy makers constantly invoked interstate economic competition in debates over policies to address labor market problems from at least the 1850s into the New Deal.⁴¹ Objections to the economic consequences of labor laws on state industries was used to beat or to gut factory laws,⁴² eight hour laws,⁴³ convict labor regulation,⁴⁴ laws requiring one days' rest in seven,⁴⁵ child labor laws,⁴⁶ minimum wage laws,⁴⁷ workers' compensation laws,⁴⁸ and compulsory health insurance laws.⁴⁹ The U.S. Industrial Commission in 1902 argued that competition among manufacturers in different states constituted a greater obstacle to the limitation of working hours than foreign competition. In its final report, the Commission wrote that “[A] single State with advanced labor legislation can not protect itself against the cheap labor and long workday of another State ...”⁵⁰ Once laws went on the books, state funding and implementation could vary widely, exacerbating interstate difference in the *effects* of labor laws for employers and workers.

The separation of powers in the state and federal governments placed additional obstacles in the way of worker protections. The U.S. and state constitutions constructed the most fragmented and protracted policy process of any large capitalist democracy. Any labor law needed the approval of two co-equal houses of the legislature and a minimum tacit approval of the elected executive. This drawn-out policy making process offered opponents many opportunities to kill or delay labor initiatives. Employers usually had tactical advantages over labor reformers in superior means to influence votes and a superior defensive position protecting the status quo. Government executives and courts could render a program meaningless even if an interest succeeded in guiding it through the legislative gauntlet.

Judges exercised ample power to interpret statutes and to block efforts to restrict employer prerogatives. As more economic issues came onto court dockets after the Civil War, courts struck down a number of state laws that interfered with business, often interpreting the Constitution as a protection of business from government interference. Especially after the turn of the twentieth century, courts increasingly used the principle of due process to disarm unions from using strikes, boycotts and picketing. Some of the most controversial rulings struck down federal efforts to ban child labor. When it struck down that federal child labor law, the U.S. Supreme Court explicitly conceded that interstate competition created disincentives for public intrusions on employer prerogatives.⁵¹

War of Attrition in Labor Market Policy. The open shop counterattack resulted in a long-lasting war of attrition over the control of American labor markets. In 1904 over twelve percent of the American workforce belonged to trade unions, a level of unionization about the same as that in Britain and twice the rate of German unionization. Union momentum stopped within two years. On the eve of World War I, twice as many British and German workers belonged to unions as did Americans.⁵²

By the 1920s, the notion of a “labor problem” was fading into a kaleidoscope of more focused topics: industrial relations between organized workers and companies, human relations within businesses, specific legal disputes pitting employer against workers’ rights, and policy reform projects such as workers’ compensation, regulation of women’s and children’s labor, and vocational education. Most of these legislative battles were fought at the state level, where the wide disparity among states’ wealth and resources, exacerbated by interstate competition, ensured that American labor market policy became and remains comparatively fragmented.

The New Deal era ushered in a host of new programs that regulated, taxed, and protected challengers to employers – but did so in ways that were uniquely American. A national labor relations board, at least early on, tended to favor unions, and New Deal programs included old-age retirement insurance, unemployment insurance, public employment offices, national labor standards, some job training and temporary work relief programs. These American labor market

programs were built on the underlying structure of the previous decades, especially federalism. This structure made the programs very vulnerable to political backlash.

But since the 1930s, American labor protections have lagged behind those in comparable nations, as collective bargaining, unemployment compensation, and the minimum wage reveal. The New Deal's National Labor Relations Board, influenced by reformed-minded lawyers, set up a very legalistic process for labor representation. As a process for protecting unions, it could and was undermined, notably by the Taft-Hartley Act of 1947, which permitted states to ban the union shop. In 2019, 27 states have such "open" shop laws, including all of the former Confederate states; together, these states have half the unionization rate of the remaining states.⁵³ The unemployment insurance system, a self-consciously "American" plan based on Wisconsin law, put the onus on individual employers to minimize joblessness. This plan gave states a tool for keeping taxes low and adding these low tax rates to the arsenal of state weapons in interstate economic competition. Resistance to increased federal minimum wage increases has produced a patchwork of state minimum wage laws across the country.

