

LABOR HISTORY SYMPOSIUM

Labor Embattled: History, Power, Rights

DAVID BRODY

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In *Labor Embattled*, David Brody, one of the most influential and insightful practitioners of our craft, brings together nine essays on the history and contemporary plight of trade unionism in the US. Key for Brody is the decay of workers' rights under modern labor law, and his insight on how workers might recapture their capacity for effective collective action is essential reading for all labor scholars. The following symposium reflects how central the crisis of contemporary labor has become for leading scholars. Thanks go to John Logan of the London School of Economics for suggesting the symposium and taking the lead in organizing it.

CRAIG PHELAN
Editor

What's the Matter with Labor?

David Brody, Herbert Gutman, and David Montgomery have defined the issues of modern labor history. Yet the appreciation of Brody's work came later than that of the other two. His reputation rose as the Reagan administration transformed the political and economic landscape in the 1980s. The agenda of history, including labor history, has always reflected current concerns. Thus, the changing interest in Brody's work is a barometer of intellectual currents of the postwar United States.

The best of labor history has always reached out beyond its subject to present a larger world. In the years after World War II, when capitalist growth seemed inevitable and open to working-class interventions, an internal history of the working class flourished: first the Whiggish histories of unionization and then the minute examinations of the process of collective bargaining, mainly executed by economists

and sociologists. Brody broadened this story in *Steelworkers in America* (1960) to include the workers themselves. But Brody's late nineteenth-century and early twentieth-century workers were hemmed in by the power of the steel masters and the state. The oppositional cast of the 1960s was deaf to the significance of this story.

Instead, the critique of modernization and affluence, the civil rights and women's movements brought the study of resisting workers and alternative working-class institutions—the Knights of Labor, the Industrial Workers of the World (IWW), the Communist unions—to the center of the stage. Challenging the gradualism and liberal assumptions of modernization theories, numerous writers denied the pacific quality of progress and reexamined the world that was lost. Barrington Moore discovered that routes to the modern world were marked by sharp class conflicts and violence, even in Britain and the United States. E. P. Thompson demonstrated in 1963 that Britain's liberal society was built upon the suppression of a vibrant proletarian culture in the early nineteenth century. Herbert Gutman, applying these methods to the United States, found social progress, which the celebrants of the affluent society attributed to benevolent elites, emerging from the traditional values of work and community that immigrants brought with them. This was an extraordinary reversal. Under reigning modernization notions, preindustrial cultures were considered barriers to progress. Even David Montgomery, who located working-class consciousness in the modern factory, concentrated upon the evanescent autonomous craftsman who controlled production and resisted managerial authority.

The anti-institutional sensibility produced rich nineteenth- and early twentieth-century working-class history. But neither Gutman's nor Montgomery's main work addressed the Congress of Industrial Organizations (CIO) period. There was plenty of scholarship on the United Autoworkers of America (UAW), the darling of the New Left, but most fit into the 'alternative' tradition, such as studies of the Communists in the UAW. Even Nelson Lichtenstein, whose wonderful work on the UAW was partly an exception, wrote from the angle of what went wrong. Insofar as other unions, like the steelworkers, attracted attention from historians it was their 'rank-and-file' dissenters, not the builders of the union. The story of the mine workers' union was ignored, although its leader, John L. Lewis, still fascinated.

The study of the unorganized, particularly African Americans, other ethnic/racial minorities, and women, became central to the new work. In addition to extending our knowledge of workers, the new social history brought to the fore a major theme in recent labor history, exclusion or discrimination—the internal divisions of the working class. The typical form of the study when it addressed the 1930s was the history of one community: Woonsocket, Rhode Island; Memphis, Tennessee; Flint, Michigan; Chicago, Illinois. The political posture was one of unfulfilled promise: elements of popular heroism and potential were well documented, but these qualities were either evanescent, defeated, coopted, or transmuted. Corporations and their leaders often disappeared from the story, as working-class culture took center stage.

Such history made political sense in the 1960s and early 1970s when unions and rising wages seemed a permanent part of the economic landscape. In the mid-1970s,

however, growth halted and productivity languished. Marx never doubted that capitalists would produce. Now many Americans did. At the same time, Keynesian measures did not work as they had in the past. In the late 1970s, budget deficits and low interest rates brought in imports instead of stimulating US production. Business became more class conscious and blamed the unions for their financial woes. An economic free-fall in 1979–80 combined with a series of foreign policy debacles overwhelmed the hapless Jimmy Carter and elected Ronald Reagan. The new president said goodbye to Keynes, labor, and many of the practices of postwar America. Reagan's neo-liberal policies benefited specific industries, financial services, retailing, oil production, defense, and housing. Other policies, culminating in the recession of 1982, decimated manufacturing and the unions representing factory workers. The blow to postwar liberalism was fatal.

Some scholars responded to this state of affairs with a postmodernism that denied the importance of class and work, and thus labor history. Others, in the US, turned to whiteness theory to explain the rise of the right. But many began to examine the CIO and union power as contingent, historical experiences. David Brody now had something to say to political activists. If labor was in trouble now, historians wanted to hear from him. He had spent his life thinking and writing about the origins and development of the twentieth-century labor movement—solid monographs, including the seminal *Steelworkers in America*, profound historical essays, gathered in *Workers in Industrial America* and *In Labor's Cause*, and now a collection of historically informed labor prescriptions, aptly called *Labor Embattled*.

The essays were written before the most recent event in labor history, the secession of several unions led by Service Employees International Union (SEIU) head Andrew Stern from the (American Federation of Labor) AFL-CIO. Whatever Brody's opinion of this move, the new collection does not support this attempt to replicate the CIO in the 1930s. In 1992, Brody wrote that 'American labor's recent decline should not be seen as a contingent event, one that, with better leaders or bolder policies, might have turned out differently, but rather that, given the changes in the US economy, its decline was historically determined.'¹ His judgment stemmed from the changing economy, of course, but it was not the conclusion of an economic determinist. Brody believed that American workers were more vulnerable to the changing economy than those in Canada, Europe, and Japan because of the political and legal status of labor rights in the United States. Increasingly Brody has found the destiny of the labor movement in the political–legal realm. Brody has never been a one-idea historian, but this turn does mark some shift in his thinking.

