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The dire State of the Union(s)

American unions are doing badly. This affects the prospects for Democrats in the US midterm elections

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US Supreme Court Justice Anthony Kennedy, who has been known as the 'swing vote' between political camps has announced his retirement. So now President Trump wants to appoint the conservative judge Brett Kavanaugh as a replacement ahead of November's congressional elections.

This is bad news for the Democrats, because the upcoming fight over the appointment will, in particular, mobilise opponents of abortion. For US unions, however, Anthony Kennedy has been a bitter enemy all along. Just recently he was part of a narrow 5-to-4 majority that denied public-sector unions the right to charge non-members a fee for the costs of collective bargaining. The Janus decision (named after the plaintiff, a state government employee in Illinois) weakens the unions as well as the candidates of the Democratic Party, who will receive less support in election campaigns in the future.

The public-sector unions, which were not significant until the pro-union legislative changes of the 1950s, have long had a much higher degree of participation than unions in the private sector—currently 34.4 percent compared to only 6.5 percent (and still declining).

One reason for this development is that civil servants are not in direct competition with each other and therefore their employers have less incentive to fight their trade unions. Meanwhile, in the private sector, relatively few unionised enterprises are competing against many non-union operations, sometimes even within the same company. However, Mark Janus's lawsuit was backed by a major alliance of union opponents who are fighting 'union compulsion'.

The weakening of US trade unions in the 1940s

The background is as follows: For trade union representation, American labor law requires a collective majority decision on the part of the workforce. It stipulates that no employee may be excluded from the benefits of a collective agreement and other trade union services. In order to avoid freeloaders, unions require either membership or a fee for their services.

As early as the late 1940s, the anti-union lobby, with the help of the Republican Party, pushed for individual states' power to prohibit these arrangements for trade unions in the private sector. Since then, 28 of the US states have passed such laws. Many of them are in the southern United States, where, as a result, the unions are also very weak — a major reason why German car factories moved there.

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The Janus decision takes the opposite approach, by prohibiting state employers from concluding collective agreements that oblige civil servants to become union members or to pay a fee. The ideological justification for the verdict is the violation of the right to free speech. The same justification also seeks to establish the use of unlimited funds by corporations and wealthy individuals in election campaigns.

Against the backdrop of the German collective bargaining landscape, the legal regulations and political practices in the US are difficult to understand. German trade unions rely on individual and voluntary membership in order to, in an ideal situation, negotiate collective bargaining agreements that cover all employees in an industry. But even in Germany, the number of union members and the percentage covered by union scale wages are falling, which means that German unions are also struggling with freeloaders.

The Obama administration failed the unions

While the German unions might be able to learn by watching the Americans' ability to organise and campaign, the US unions' hope for better institutional protection is in vain. They are ideologically on the defensive, financially weak and organisationally in crisis. As if that wasn't enough, they are also divided into two umbrella groups—the AFL-CIO and the Change to Win coalition—and not strategically oriented. Instead of consistently organising in specific industries, many unions have resorted to only organising where success looks promising. This will turn them into 'one-stop shops', serving everyone but with little focus.

Also due to this weakness, the Democrats have neglected their ties to the unions and prefer to bet on a rainbow coalition of voters. The Obama administration's central political failure was not advancing a labor law reform to make it easier for trade unions to organise. It would have shifted the balance of power in the US in favor of 'working families'. This reform, modelled on Canadian federal legislation, failed in 2009 due to the resistance of a Democratic Senator from Arkansas, the 'homeland' of anti-union Walmart.

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The 2016 election results in the formerly industrialised US states, where Trump was able to win, demonstrated the need to improve the situation of workers and their representative organisations. Today it becomes even more apparent from the fact that there is hardly any resistance to the entrepreneurial measures designed to prevent workers from getting any benefit out of the current positive labor market. So-called 'non-compete' clauses are intended to even prevent employees in fast food restaurants from realising higher wages by changing jobs. Originally intended for employees with specialist knowledge that should not be 'bought' by the competition, these clauses would probably not be upheld in court. But right now neither workers nor unions have the power to fight back.

A new agenda for the global economy

Given the weakness of US unions and the high cost of organising campaigns, the few voices who want to find something positive in the Janus Supreme Court decision are negligible. The prospects are disturbing, especially in the private sector, but now in the public sector as well. In view of low wages and the high cost of living, the union contribution is something that many people would like to save on (it is usually much higher than in Germany). This is because wages and working conditions under a labor union are much better.

Everyone benefits from the collective agreement in unionised workplaces, but most companies just don't have one. In this sense, the patchwork of union and non-union operations in the United States is something of a national reflection of the global economy: lower standards are putting the higher standards under pressure.

The business community is profiting from this, but accepts that the resentment, in particular of low-skilled workers, is paving the way for populism, leading to a protectionist backlash against the liberalised and deregulated global economy. Here in particular, the industrial unions are willing partners of 'their' companies, for example in the steel and automotive industries, and of President Trump (who presumably couldn't care less about their jobs).

Neither the US unions nor the Democratic Party have ever developed a convincing agenda for regulating the world economy. Some preach short-sighted protectionist measures, while others have uncritically celebrated liberal globalisation as promoting prosperity, democracy and peace for far too long. They need to regroup, not only in this policy area, but also with regard to immigration. Most unions have struggled through a lengthy process to reach a policy that does not fundamentally reject immigrants but attempts to organise them. However, if the Democrats make the abolition of the ICE immigration agency a litmus test for their candidates, they will turn people away and drive even more of their members into the Republican camp.

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