From Leader to Laggard. American employers had more success in the battle for control of labor markets than employers in comparable nations. This endless struggle over the control of labor foreshadowed, in some key ways, today's struggle over the land, natural resources, and the environment.

The Environment

Emergence. Like the "labor problem," the emergence of the concept of an "environmental problem" was decades in the making. Local controversies over water, air, and land pollution dotted the American landscape after World War II. Sprawling metropolitan areas, especially in southern California, experienced recurring, visible, and seemingly intractable smog. Graphic environmental tragedies, including deadly smog (Donora, Pennsylvania, and London, England, 1952), oil spills (the coast of Santa Barbara, California, 1969), and freshwater pollution (Cleveland's Cuyahoga River fire, 1969) shocked international audiences. Eloquent books by Aldo Leopold, Fairfield Osborn, and Rachel Carson framed a larger narrative of environmental problems driven by pressures of population, technology, carelessness and pollution.⁵⁴ Carson wrote, "...the central problem of our age has therefore become the contamination of man's total environment..."⁵⁵ Concern about "the environment" shot up in public opinion polls in the late 1960s.⁵⁶ Media attention to environmental issues spiked.⁵⁷ Earth Day, a national teach-in on April 22, 1970, engaged millions of Americans across the country and solidified the sense of urgency about the environment.

By then, American leaders publicly acknowledged the environment as an encompassing problem. In January of 1970, President Richard M. Nixon told the nation that "The great question of the seventies is, shall we surrender to our surroundings, or shall we make our peace with nature and begin to make reparations for the damage we have done to our air, to our land, and to our water?"⁵⁸ In the wake of Earth Day, 1970, *Fortune* magazine described "The Environment" as "The National Mission of the '70s." Senator Edmund Muskie (D-Maine), the foremost environmental advocate in Congress, proclaimed that "The only strategy that makes sense is a total strategy to protect the total environment. The only way to achieve that total strategy is through an Environmental Revolution—a commitment to a whole society."⁵⁹ David L. Sills, executive associate of the Social Science Research Council, viewed environmentalism as a social movement aimed at a broadly defined "environmental problem" understood by participants in different ways.⁶⁰

Resistance to Producer Prerogatives. Environmental pressure groups rapidly institutionalized environmental advocacy. Long established groups, notably the Sierra Club, recast

themselves as champions of a new, broad environmental agenda. Emerging new national groups included the Environmental Defense Fund (1967), the Friends of the Earth (1969, a more militant offshoot of the Sierra Club), the Natural Resources Defense Council (1970), and the League of Conservation Voters (1972).⁶¹ The Sierra Club Legal Defense Foundation (1971, now Earthjustice) and other environmental legal groups specialized in lawsuits against polluters and delays in the implementation of environmental legislation. State and local advocacy groups sprang up around the nation. These groups forced their way into closed networks in natural resource policy, creating more open “issue networks” in which environmental protection contested long established routines of expertise.

Federalism and the Upsurge in Environmental Policy. Federal environmental policy, like labor market policy, had emerged only after a long gestation at the local and state levels. Some cities with especially serious air pollution problems (St. Louis, Pittsburgh, Los Angeles) initiated many of the first controls on air and water pollution by the 1940s. In sprawling Los Angeles, regional action followed. The state of California, with decades of experience in governing unique coastal, landscape, and water resources, it took a lead in establishing strict automobile emission standards in the mid-1960s. A majority of states had enacted air pollution laws by 1963. But some of the large industrial states with the worst pollution problems had taken no action at all on air pollution. Only a handful of states had established programs to reduce water pollution.⁶²

Congress gradually had pushed the state governments toward more environmental engagement. A bipartisan 1948 Water Pollution Control Act provided for federal research and a bit of federal support for state water pollution enforcement. The 1955 Clean Air Act similarly authorized federal research on the problem. In the 1960s, Democrats in Congress began to crusade for more and more federal action. The first product was the path-breaking Wilderness Act of 1964, which protected nine million acres of federally-owned land. Muskie’s reputation as an environmental policy leader grew when he chaired a new Senate Subcommittee on Air and Water Pollution (1963). He successfully advanced the Clean Air Act of 1963, the Water Quality Act of 1965, the Clean Waters Restoration Act of 1966, and the Air Quality Act of 1967.⁶³ Each of these laws increased federal action in the use of resources and the side effects of production.