In a 1967 essay reprinted in this new collection, 'Labor's Institutional Sources of Expansion and Contraction,' Brody tackled the standstill of union growth. He argued that labor lacked the capacity to change the technology that was eroding the jobs in key manufacturing industries, steel, packinghouse, auto, etc. But he added other causes, the antiunion south, the whitecollar worker's resistance to trade unionism, and the hostile legislative and court decisions that made organizing difficult. Increasing the numbers of union members required removing those barriers, but the labor movement could not do it. Brody turned to the New Deal labor breakthrough

to prove his point. In 1932, informed opinion concluded that the labor movement was in terminal decline and irrelevant. But three years later, everything changed. Brody explained that 'the labor movement was the beneficiary, not the agent, of the sudden turn in its fortunes' (p. 35). The agents of change were the depression, the political changes in the nation, and the rank-and-file upheaval, which weakened the defenses of capital. Returning to the 1960s, nonsectarian Brody was unconcerned about the proper tactics to invigorate the movement because he believed that labor leaders will create the appropriate ones when the environment is favorable. The important variable was the environment, which the labor movement could not change.

Examining the environment in 1967, Brody gave the economy and politics equal billing. More recently, Brody has targeted the legal framework of collective bargaining. Perhaps Brody's new interest was ignited by his participation in a conference on labor law reform, called in preparation for President Bill Clinton's Commission on the Future of Worker-Management Relations in 1993. The commission was headed by John T. Dunlop, a founder of modern labor relations practice. Brody's essay on the origins of the Wagner Act, prepared for the conference, and most of the other essays in the volume are explanations of how American collective bargaining came to be and how to make it more effective. These essays, most written in the 1990s, offer an interesting history of the decade and explain why the state of labor relations is now off the political table.

Brody reminds us that across the political spectrum, scholars, industrial relations specialists, labor leaders, and politicians concluded that failed labor relations were the source of America's economic decline during the 1980s and early 1990s. Ascendant Japan and Germany practiced more consensual labor relations, believed to be the source of their prowess. On the left, the Bluestones, father and son, argued in 1993 that business could prosper only in partnership with the unions.² These recommendations merged with centrist plans for quality of work programs, work groups, and the like in nonunion firms. The first question was whether such work groups were legal under the Wagner Act; the second was whether they were desirable for the labor movement.

Brody's contribution was to explain the historical origins of Section 8a (2), which prohibited employer domination in the formation of labor organizations that address terms and conditions of employment. The prohibition banned all forms of work councils and committees. Anything less was incompatible with the right of workers to freedom of association. 'For this,' Brody concluded, 'employers, with their unrelenting antiunionism, had only themselves to blame' (p. 96). Having historicized the provision, Brody then asked whether it should be changed. His answer was no. Brody was not advocating adversarial unionism, but he criticized the Bluestones over the means to the end, participatory unionism. The starting point for consensual agreements was a strong union, working through the give and take of collective bargaining. Brody pointed to the steelworkers union, which in bad times made concessions and performed management roles in many bankrupt steel firms. But it

played that role only because it was a strong union. 'First, power, then, maybe, cooperation,' he concluded (pp. 87–88). In short, American collective bargaining was no barrier to collaboration, when necessary. And, labor relations were not responsible for the decline of productivity.

The Dunlop commission considered Brody's history, but recommended that carefully restricted committees be permitted. However, the possibility for any kind of labor reform had ended in 1995. Republicans had taken the Congress in 1994 and had their own ideas. The GOP would limit the coverage of Section 8a (2) to labor organizations that negotiate collective bargaining contracts. Employers would be free to set up employee representation plans. Clinton vetoed this legislation, but the administration and the labor movement had lost the opportunity to make organizing easier, the goal of most of the unionists participating in the Dunlop Commission. Moreover, the motive for change had disappeared. The rise of productivity in the late 1990s, without any legislative change in labor relations, eliminated the economic impetus for change. And, it seemed that adversarialism had paid off very well, at least for the corporate bottom line. The shedding of workers that seemed to be a cause of economic decline in the early 1990s now became a virtue, even the explanation for the success in the late 1990s. Now German and Japanese labor relations seemed problematic while the American way of contracting out, outsourcing, and casting off workers looked like the road to high productivity. Advocates of quality circles and other such practices disappeared. The Bush administration in 2001 made no effort to revive the shop floor systems of representation that Republicans and corporate leaders had prized in the early 1990s.

The upturn of the late 1990s did not translate into good fortune for the labor movement. Despite the rise in productivity, the fall in the unemployment rate, and the slight rise in wages, the AFL-CIO, even with a new president, John Sweeny, elected in 1995, did not reverse its secular decline. The debate in the early 1990s offered reform of labor relations as a route to national prosperity, analogous to the argument that the unionization promoted in the Wagner Act, by raising aggregate demand, was a way out of the depression. But after the upturn of the late 1990s, the link between labor rights and economic policy was harder to make. So Brody examined the political–legal setting.

Brody's essay on the representation election tells an important story. Initially, the Wagner Act made elections only one of many ways to certify unions. The Taft–Hartley law of 1947 made the election mandatory. Once the notion of self-organization was reconceived to be an electoral contest, either result, a union or no union, became legitimate. Employers became equal players, not the intruders of Senator Wagner's script, and the election became a choice between collective and individual bargaining. And, just as unions were no longer privileged and were subject to accusations of unfair labor practices, so employers gained the right to petition for elections. The transformation was inexorable. The National Labor Relations Board (NLRB) limited union access to the workplace, tolerated employer speech, and decided that an employer prediction that a union would lead to plant closure was not a threat. With such rules, union elections were unwinnable.

This history led Brody to ask how it was possible for labor rights to become so compromised. The Wagner Act's provision for 'self-organization,' absence of language validating non-associating, requirement of every worker to accept representation by the agent selected by a majority, and notion of labor organizations as benign seemed to have married worker freedom and solidarity. Workers were free but they would express that freedom collectively. But the tension, Brody observed, between free labor and solidarity in labor law was an old one. The worker's right to organize was still governed by *Adair v. US*. The Supreme Court, in 1908, had declared a provision of the Erdman Act that forbade railroads from discharging employees for union membership unconstitutional. The court based its opinion on liberty of contract and free labor. 'The right of the employee to quit the service of the employer, for whatever reason, is that same as the right of the employer, for whatever reason, to dispense with the services of such employee... Any legislation that disturbs that equality is an arbitrary interference with liberty of contract which no government can justify in a free land' (cited on p. 131). The avalanche of yellow-dog contracts and injunctions that followed *Adair* was halted only in the 1930s with the Norris-LaGuardia and then the Wagner Act.

But Brody points out that Norris-LaGuardia did not declare the yellow-dog contract illegal because it violated the worker's freedom, only unenforceable; and the injunction, rather than inapplicable to labor disputes because labor was not property, was only restricted. Then, the Wagner Act, written to scale the Supreme Court bar, skirted *Adair*. The court found that forbidding the firing of union workers was only a very limited interference with freedom of contract, which still stood as a pillar of the law. The corollary was that violating the Wagner Act was only an unfair labor practice, not a criminal offense. The penalty, reemployment with back pay, and, on other violations, an NLRB order to cease and desist was sufficient to right the wrong. Proscribing the impediments to labor organizing was justified on the basis of public policy and social advantage. That was the rub. The scaffold was legal realism, the structure was administrative, and the façade was New Deal public policy. However understandable these decisions were during the 1930s, Brody concluded, they are weak reeds for a globalized, free market United States at the beginning of the twenty-first century.

Thus, Brody proposed in 1998 that labor should extract from the bundle of rights linked to representation the right to organize. Given the political change after the 2000 presidential election, which made national action unlikely, he concluded in 2004 that perhaps one must start in the states. Given the problem, the response seems feeble. But, as Brody himself says, 'policy is not the business of historians' (p. ix). Still, he eliminates whole areas of possible policy change. Brody removes the possibility of marrying labor rights with economic change. He argues that firms without unions are more profitable than those with unions. Thus, unlike the New Deal era, when unionism was viewed as enhancing economic prosperity, today antiunionism boosts the economy and thus is rational for firms and the nation.

Brody ends up in this cul-de-sac because he has merged two arguments. First, are nonunion firms more profitable than union firms? And, second, are nonunion firms,

whether more profitable or not, good for the economy and society? But first it must be clear that every corporate head at any point in time and in every country would prefer to make decisions without unions. It is as true of the president of Columbia University as the CEO of Wal-Mart. In other words, companies do not oppose unions simply because they reduce profits. In the current consolidation of the steel industry, Dan DiMicco, the head of the mini-mill Nucor, refused to buy unionized steel mills because they are unionized, even though they are profitable. Instead, DiMicco bought nonunionized, unprofitable ones simply because they are union-free. His actions stemmed from ideology, not profitability. Whether nonunion firms are more profitable than others is not an easy question to answer. Brody based his conclusion that nonunion firms were more profitable on studies from the late 1980s.³ Is that true today? Richard Freeman and Larry Mishel would modify that conclusion.⁴ And can gross figures covering all economic sectors explain why some union firms may be less profitable? Aggregate figures on profitability would not show, for instance, that nonunion steel mini-mills are more profitable than the integrated firms because they lack the legacy costs of the older mills. This distinction is important in evaluating profitability, fashioning a political argument, and devising solutions. Even if we find that some nonunion firms are more profitable than union firms, as they surely were in the 1930s too, is there no economic case that can be made to justify the unionization of Wal-Mart? What about the health costs non-union firms are transferring to the nation? Would consumers be so debt-ridden if wages had risen as they had before 1973? And it goes on. The economic argument today will not be identical to that of the 1930s, but yielding an argument that unionized firms can be profitable gives up a powerful argument for unionization.

Moreover, while it is true that during the Great Depression the labor movement took advantage of changes it did not initiate, it did play a role in obtaining the original NRA and the Wagner Act. Subsequent legislation during the Fair Deal, New Frontier, and Great Society, spearheaded by labor, surely altered the economic environment. Is it impossible for the labor movement to modify its political and economic environment today? Brody's analysis leaves little space for union action. But must every free trade bill pass? Must every trade bill omit provisions for labor rights? Globalization is neither inexorable nor singular. Giving up efforts to alter the economy means that unionization will be squeezed into those areas of the economy that are sheltered from globalization. But protected areas are becoming smaller and smaller. To build a union movement on service workers like janitors and home care workers, who cannot be outsourced, is to give up on strong unions that can alter corporate behavior and market incentives. It is the trade union equivalent of Paul Krugman's dystopic US, where economic activity consists of Americans selling each other houses.⁵

Historians are not policy wonks; and even policy wonks do not have crystal balls. David Brody has given us a historically grounded analysis of some of the most important issues facing the labor movement and the US. That is a very rich gift, even though my attempt to wonk leads to different conclusions.

Notes

- [1] Brody, *Workers in Industrial America*, 249.
- [2] Bluestone and Bluestone, *Negotiating the Future*.
- [3] Brody cites Hirsch, *Labor Unions and the Economic Performance of Firms* (Kalamazoo, Mich., 1991). Given the publication date, I assume that the studies on companies were done in the late 1980s.
- [4] Freeman, 'Do Unions Make Enterprises Insolvent?' Mishel, 'How Unions Help All Workers;' Philips, 'Lessons for Post-Katrina Reconstruction.'
- [5] Krugman, 'Safe as Houses.'

References

- Bluestone, Barry, and Irving Bluestone. *Negotiating the Future: A Labor Perspective on American Business*. New York: Basic Books, 1992.
- Brody, David. *Workers in Industrial America: Essays on the 20th Century Struggle*, 2nd ed. New York: Oxford University Press, 1993.
- Freeman, Richard B. 'Do Unions Make Enterprises Insolvent?' *Industrial and Labor Relations Review* 52 (July 1999): 510–27.
- Krugman, Paul. 'Safe as Houses.' *New York Times*, 12 August 2005, 19.
- Mishel, Lawrence. 'How Unions Help All Workers.' EPI Briefing Paper, #143, August 2003.
- Philips, Peter. 'Lessons for Post-Katrina Reconstruction.' EPI Briefing Paper #166, October 2005.

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Is the Battle over, or Just Beginning?

Reading David Brody's *Labour Embattled* is a bittersweet pleasure. The pleasure is partly just a matter of reading Brody yet again: his knowledge is broad and deep, his arguments clear and forceful, his style elegant and engaging. It is also refreshing to read a book so free of cant, so utterly interested in displaying its author's methodological sophistication and so relentlessly focused on the real world where real things happen to real people with real, and often devastating, consequences. The working class and the labor movement are here no mere discursive constructions but living men and women whose conditions of life are shaped by the story Brody tells.

The bittersweet aspects of the experience are of course closely related: the crisis of labor that Brody analyses is pressing and concrete, and on its resolution hangs the fate of those who depend upon, or could depend upon, labor organization to create the conditions for a more prosperous and secure existence or for a life much harsher and more insecure. Brody's message is very gloomy, with few bright spots, and the picture becomes darker the more he delves into its origins. It is useful to review his argument in greater detail in order to get the full measure of his pessimism.

At the core of Brody's book is a reexamination of the legal tradition within which collective bargaining has developed in the United States. In standard accounts the labor movement suffered at the hands of judges keen to defend the rights of property over those of workers until the 1930s. Then, in the Wagner Act of 1935, the rights of workers to organize and bargain collectively were recognized and a wave of unionization quickly brought the great bulk of America's industrial workers into the union fold. Unfortunately, this supportive legal framework has been gradually redefined and is now far less favorable to the efforts of workers to organize or, if organized, to get employers to bargain in good faith. The beginnings of this reversal can be traced to Taft-Hartley in 1947, but it has been much hastened by conservative administrations beginning with Reagan, and it has been reinforced by the onset of a more competitive economic environment. Of course, aggressive employers also had a hand in efforts to dilute and restrict the legal rights of workers.