During President Richard Nixon’s first term, intensifying public concern about the environmental problem, combined with exceptional political circumstances, produced a sharp expansion of federal environmental regulation. Nixon’s narrow presidential victory in 1968 made reelection a high priority for his administration. Democrats Muskie or Senator Henry Jackson (another Senator with a growing environmental reputation) seemed Nixon’s most likely challengers in 1972.⁶⁴ Nixon signed Jackson’s National Environmental Policy Act at the beginning of 1970, and later that year, he established a new U.S. Environmental Protection Agency (EPA). When Nixon proposed stricter and nation-wide air pollution regulations, he set off a competition to claim credit for achieving the most stringent environmental regulations. Democrats in Congress advanced higher standards and earlier deadlines than Nixon’s. In the end, Nixon signed a remarkably strict bill regulating air pollution. A strict Federal Water Pollution Control act in 1972 imposed strict federal rules governing pollution in the nation’s navigable waters. Nixon also signed the Occupational Safety and Health Act of 1970, the Endangered Species Act of 1973, the Noise Control Act of 1972, the Ocean Dumping Act of 1972, the Marine Mammal Protection Act of 1972, the Coastal Zone Management Act of 1972, and strengthening amendments to the Federal Insecticide, Fungicide, and Rodenticide Act in 1972. Congress later passed the Safe Drinking Water Act of 1974 and several laws in 1976, including the Resource Conservation and Recovery Act, the Toxic Substances Control Act, the National Forest Management Act, and the Federal Land Policy Management Act. The last of these acts changed the mandate of the U.S. Bureau of

Land Management, manager of over two hundred million acres of land in eleven western states and Alaska. The law shifted the agency's mandate from maximizing extraction from public lands to, in part, conserving those lands to an extent – which had proved to be a deeply contested change. Meanwhile, environmentalists' lawsuits and court rulings compelled the EPA to enforce apply strict interpretations of these environmental laws, interpretations it has found increasingly difficult or impossible to enforce.⁶⁵

This environmental policy passion did not endure. The energy crisis and the problems of environmental regulation eroded the urgency of environmental policy. The deputy EPA administrator pointedly noted that “every Congressman could feel’ the drop in intensity of grass-roots public concern about the environment.” In August of 1973, Senator Muskie drew attention the decline of the public's environmental intensity, and suggested increasing opposition from from opponents. By the mid-1970s, Muskie noted the end of the “honeymoon period” when it was “relatively easy to generate public pussport and congressional support for the goeas that we have written into law.” But, he continued, “it is going to be more difficult to avoid the pressures of those who would throw away much of what has been accomplished.”⁶⁶

How Producers Mobilized to Fight Environmental Protections. While support for environmental laws cooled after the early 1970, business was mobilizing to resist these mounting environmental policy intrusions on its prerogatives. As in the case of mobilization against the labor problem, mobilization against the environmental problem involved public relations, political pressure, and litigation.

Public relations. Earth Day and the successes of federal environmental legislation sparked a business backlash against the environmental protection narratives. In a 1971 memorandum in inspired by the U.S. Chamber of Commerce, Lewis F. Powell crystalized the demand for a business counterattack. Powell complained about “the stampedes by politicians to support almost any legislation related to ‘consumerism’ or to the ‘environment’” and urged a broad public relations counteroffensive.⁶⁷ By 1979, most of the large American corporations had instituted public relations units.⁶⁸ New, well-funded policy shops joined the fight. Conservative brewing magnate Joseph Coors, inspired by the Powell memo, funded the Heritage Foundation as a conservative think tank. Heritage became a wellspring of ideas for the business and conservative presidential administrations beginning with the Reagan administration.⁶⁹ Conservative think tanks with an anti-regulation agenda proliferated: the American Legislative Exchange Council (ALEC), the Cato Institute, the Manhattan Institute, Citizens for a Sound Economy (precursor to what we now know as Americans for Prosperity).⁷⁰ Conservative publicity networks amplified the arguments of maverick scientists like Fred Singer who challenged the causal relationships used to justify federal regulation.⁷¹