While Brody would endorse this rough chronology, he argues that the recent constriction of the New Deal legal framework is much more deeply embedded in American ideology and judicial traditions. In the most interesting of the essays that make up this fine book Brody traces the history of the legal right to organize and demonstrates how trade unions, strikes, and boycotts were regularly regarded as outside the law, violations of freedom of contract or laws against criminal conspiracy throughout the nineteenth century. The turn to injunctions issued by federal judges from the 1880s and 1890s further circumscribed the rights of trade unions, as did the simultaneous spread of the yellow-dog contract. Eventually these high-handed and transparently partisan tactics produced a popular reaction that would lead in the end to the New Deal legislation that allowed for the unions' massively successful organizing drives of the late 1930s. But even then the bias of the law towards free labor and freedom of contract remained and, as Brody shows, those who crafted first the Norris-LaGuardia Anti-Injunction Act of 1932 and then the Wagner Act chose not to directly challenge the principle of liberty of contract, but rather to assert that union organization represented, in Oliver Wendell Holmes's words, but 'a very limited interference with freedom of contract, no more.'¹ That interference was justified because the collective organization of workers was regarded at the time as good 'public policy,' not as a matter of right. When opinion inevitably shifted about what constituted good public policy, this weak and contingent grounding left labor vulnerable to efforts by employers, aided by sympathetic judges and members of the National Labor Relations Board, to reshape and redefine the law so as to limit what unions could do and to enlarge the scope of employer free speech and thus to allow employers more leeway in combating unions' organizing efforts.

Other features of US labor law also restricted unions by narrowly defining the terms of representation elections. Technically, the law allowed for employers to recognize unions with or without elections, but in practice employers fought to retard the progress of organization by encouraging the growth of company unions in the years just prior to the Wagner Act. This tactic in turn prompted labor's supporters to specify more fully the procedures and rules for elections, which workers were eligible to vote, and what kinds of organizations were allowed to

contest elections. The effect in the short run was to blunt employer efforts to promote company unions and to facilitate the growth and certification of genuinely independent unions. But the long-term cost was a restriction on the types of organization workers could join and the scope of bargaining, limitations that would prove critical after 1945.

So both contingent factors—the need to counter employer tactics in the early 1930s—and deep structural forces—the centrality of free labor and liberty of contract in American law—combined to make what seemed a very favorable legal framework into a potential straightjacket that, by the 1970s and 1980s, was used to impede rather than to support the right to organize. The constraints imposed by this framework have made it virtually impossible in recent years for unions to advance in an era when political events and economic conditions have also been working in favor of employers.

Brody's argument has two major implications: the first is that unions should perhaps abandon their traditional reliance on the rules governing the representation election and try to make progress outside this framework; the second is that the labor movement should launch a mass campaign focused on the right to organize. I should like to query the first of these and endorse the second, but with a minor qualification.

The temptation to ignore, and seek to work around, the by now customary framework for union recognition and bargaining is understandable. But is it wise? Brody himself is unsure. He speaks sympathetically, for example, of unions 'beginning to vote with their feet' against the system, 'boycotting NLRB elections, organizing workers directly, and pressuring employers for voluntary recognition;' in effect 'trying to break the grip that NLRB certification currently holds on workers' access to collective bargaining' (pp. 135, 144). But Brody also recognizes that acting outside the existing framework might elicit similar, and perhaps more effective, behavior from employers. On balance, the book seems to suggest that a move outside the framework of the representation election, towards a strategy based simply on the workers' right and the employers' duty to bargain, would be useful. But Brody acknowledges the difficulties: the broader right in essence requires getting employers to agree to recognize unions and is not embodied in procedures to ensure that it happens; making it a reality would thus seem to require a political mobilization and the creation of a political climate that seem very remote at the moment. Who, after all, would bet that workers could mobilize more effectively than employers over the issue? These considerations seem to make Brody pessimistic about broad campaigns to organize outside the framework of the representation election or to recast the framework of labor law. Instead, he makes a more modest proposal for a campaign narrowly focused on the right to organize.

This caution seems well placed, but might be reinforced by a consideration of experience elsewhere. The British case seems most relevant and would seem to contain a strong warning against unions charting a course outside even a flawed set of legal protections. Unions in Britain long operated without formal rules for bargaining and recognition and their leaders treasured, and fought for, this voluntarist tradition. A critical moment occurred in the late 1960s, when a Labour government saw its

economic plans and prospects undermined, or so it was argued, by waves of strikes in the car industry and on the docks, and in response proposed the legal regulation of trade unions. The famous White Paper *In Place of Strife* (1969) offered an exchange: an extensive package of union protections and rights in return for union agreement to make contracts legally binding and enforceable. The deal was rejected outright by union leaders and greeted with marches, mass meetings, and threats of resistance. The government backed down and the defeat was one of the reasons the government lost the subsequent election in 1970. Union traditions and prerogatives remained in place and over the next decade trade union power was wielded with even greater force as the Labour governments of 1974–79 tried to govern the economy through a corporatist arrangement symbolized by the so-called ‘social contract’ with the unions. That experiment ended in a dramatic failure in the ‘winter of discontent’ in 1978–79, an event which played no small part in the election of Margaret Thatcher in May 1979.

Thatcher proceeded to take on the unions in a series of pitched battles that ended in crushing defeats and a hemorrhage of union membership. The Conservatives also passed successive laws restructuring industrial relations which denied the unions the use of a variety of established tactics. The effects were disastrous, for industrial defeats and a deep depression destroyed the great bastions of union strength in older industries while the new legal framework made it increasingly difficult to recruit in other areas. By the mid-1980s trade union leaders were desperate and they turned to Europe, where the European Union under Jacques Delors was elaborating a vision calling for further economic integration balanced by rights embodied in a ‘social charter’ and a commitment to involve the ‘social partners,’ basically unions and employers, in decision-making. The Labour Party had been deeply ambivalent about Europe up to that point but now found in the ‘social charter’ a possible protection from the wrath of Margaret Thatcher. By 1997, when a ‘New Labour’ government took power under Tony Blair, the unions were solidly committed to establishing a new legal framework for industrial relations based largely upon EU laws and traditions. The new laws have not brought a massive revival of membership or influence, but they have created a new set of rights whose effect over the short run has been to stop the slide in union membership and to allow some modest gains. This has been achieved, moreover, during a period when purely economic trends—with employment continuing to decline in manufacturing and to move into the service sector—might have otherwise continued to erode membership and influence. The lesson seems clear enough: absent legal protections unions may do better or worse, but when they do worse they do much worse. Is the lesson applicable to the US at the moment? That is for others, with more detailed knowledge, to say, but it is at least worth considering the possibility that America’s flawed legal framework surrounding representation elections may be better than the alternative.

So, not an argument against Brody, but a caution that echoes and strengthens his own. At the same time, I see nothing but good coming from Brody’s proposal for a mass campaign targeted fairly narrowly on the right to organize. It is the clear focus of the effort that most commends it. Brody is surely right that a broader effort to

recast American labor law or replace the representation election would at the moment be quixotic, but a campaign with a very narrow and specific objective would have a much better chance of succeeding. The 'right to organize,' Brody reminds us, 'is exercised by individuals and calls forth no rival employer rights. On both counts it is the most unassailable of labor's rights' (pp. 154–55). This seems absolutely right and the demand's simplicity ought to allow the unions to recruit allies on a very wide basis.

In fact, my guess is that the appeal might be even broader than Brody suggests because its clarity seems ideally suited to mobilize support through new media and new types of organizations. It is a bit surprising, in this regard, to read Brody's slightly dismissive essay on the report issued by Human Rights Watch in 2000 criticizing the denial of human rights for workers in the United States.² Brody is no doubt correct in stressing the report's limits, especially its failure to argue that free speech for employers and free speech for workers are by no means equivalent and equally deserving of protection. What Brady seems to miss here, however, is the potential not only of a rights-based political discourse, but of organizations, NGOs, like Human Rights Watch to bring the desperate plight of so many American workers to the attention of their fellow citizens. Whatever the quite reasonable questions that can be posed about the legitimacy and accountability of various NGOs, there can be no doubting their growing effectiveness in an age when traditional kinds of political organizing and even the ordinary process of voting seem to so many to have become so ineffective. The lesson and the strategy seem obvious: a hard-headed, carefully targeted campaign for the right to organize, making use of every possible weapon in labor's arsenal and deploying new weapons and rhetorical strategies and aimed at reaching new audiences and allies. Throughout his book Brody candidly admits that he is stepping out of his normal role as historian and advising the labor movement on what to do. How gratifying if something like Brody's proposed campaign began to take shape as a result of good history and a willingness to put its lessons to practical use.

Notes

[1] Holmes's phrase appeared in his dissent to *Adair v. US* (1908), cited by Brody on p. 132.

[2] Compa, *Unfair Advantage*.

References

- Compa, Lance. *Unfair Advantage: Workers' Freedom of Association in the United States under International Human Rights Standards*. Washington, 2000.
 Department of Employment and Productivity. *In Place of Strife*. London: HMSO, 1969.

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History We Haven't Made Yet

Hope and heroism, or the rescue of history's rejects from the 'enormous condescension of posterity,' have never been David Brody's signature. What always has been is his bloodless eye for the limits and rationality of American trade unionism, the logic of its adjustment to a given economic environment, the density and disabling caution of its institutional rules, and the great seriousness with which it takes itself—despite or perhaps because of its fantastic weakness before American capital. Brody's view of American labor is informed, skeptical, materialist, and institutional,¹ a combination that has made his voice formidable and respected, and perennially just shy of fashionable, throughout his distinguished career.

Brody has long defended New Deal labor law and the CIO's nationalized 'workplace contractualism' against the argument that they foreclosed superior alternatives available to liberal policymakers or labor itself—a view once at odds with much of the next generation of labor historians. Without changing that view here, he considers its grim irrelevance in a world in which labor seems to be vanishing altogether as a public presence. He begins this collection of essays by registering both dismay and puzzlement 'at the subversion of a great New Deal law . . . intended to liberate workers . . . into a law that oppresses them' (p. vi), and ends it with a chapter 'trying to tell the labor movement what to do' (p. 138) to escape the grasp of the politics that law helped set in place. But these bookend observations are less an invitation to a sparkling seminar on strategy than a mournful wake. They reflect Brody's stunned sadness at the 'calamity—decent jobs disappearing, income disparities widening, and diminishing collective power—that has in recent years overtaken the working people and institutions whose past I have long studied' (p. viii).

Brody takes the current crisis of American labor to be greater than anything since the Great Depression, but with labor today even less equipped than then to solve it on its own. Even before the recent split in the AFL-CIO, he found 'the labor movement in shambles' (p. 13). He looks for a new Roosevelt (maybe, he briefly speculates in a 1993 essay reprinted here, Bill Clinton?), to again bring off that 'rarest of conjunctions in American labor politics'—the identification of labor with the achievement of 'unimpeachable national goals' and the creation of an environment 'at once sympathetic to labor's cause . . . yet not tainted by [its] special-interest politics' (p. 26)—and does not find one. Worse still, and clear only from his silence, Brody is not confident that the case for labor advancing 'unimpeachable national goals' can even be made today. Our current politics simply does not recognize a problem for which labor is part of the solution.

Most of the essays collected here (all edited reprints of things already published, one as long as 40 years ago), bear on just how the 'subversion of a great New Deal law' took place. This is the most important contribution of this volume, made in a series of essays on the origins and immediate politics of that law. But in truth—and an immediate curiosity of the collection, given Brody's announced puzzlement at its beginning—he finds very little to subvert. As Brody tells the story, the New Deal

never enshrined solidarity as a protected value. It always understood worker organization as a product of individual and not collective choice. It subordinated the protection of such choice to policy goals, with no real penalties for its curtailment. And it steered that choice toward a state-supervised election process that hostile employers quickly learned to dominate (immediately through coercive speech; eventually through balder sorts of coercion), while effectively narrowing worker options on representation to a zero-or-one choice between exclusive representation in collective bargaining or nothing.

This last, indeed, was well along even before the NLRA was passed. Brody's story on this is that Senator Wagner, the head of the NRA's labor board, was at pains in its governance to carve out a form of protected worker representation that would be distinct from the company unions that employers formed in response to its Section 7(a). The easiest way to do this was to say not what such representation would do so much as how it would be chosen, which led almost naturally to specifying an election process. And while Wagner himself never saw elections privileging a particular sort of representation, the NLRA he authored effectively did. Elevating elections, and leaving their administration and purpose to the state, invited employer dominance.

The irony is that the reason for this NLRB-administered system evaporated once the law was enacted because the company unionism that had called it forth simultaneously became illegal. Section 82—8a(2) under Taft–Hartley—defined company domination of labor organizations so stringently that workplace representation in any form not stemming from collective bargaining was—and still is—effectively proscribed. Too late. The die was cast. The associational rights of workers—'this freedom of self-organization'—had fused with a specific state-mandated process for determining and certifying bargaining agents. (p. 102)

No great surprise then that, after their 1930s growth spurt (largely outside the NLRA) and World War II consolidation, private sector unions stopped growing outside the sectors they claimed by its end (manufacturing, regulated industries, mining, meatpacking, and construction). No surprise that when employers later moved aggressively against them in those industries, particularly since the early 1970s, the law proved an exceptionally feeble ally for labor. And no surprise either that unions, which were at least secondary authors of the postwar system, and heavily invested in its institutional routines, found it difficult to adjust to the many adverse economic and political changes that have since rocked their world: deregulation, industry deconcentration, internationalization, financialization, merger mania, devolution, the rise of a thoroughly modern right, and lately, the collapse of their great twentieth-century creation in the US, an employer-based welfare state.