Policy Pressure. Businesses large and small fortified their political arsenals and mounted a massive lobbying attack against environmental laws, consumer regulations, and other intrusions on their prerogatives. Large corporations bulked up their lobbying efforts and created political action committees. The U.S. Chamber of Commerce increased its membership and political activity. The National Association of Manufacturers relocated to Washington DC to exert more pressure. New institutions like the Business Roundtable organized the largest corporations. An energized National Federation of Independent Business, representing small enterprises, rapidly grew.⁷²

Litigation. Conservatives set out to counter environmental public interest groups in court. After the creation of the conservative Pacific Legal Foundation in 1973, wealthy conservative Joseph Coors and corporations helped create the National Legal Center to spread conservative “public interest” legal organizations across American regions.⁷³ One such organization was the Mountain States Legal Foundation, a leader in the “wide use” movement opposing environmental

protections in the West. These early efforts provided a base of experience for conservative lawyers and environmental administrators in the Reagan and Bush years. The Mountain States Legal Foundation employed two future Republican Secretaries of the Interior (James Watt and Gail Norton) and a Republican U.S. Senator (John Kyl, R-AZ).⁷⁴

How Federalism Advantaged Environmental Policy Opponents. American federalism and the separation of powers helped producers stalemate American environmental policy. The delegation of implementation to the states bred antagonism between Federal regulators and business and state officials.⁷⁵ The Clean Air Act of 1970 required states to develop and implement State Implementation Plans (SIPs) to guide the regulation of power plants, factories and other stationary sources of air pollution. SIPs gave state and local officials the politically toxic responsibility to decide which businesses and private interests would bear the costs of implementing clean air rules.⁷⁶ A chief of enforcement for the EPA explained to Senators that

... these [civil and criminal actions] include the largest, most complicated (sometimes most recalcitrant) sources. . . These included the deadline-violating large power plants, steel mills, pulp and paper mills, chemical plants, etc.... Analysis indicates that 510 of the 609 facilities designated for civil actions (84%) and all of the 5 designated for criminal actions were left by the states for federal ... action ... I call this to the attention of the Committee not to criticize the States, but to indicate the essentiality (sic) of a strong, active federal presence in enforcement if the large sources are to be made to comply and national consistency achieved. It is often very controversial for the federal government to enforce against these sources, but if we do not, no one will.⁷⁷

These laws created more and more enemies as they were implemented. They forced the understaffed EPA into confrontations with auto companies, manufacturers, and energy utilities, among others. Meanwhile, federal funding for enforcement began to shrink in the early 1980s. Federal funds covered about seventy percent of the cost of the states' environmental protection activities in the early 1980s, but only covered thirty percent by 2001.⁷⁸ The reduction of federal oversight capacity elevated state discretion, and as political scientist Walter Rosenbaum observed, "political pressure and conflict flow to wherever administrative discretion exists in the regulatory process."⁷⁹

In the western U.S., federalism gave cattle, timber, mining interests the leverage to challenge stricter federal conservation laws. In 1979, Nevada launched the "Sagebrush Rebellion," enacting a law" claiming that it, and not the federal government, controlled public lands within its borders (that is, about 80% of the land within the state). Arizona, New Mexico, Utah, and Wyoming passed similar laws. Once in office, the sympathetic Reagan administration pulled back on the enforcement 1970s legislation that weakened the priority of natural resource use and extraction.⁸⁰ In 1988, a "wise use" conference in Reno brought together timber companies, Exxon, Farm Bureaus and many other interests. Its Wise Use Agenda provided a list of items that included opening all public lands to mineral extraction., and limitations on pesticide regulations and the Endangered Species and Wilderness acts.⁸¹ Battles over this agenda have marked western politics for years. Radical wise use rebels such as Cliven Bundy created tense confrontations resulting in violence.⁸²

The struggle between state discretion and federal regulation has encouraged deep geographical antagonism over environmental policy. According to political scientist R. Daniel Kelemen, an environmental scholar who compared environmental policy in the European Union and the U.S.,