Which brings us quickly (it's a short volume) to the present, and Brody's recommendations to labor. These, by quick process of elimination, reduce to one. What is really needed, Brody says, is 'A Labor Law for the Twenty-first Century.' This would be a comprehensive reform of the New Deal labor system, amending its 'key features—the certification structure, employee definitions, and mandatory bargaining issues' and leading, 'ultimately, to labor's liberation from the representation

election' (p. 155). But he offers no more words than these on the content of such a new labor code, and takes labor to be too feeble to attempt this effort now. So this suggestion is rejected as soon as it is offered. Another possibility is action in the states. But, with apparent reluctance and no discussion, he assumes that the usual advice of labor lawyers is right, and 'any state action touching preemption is ill-advised because only adverse decisions are to be anticipated' (p. 155). So that's out too.

His one remaining suggestion is that labor should mount a broad popular campaign for its 'right to organize,' understood 'in the specific sense of the individual rights of workers to associate' (p. 155). This, says Brody, has always been the only real basis of American consensus on labor's rights, going back to *Commonwealth v. Hunt* (1842), and '[t]hat consensus still exists' (p. 143). Perhaps, by concentrating narrowly on its reaffirmance, we can ignite popular support for the New Deal's basic declaration about worker freedom, and revulsion at employers' routine violation of it. The principle is simple enough. As Roosevelt expressed it, 'workers ought to be free to choose any representative they wanted, whether it be an individual, a union, the Royal Geographic Society, or the Akhoond of Swat' (p. 26). It's about freedom, stupid. Not 'contracts-R-us' unionism.

On Brody's view, this right to free association should indeed be a right, requiring no justification for its assertion and being in no way subordinate to policy goals. It should be enforceable, with stiff penalties to deter its violation by employers. It should indeed be individual, bring worker rights into line with other civil rights, and more understandable in America's liberal culture. And its rescue from the muck of labor law should not concern itself with that surround. Indeed, '[t]actually the crucial thing is to avoid making the right to organize part of an omnibus reform' (p. 155). Brody wants this fight to be clean.

And here his discussion ends.

So what are we to make of *Labor Embattled*?

Working backwards from its end, I think the suggestion of a mass education and organizing campaign to frame labor rights as civil rights, beginning with worker rights of free association, is a fine one. I have made it myself, as have countless others, and there is already a major union- and civil-rights-backed group, not mentioned by Brody, that takes this as its central mission: American Rights at Work (<<http://www.americanrightsatwork.org/>>). As evident from that group's history, however, Brody should know that keeping this fight 'clean' is difficult. Labor still concerts more readily around attempts to repair the hated election process, with victorious elections understood to lead to traditional collective bargaining, than it does around asserting a right of free association with an institutional *tabula rasa* on its use. Labor law reform now concentrates, as it has in the past, on just such repair. The current reform vehicle is the Employee Free Choice Act (EFCA) (which Brody does mention, on p. 156). This combines card check certification with penalties and injunctive relief on employer misconduct, and arbitration on first contracts. The EFCA is going nowhere in a Republican-controlled Congress, and even in a Democratic one it would be certain of veto by Bush. Employers have not yet taken it seriously enough

to mobilize against it. Whether it could, sometime in the future, succeed with a Democratic president and Congress is anyone's guess. But it certainly doesn't aim at a wide open discussion of what's wrong with the New Deal system, or propose its radical reform.

I'm also skeptical about Brody's implied claims about the importance of the law. I agree it makes a difference, and that US law is notably hostile to class solidarity. But I also see its effects working largely through the structural divisions within the labor movement, the peculiarities of labor's concentration in a limited number of industrial sectors, labor's limited political ambitions, and such 'cultural' factors as racism and sexism. For example, it wasn't the law per se that led unions in the postwar period to invest so little in organizing, but the fact that they felt secure in their core industries. As George Meany observed as late as the early 1970s, 'Frankly I used to worry about the membership, about the size of the membership. But quite a few years ago, I just stopped worrying about it, because to me it doesn't make any difference.'² It did not because apolitical unions have little incentive to increase membership per se, but only density, and in that core their density was fine. Equally, it wasn't the law that kept them from organizing women clerical workers, or the south, but disdain for women workers and blacks. And, indeed, it wasn't even the law that compelled their monomaniacal attention to elections and majority representation, but a lack of interest in developing membership outside collective bargaining.³ Until recently, unions did not believe that such members could be serviced, and saw little use for them.

More generally, I applaud Brody's effort to be helpful. In fact, though it may reveal less respect for the 'pastness of the past'⁴ that he is concerned to honor, I take what he calls 'applied labor history' (p. viii)—not defined here precisely, but amounting to searching labor's past for something of use to its present—to be self-evidently good. Of course we should rummage in the past (and anywhere else) for anything that might help us now. I wish more labor historians did this, though I know too that it's hardly their responsibility alone.⁵ But, this said, I find *Labor Embattled's* contribution to present thinking about labor strategy to be slight.

Part of the problem, as Marcel van der Linden complains at length, is that it is so parochial. It seems neither informed nor concerned about the importance, in understanding American labor's present predicament, of the global crisis of social democracy, not just the pathological form that takes in the United States. It ignores the large comparative scholarship on the varied national expressions of this crisis, why it has affected some labor movements more than others, and labor's varied strategies of response. It shows no interest in American labor learning from the experience of these other labor movements, or other sorts of democratic mobilization in the world. It doesn't consider the terms under which American labor might cooperate with these other movements, or why such cooperation would be helpful to its own life. It says nothing about how the US international role in military and economic affairs bears on labor's domestic welfare. It fails even to speculate on how US decline or international resistance to that role might open space for a more

benign US domestic politics. In ignoring most of the world, Brody plays here with a very limited set of tools.