... the development of environmental regulation in the United States demonstrates that the combination of fragmentation of power at the federal level with federalism

has had intended and counterintuitive consequences. As in other federal systems in this study, the U.S. federal government has taken on a powerful role in environmental policymaking, while delegating most policy implementation to state governments. At the same time, however, it has placed greater constraints on the discretion of state governments than have other federal governments. The fragmentation of power in the U.S. federal government has encouraged the enactment of detailed, inflexible regulations, the emergence of active judicial review of administrative action, and, ultimately, the development of an adversarial, litigious approach to enforcement that severely constrains state government discretion in implementing federal laws.⁸³

The rise of opposition to environmental regulation has contributed to the ideological polarization of Americans. Democrats and Republicans overwhelmingly supported strong environmental protections in the early 1980s. But by 2012, less than half of Republicans agreed with that need, while Democrats agreed with it just as strongly.⁸⁴ Just as federalism has contributed to polarization generally,⁸⁵ it has helped sort environmental polarization into geographically warring sides on the climate change issue.

War of Attrition in Environmental Policy. As in labor market policy, the backlash against environment policy resulted in a war of policy attrition that turned United States from and environmental policy pioneer into laggard today. At one time, the U.S. initiated far-reaching, stringent environmental protections before comparably wealthy democracies.⁸⁶ In the 1970s, the U.S. government spearheaded international environmental agreements and the science and mitigation of climate change. American such as the EPA and National Oceanic and Atmospheric Administration were instrumental in creating the Intergovernmental Panel on Climate Change in 1988.⁸⁷ That period of leadership has passed as environmental politics changed.

From Leader to Laggard. The strong mobilization of opposition marked the turning point in American environmental policy leadership. In the 1980s, the U.S government began to resist international environmental action and it slowed domestic policy momentum. Environmental challenges to employer freedom have not withstood withstand stalemate or erosion. Several measures separate measure now rank the United States as an environmental policy laggard among wealthy democracies. It has failed to ratify international treaties on biodiversity, persistent organic pollutants, and the transportation of hazardous waste. Most visibly, the U.S. has resisted actions to mitigate climate change, the world's most urgent and publicized environmental crisis.⁸⁸

Climate Change. Currently, American climate change policy is stalemated. The Trump administration has largely reversed the Obama administration's efforts to implement national rules to reduce carbon emissions. Producer and think tank cooperation strongly influence the Trump administration. More forty groups cosigned a letter to President Trump urging the president to fulfill his promise to remove the U.S. from the Paris climate accord. The cosigners included a collection of leading conservative organizations including the Competitive Enterprise Institute, Americans for Prosperity, the Heritage Foundation, Americans for Tax Reform, The Heartland Institute, and The Eagle Forum.⁸⁹ The Trump administration announced its withdrawal within weeks.⁹⁰

Both sides in the global warming issue use federalism to advance their interests. Environmentally conscientious California set ambitious goals and enacted strong regulations for reducing carbon emissions.⁹¹ By 2018, fourteen states had set a carbon dioxide performance standard for power plant emissions; twenty-two states had set targets for reducing greenhouse gas emissions; twenty-nine states imposed requirements on electrical utilities specifying that a certain amount of electricity must come from renewable or alternative energy sources; and forty-four states

set a minimum level of energy efficiency for commercial buildings.⁹² Nine Northeastern and Mid-Atlantic states participate in the Regional Greenhouse Gas Initiative (RGGI) to set a mandatory limit on their collective CO₂ emissions, and a “carbon market” for trading emissions permissions.⁹³ These states have advocated national regulation of greenhouse gases.

But states rich in coal, oil, and natural gas jealously guard these resources from Federal regulations that would shrink their use and value. Leading oil and natural gas producing states (including Texas, Oklahoma, Alaska, and North Dakota) and coal states (Wyoming, West Virginia and Kentucky) strongly have opposed Federal regulation of carbon emissions. All these states, and a total of thirty-four states in all, materially benefit from severance taxes or fees on the extraction of oil and natural gas.⁹⁴ Conservative state Attorneys General, such as Scott Pruitt of Oklahoma, worked together to sue the Federal government over air pollution, water pollution, and endangered species, using “states’ rights” to try to frustrate the Environmental Protection Agency at every turn. States ruled by Republicans, such as Michigan, Wisconsin and West Virginia, used their policy discretion to slow environmental enforcement, gaining an advantage in interstate economic competition.⁹⁵ When the Obama administration proposed strict Federal regulations on electric power plant emissions, this Clean Power Plan by early 2016 generated more legal activity than any environmental initiative in American history. Twenty-nine states and state agencies had joined these lawsuits, most of which benefitted from oil and gas severance taxes and almost entirely led by Republican state officials and joined by a host of energy and other business groups.⁹⁶ Republican U.S. Senate Majority Leader Senator Mitch McConnell (R-KY), publically urged states to defy the U.S. government regulation.⁹⁷ Meanwhile eighteen states and Washington D.C., mostly led by Democratic officials, filed suit in *defense* of the plan. Several environmental interest groups and cities joined them.⁹⁸