But it gets worse. As suggested both by van der Linden and Judith Stein, *Labor Embattled* misses much action in the US itself. Well before the AFL-CIO split that postdated these essays, there was a huge amount of discussion within labor about the need for fundamental change in its strategy—the need to slash its own bureaucracy and make long-term, scaled commitments to organizing; to move outside the ‘three yards and a cloud of dust’ process of NLRB election certification; to change its goal in organizing from 50+ percent of members in limited units to a general presence in the economy; to move its focus outside collective bargaining to assert more control over the supply-side of the economy; to make better use of its financial assets in competing for that role; to ease the requirements of union membership and affiliation; to invest more in its regional bodies, particularly metropolitan central labor councils; to improve its political game in the states. Brody is silent on all of this. Nor does he take stock of labor’s attempts to implement many of these suggestions: its nearly wholesale, no longer retail, move away from traditional NLRB election organizing,⁶ its more community-based strategies of recruitment, its willingness to change the terms of union affiliation and membership (‘minority unionism,’ ‘open source unionism,’ Working America, etc.), its renewed investment in political action (regrettably, almost entirely still at the national level), its more intentional use of pension savings, its many efforts (again, usually in alliance with community or other progressive forces outside labor) to impose new standards on economic development, its declared commitment to high-road (high-wage, low-waste, democratically accountable) governance of the economy (not just firms within it), its much greater mobilization around public determination of the ‘terms and conditions’ of employment (e.g. campaigns for government-mandated wage increases, health insurance, etc.), its more deliberate use of state political power in organizing sectors touched by public dollars, etc. Nor, beyond saying that labor is in a shambles, does he discuss the divisions and institutional barriers within labor, or the left more generally, that have slowed this and other promising work. Such attention to institutional detail, and the difficult circumstances of advancing labor struggle, is exactly what one would have hoped from Brody, based on his past work. Here it is not supplied. For all its talk of the need for engagement, this is simply not a very engaged work.

Maybe the biggest lacuna in *Labor Embattled* is any positive vision for labor. I quite agree with Brody that unless labor is seen as part of the solution to social problems, it is dead. I disagree with his apparent pessimism about labor finding that role.

To be sure, doing so will almost certainly require labor taking a form quite different from its present one. It will not fit Selig Perlman’s view, which Brody accepts, of what American labor has always been about. It will of necessity be more political, and less exclusive in leadership. It will be more attentive to questions of production, not just redistribution. It will be less concerned with job control than the social control of the economy and the need to defend society and nature against the destruction of a predatory capitalism. Its power will be defined less exclusively by firm or sector, and more by geography. It will devote itself to raising living standards

through consumption efficiencies, not just production ones. It will take social reproduction seriously, and value citizenship along with productivity. Its characteristic bargaining with capital will be less over individual wages and benefits, and more over growing value and reducing waste (and capturing a fair share of the benefits of doing both) in an expanding set of democratic places—most plausibly, at least in the US, beginning with the great metropolitan regions. The terms of that bargaining will not be labor's surrender of control over production for a share in its output, but labor's provision of the collective goods needed to meet, profitably, the higher social standards by which it insists that capital abide. Finally, and perhaps obviously, the agent of this politics will be less found than made. It will have to be constructed discursively and explicitly, with a practice informed by the democratic commitments that ground it, and new organizational forms capable of attracting and consolidating the diverse population this politics would serve. The real agent here will be less the working class per se (whatever that is) than something like 'the democratic public'—all those (the working class certainly squarely among them) with an interest in the autonomy and mutual respect that are the foundation of democratic politics, and in the protection of social life and nature from the wreckage inflicted on them by unregulated market forces.

But all this, I think, is doable. Given the number of people now at risk of finding their lives and their social relations disrupted by 'market forces,' I am sanguine about finding a subject for this politics. Indeed, much of it is already happening—though clearly without the clarity of purpose, and scale, required. I see nothing in internationalization—to briefly note the current bugbear of the left—to defeat its basic economic assumptions. I don't think that place is irrelevant to the operation of modern economies, and do think that public power within them can still be used to good ends. Nor do I think that all constraints on capital are a cost to it. And even under the worst imaginable conditions, in which capital responds instantaneously to any expected change in the rate of profit, it cheers me that while under such conditions no place could lower that rate, equally none could raise it. So any improvement in social organization, any increase in the productivity of places, would go directly to the immobile workers who call that place home. Finally, I think it possible to make peace between the working classes of the rich North and those of the impoverished South on these broad terms. We should both insist against the International Monetary Fund (IMF) and World Trade Organization (WTO) that our goal in globalization is universalizing conditions for sustainable human development, with mutual national autonomy in pursuing it, and move international expenditures from economic and military bullying to global public goods (e.g. per-capita-based carbon cap and trade regimes for global warming, and better international health institutions) in support of it. Trade and market access are secondary to this goal. That's a deal that the poorer countries of the world would welcome, and that the rich countries' working classes, if not their capitalists, would be happy to offer.

For all these reasons, then, I think there are grounds for reasonable hope. There's a growing consensus on the undesirability of our current path. There is at least some motion toward a plausible and superior alternative. There is congruence between that

alternative pursued nationally, and a new international structure to permit its pursuit everywhere. And there's a clear role for labor, albeit probably a transformed labor, in helping to author this more cosmopolitan, but decidedly practical, politics.

Of course, the challenges to reaching this politics are enormous. For all I know, they will never be met. Or maybe, sometime well before labor gets its act together, we'll all be terminated by global warming, mutating pandemics, nuclear terrorism, or some other disaster. But in the meantime I'm very far from the dark place to which Brody seems to have wandered. These are indeed hard times. But they are also alive with possibility, and have more than their fair share of means, including vast numbers of people of conviction as well as interest already in motion, to get to a much better place. If this place now seems a fantasy, or cloaked in darkness, or out of focus, or just beyond our grasp, that should neither discourage nor surprise. There's still some history we haven't made yet.

Notes

- [1] Representative is Brody's classic 'The Emergence of Mass-Production Unionism.'
- [2] Meany interview, *US News & World Report*, 21 February 1972, 28.
- [3] See Summers, 'Unions without Majority;' Freeman and Rogers, 'A Proposal to American Labor;' 'Open Source Unionism;' Morris, *The Blue Eagle in Court*.
- [4] Brody, quoting Richard Hofstadter, on p. vii.
- [5] Harry Truman, to whom the American left seldom looks for wisdom, was famous for saying that 'the only thing that's new is some history you haven't learned yet.' Particularly in the present period, when old institutions are falling apart and new ones wait to be created, a better knowledge of what's been tried before and cast aside, for good reasons and bad, would do the American left much good. End of platitude.
- [6] Good data are very hard to find on this, but the best estimates I know of, from the AFL-CIO and organizing staff at the lead organizing unions, are that somewhere between two-thirds and three-quarters of new certifications come from card check or other 'non-vote' organizing. For some evidence on the scope and speculations on the meaning of this within labor, see Brudney, 'Neutrality Agreements and Card Check Recognition.' For the small share of labor's claimed ~200,000 new private sector members annually, see Bureau of National Affairs, 'Number of NLRB Elections.'