Key Similarities of the Labor and the Environment Issues

The labor problem and the environment problem share similar basic features. Like the labor problem, the environment problem a **broad field** with thousands of narrower, often local conflicts over hazardous waste sites, air pollution issues, water contamination, land use, endangered species, invasive species and energy. These conflicts may be geographically microscopic, or regional, national or international.

Both struggles turn on the control of fundamental **factors of production**: labor and land. Both involve a struggle for power, control and advantage: *who* controls resources essential for production, *when* these resources are used, *how* they are used and who bears the *costs* – direct and indirect – of using them. In the U.S., the labor problem pits employers’ extensive, institutionalized right to manage against demands to slow and limit the destructive consequences for workers, families, and society. Similarly, the “environmental problem” pits the extensive, deeply rooted property rights of producers against demands to slow and restrict the destructive consequences for humans, land, air, water, and species.

In both cases, these diverse conflicts have played out in a battlefield of **institutions** that work to the advantage of those who seek to use factors of production for short-term economic gain, and do so more effectively in the U.S. than in comparable industrial democracies. Both cases reveal an underappreciated feature of American political institutions: federalism, the separation of powers, and the independent judiciary **obstruct cooperation** between those who control factors of production on the one hand, and those who seek to restrict these use of these factors of production on the other. In a European nation like Germany, corporatism provided a way for employers and workers to compromise on the balance of employer rights and worker protections. In the United States, institutions make cooperation much more difficult, and by doing so reward

confrontation, conflict, and winner-take all politics. In both American cases, the institutional obstacles to cooperation in the control of prices and production simply increased resistance to policy intrusions. No one party could negotiate for business, labor or the environment, making a brokered mutual concessions, compromise and agreement almost impossible. Those who enjoyed wide prerogatives in labor and natural resources resisted intrusions with fierce hostility.

Both the labor problem and the environment problem developed through comparable stages in the United States.

1. The Initial Burst of Reform. The labor problem in the United States bloomed after the Civil War, as the national economy increasingly industrialized and integrated, and the environmental problem blossomed after World War II, in the prosperous, economy beginning to transition away from its industrial core. Demands for protection found fertile soil for roughly three decades in both cases. Both resulted in new organizations that advanced a far-reaching reform agenda – an agenda that increasingly challenged the control over a key factor of production. Both resulted in growing surge of policy enactments that was at least comparable, and sometimes ahead of, to the pattern in industrializing nations in western Europe.

2. Countermobilization by business. After the initial burst of policy success grew increasingly intrusive on their prerogatives, those who controlled labor and natural resources mobilized. Large corporations like U.S. Steel and later Ford asserted unilateral control over labor. Smaller employers, lacking such control, lashed out at trade unions to break their power and influence. In the thicker policy environment of the 1970s, businesses large and small used existing organizations and built new organizations to resist the reduction of their power over natural resources.

3. Strategies of Resistance. In both cases, the furious business counterattack on labor and environmental regulation deployed three weapons: public relations, political pressure, and litigation. Newly formed business organizations blunted the force of their opponents by clouding their position: organized labor was attacked as another evil trust seeking privilege, and environmental science reached debatable conclusions that could be refuted by common sense and observation. Both labor and environmentalists were characterized as radical in their aspirations, and both were threatening shared prosperity. Both business and opponents dramatically increased pressure on lawmakers and executive in the federal and state governments, and conducted litigation efforts to stop the advance of restrictive laws that survived the process.

4. The Key Role of Federalism. Federalism facilitated both the early advance of reforms and the later resistance to it. Some states preceded the national government in enacting pioneering labor and environmental laws, but few labor laws were passed by all the states (Workers' compensation, did spread nationwide, but took over 30 years to do so). Regulation – especially decentralized regulation – is highly vulnerable to mobilization and reaction. In both cases, some states used their comparative laxity in labor and environmental regulation to gain economic advantages for themselves, at the expense of other states.

5. War of attrition and polarization. In both cases, the result was intense political polarization and an enduring war of attrition. The battle over the environment has involved trench warfare in which ground is gained and lost, with durable success measured incrementally. The development of the labor problem also reveals another comparison to World War I: the mobilization of new, more expensive and destructive instruments of political warfare.

Key Differences of the Labor and the Environment Problem

The cases of labor and the environment also differ from each other in important ways. These differences must temper the lessons drawn from the comparison of the labor and environmental problems.

- 1. Workers can vote, but nature cannot.** There is great disparity between the personal impact of most labor problems and the personal impact of many environmental problems. The direct personal experience of labor issues is more immediate than the direct personal experience of environmental problems. Adult humans are agents who vote, and they vote for on labor issues and environmental issues through a human lens. Humans affected by low wages and dangerous working conditions can speak for themselves and respond to arguments of self-interest. Nature cannot not speak for itself – it needs human agents to speak for even the most charismatic creatures (such as polar bears) and landscapes (such as the Grand Canyon). There is a related political obstacle: the human life span is much more consistent with labor problems than with many environmental problems, most notably climate change. Many such environmental problems involve public goods whose value exceeds anyone's lifetime.
- 2. The visibility and impact of costs and benefits.** The costs of both labor and environmental protections often are concentrated on the owners of these factors of production. But while the benefits of labor regulation are direct and tangible for many humans, the benefits of environmental regulation often are much more diffuse, indirect and delayed. Often, most notably in the case of climate change today, beneficiaries will not see the direct benefits for a very long time. Large numbers of worker-voters benefit from shorter hours, higher wages and benefits, better working conditions, vocational education, unemployment insurance, and socialized income support programs for workers. Environmental advocates must advance solutions that may result in visible higher costs for many voters (such as carbon taxes) but relatively invisible benefits. The delayed harm of global warming provides opponents of environmental regulation many years to beat back regulations that impeded their control of natural resources.⁹⁹ .
- 3. Different policymaking eras.** The development of stronger national domestic policy occurred between the most important periods of labor and environmental policy development, before and after the New Deal, respectively. Positive responses to the demands for labor and environmental laws came at the state level, but in the case of labor, the avenues for a national response were very limited until the New Deal. The decentralized nature of domestic policy ensured that states provided nearly all labor protections resulting from the labor problem. But in the case of the environment, national leaders had the will and the ability to implement national regulations based on state implementation. The more centralized policy system of the 1960s did not preclude state innovation, but it allowed national policy makers to advance laws that nationalized the best practices of pioneering states. Initial disappointment with this approach led to the national command and control directives in air and water pollution, combining strict national rules and the possibility of litigation to veto state waywardness.
- 4. The impact of the labor problem on the development of the environment problem.** The experiences of the battle over labor laws helped environmental adversaries take better advantage of the opportunities and constraints of American political institutions. Environmental interests learned to place more specific litigation levers in legislation. Both environmental advocates and their opponents refined the weapons of public relations, political pressure, and litigation much more effectively. Business was able to exploit its

natural advantage in money and in their privileged position to mount focused, specialized attacks on its prerogatives.

Lessons

The labor question indicted capitalism along a broad front – and so does the environmental question today. Advocates of protections for labor and natural resources mounted assaults on the autonomy of owners. Here are some lessons that I draw from these parallel American experiences.

- Although the concept of a broad “labor problem” or “environmental problem” encompasses thousands of varied conflicts, both fundamentally involve a clash between unlimited producer control of a factor of production, and resistance to the destructive consequences of that control.
- Facts, even scientific facts, will not speak for themselves. Facts often have been a casualty of politics of labor and the environment because adversaries use facts selectively to gain advantage. The idea that evidence will overcome resistance is wishful thinking, and it will frequently fail.
- The battlefield for labor and land is national, but the many mobilizing circumstances are often localized and functionally specific. Often, this limits the audience for reform, the resistance that can be mobilized, the durability of that support and the impact of reforms that succeed. Fragmentation advantages producers despite successes in geographically specific areas.
- Defenders of status quo have two enormous advantages over those who want to restrict the owners of the factors of production. First, they have superior resources, and experience show they will use that advantage in the public discourse, in legal proceedings, in policy-making and in policy implementation. Second, defenders of the status quo and property rights have strong institutional advantages that strengthen their other superior resources in the American system, and can use the separation of independent branches and federalism to fragment, slow, and stop policies that substantially interfere with their prerogatives.
- It is easier to engineer the cooperation of those who have an interest in protecting maximum private prerogatives over the use of land and labor than it is to engineer the cooperation of those who want to set limits on those prerogatives. Federalism, the separation of powers, and the independent judiciary make mutual agreements hard to enforce and implement in a durable way.
- Crafts unions, like some environmentalists, often failed to build broad coalitions, and thereby played into their opponents’ advantage. Narrow support allows opponents to characterize these groups as wannabe elites who are seeking the same kinds of special advantages that owners of labor and land enjoy. Social justice provides a bigger frame that broadens the coalition for environmental and labor protections. The ideas of sustainable development, and the aspiration of a life with dignity for all, can connect labor and environmental issues with a security floor that can have broader appeal. An example would be a plan that taxes carbon and provides progressive tax relief.
- Regulatory strategies are attractive for overcoming producer control over the factors of production, but regulations have many shortcomings, including lack of durable support for implementation, and the cost of litigation that advantages those with power over land and labor.
- Policies that rely in part on the possibility of litigation may allow the courts to overcome resistance to implementation, but the courts are slow and often unreliable vehicles for faithful policy adjudication and implementation.

- Policy makes politics.¹⁰⁰ Architects of environmental protections must consider the impact of public policy on the political coalitions that will support or oppose the law in the future. For example, far-reaching Waters of the U.S. rules that intrude on farmers' land use will mobilize them to oppose the law, and agriculture has substantial power in the American system because of the place-based U.S. Senate and the Electoral College. In contrast, corporate animal feeding operations (CAFOs) often prompt farmer opposition.
- Because federalism fragments coalition building in the United States, coalitions must be strong at the state level in all the states, *especially* in states that are more protective of expansive owner rights over natural resources. California and New York provide very limited models for policy and politics in, say, West Virginia or Wyoming because it is easier to build support in the former than the latter. Advocates of reform must build a very wide state coalition for change, as demonstrated in the cases of the Progressive Era amendments for alcohol prohibition and women's suffrage.
- Creating effective, durable policy institutions is critically important, because public opinion on environmental issues is widely but not deeply supportive, and spikes of public attention do not persist. Institutions are durable, but the issue attention cycle is not.
- Effective national policies can follow from national floors on labor and environmental policy performance and state discretion above those floors. But the law must ensure that (1) floors are regularly updated and (2) there is a durable commitment to effective implementation.

Conclusion

The development of “the labor problem” provides insight into the politics of “the environmental problem” today. Conflicts over labor and land are chronic and widespread because they are essential factors of production in modern economies. Owners expect sovereign control of these factors of production, but they met resistance when short-term wealth acquisition damages to identity, security, and justice. The resulting development of politics and policy has reflected the powerful force of short-term economic growth smashing against resistance to the collateral damage of this growth.

The development of “the labor problem” anticipated key features of the development of the environment problem: the challenge to unilateral owner control over a basic factor of production, initial successes that were relatively unimpeded by effective owner opposition, policy successes that increasingly threatened a wider range of factor owners on a larger scale, a massive campaign by factor owners to protect their prerogatives, and a bitter, drawn-out war of attrition with modest gains on either side. In both cases, federalism and the separation of powers shaped the development of these policy conflicts. If American environmental policy history repeats the story of labor market policy, environmental conflicts are likely to be as enduring as the conflicts over labor rights – conflicts that still persist, more than a century later.

History also offers lessons for breaking out of the war of attrition in environmental conflicts. Broad, strong and durable coalitions – in every American state – are indispensable for overcoming the defenses of owners of production. Institutions and laws that reflect the priorities of these coalitions must be in place to ensure that aspirations are realized. Coalitions that aspire to bring together those challenging the right to control labor and land with strong security floors offer a path for building both.

Endnotes

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