References

- Brody, David. 'The Emergence of Mass-Production Unionism.' In *Workers in Industrial America*, by David Brody. New York: Oxford University Press, 1980.
- Brudney, James. 'Neutrality Agreements and Card Check Recognition: Prospects for Changing Paradigms.' *Iowa Law Review* 90 (2005): 819–96.
- Bureau of National Affairs. 'Number of NLRB Elections, Win Rate by Labor Unions: Both Decreased in 2005.' *Daily Labor Report*, 26 April 2006, C1.
- Freeman, Richard B., and Joel Rogers. 'Open Source Unionism.' *Working USA* 5 (Spring 2002): 8–40.
- and ———. 'A Proposal to American Labor.' *The Nation*, 24 June 2002, 18–24.

Morris, Charles. *The Blue Eagle in Court: Reclaiming Democratic Rights in the American Workplace*. Ithaca, N.Y.: Cornell University/ILR Press, 2004.

Summers, Clyde. 'Unions without Majority: A Black Hole?' *Chicago Kent Law Review* 66 (1990): 531–48.

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What Is the Problem? And How Can We Be Part of Its Solution?¹

Union penetration within the labor force in the United States has fallen from 33 percent in 1965 to less than 13 percent in 2004. Nearly three-fourths of the remaining labor union members work in the public service sector, meaning, in effect, that the private manufacturing and service sectors have become almost completely non-union. With justification, this development is sometimes viewed outside US borders as the 'American nightmare.' David Brody argues in *Labor Embattled* that labor historians can and must contribute to overcoming this crisis. This is an attractive argument and I wholeheartedly support it. But I also believe that Brody's analysis of the problems is quite inadequate, as is the solution that he proposes. The most important reason for this is that he only tackles one small part of the issue and, in so doing, loses sight of how things fit together in the larger context.

As I read *Labor Embattled*, I was immediately struck by his extraordinarily limited geographic perspective. For Brody, everything revolves around the United States. The rest of the world—the other 94 percent of the world's population—is mainly, though not exclusively, dealt with as a 'problem': Mexican industrial relations 'threaten basic premises about American trade unionism' (p. 23), Germany and Japan are here more and there less successful competitors (p. 98). Efforts to develop a broader view are almost completely absent. The immediate consequence of this tunnel vision is that the full scope of the difficulties within the US labor movement cannot be assessed. To illustrate this point it may be useful to look at how union density rates in other advanced capitalist countries are developing. In Table 1 two things are especially obvious. One is that it is clear that the problems in the US are not unique; the labor movement is experiencing difficult times in many advanced capitalist countries. Secondly, it seems that nonetheless the problems in the US are more severe than in most other countries.

Both of these observations suggest an approach whereby, on the one hand, similarities are explored among various countries, and, on the hand, the differences are also examined. Or to put it another way: the 'American nightmare' probably has both more general causes that are also factors in other countries as well as causes

Table 1 Net Union Density Rates in Some Advanced Capitalist Countries

	1980	2004
Australia	46	25
Austria	51	37
Belgium	57	56
Canada	33	28
France	17	10
Germany	34	25
Italy	44	35
Japan	30	22
The Netherlands	32	23
Norway	54	54
Sweden	78	81
United Kingdom	49	31
United States	20	13

Sources: For 1980: Golden et al., 'Union Centralization among Advanced Industrial Societies;' for 2004: Organization for Economic Cooperation and Development (OECD).

specific to the United States. Brody neglects the first aspect and therefore overestimates the second. It is natural to assume that the supranational downward trend is associated with the current 'globalization' of world capitalism that has resulted in a shift in the power relationships between workers and employers to the benefit of employers. Almost everywhere, since the 1970s, 'employers attacked unions, in some instances—most notably the US—profoundly crippling them. Almost everywhere, they also assaulted bastions of workers' strength on the shop floor, seeking to revise traditional work rules and speed up production. To reduce indirect labour costs, as well as to soften up labour resistance, governments across the advanced capitalist world launched severe austerity drives—tight credit to drive up unemployment and reduced social services to weaken workers' safety net.'²

That this worldwide offensive was more successful in some countries than in others, and that the consequences differed per case, can best be attributed to differences in institutional relationships. The scholarly literature mentions, among other important factors, the Ghent system for the distribution of welfare benefits (which can perhaps explain the relative stability of Scandinavia and Belgium); representation in the workplace; employer recognition of the unions in nationwide and/or sectoral corporatist institutions; and closed-shop rules that require union membership.³

The experts do not appear to be in total agreement about which institutional arrangements are of particular importance for the United States.⁴ But I do find it plausible to argue, as Brody does repeatedly, that *one* important factor has been US labor law. I am convinced by his argument that the inherent weaknesses of the National Labor Relations Act of 1935 have undermined its effectiveness and that it is

now urgently in need of revision because 'alternative forms of workplace representation' are severely impeded by the Act (pp. 58, 96).

In any case, the problems faced by the US labor movement cannot, in all probability, be explained *only* by internal developments, and certainly not only as a result of the specific character of labor legislation. The emergence of the Newly Industrialized Nations and their lower wage structures, the global politics of 'flexibility,' and countless other factors must also be incorporated into the analysis.

Unlike many other labor historians, Brody is willing to use his knowledge of the past to engage with today's strategic problems: 'I make no bones about it. In these essays I am trying to tell the labor movement what to do' (p. 138). This is courageous, and it would be good if others would follow his example. But we should, of course, also be conscious of the fact that a 'single' history does not exist, and that each lesson we draw from history is by definition temporary and subject to revision. We should not, therefore, be too quick to assert certainty. The chance is great that we are hampered by implicit judgments of which we ourselves are not conscious. I'm afraid that this is also true for Brody.

There are, to begin with, significant silences. Why doesn't he say anything about the internal power relationships in the union movement? Why is he silent about the distance between the professional union leaders and the rank and file? Why does he have nothing to say about the movements for union democracy, such as the UAW New Directions, and associated organizations such as the Black Workers for Justice? Why doesn't he study the advantages and disadvantages of new types of organizing campaigns, such as Justice for Janitors?

Secondly, Brody is operating with hidden assumptions—assumptions that seem to him obvious and about which he no longer feels a need to reflect. One of these assumptions is what Adolf Sturmthal long ago described as 'a naïve belief in the universal applicability of some form of collective bargaining.'⁵ Collective bargaining is very definitely not the only method by which unions can defend the interests of employees, in particular the interests of casual workers and workers in the informal sector. Why doesn't Brody investigate these alternatives, such as mutual aid funds and cooperatives, for example?⁶

Thirdly, Brody excludes interpretations that he has not actually studied on their own merits. For example, Brody dismisses in less than one page Staughton Lynd's call for 'a shift of labor's orientation to community based organizing' (p. 21) with the observation that the local union movements of the 1930s 'never believed they could survive on that basis. They saw the logic of national structures' (p. 21).⁷ That may be correct, but in such an offhand manner should it really be claimed that everything about this topic has been said? Haven't there been numerous examples in the US over the past 20 years of successful local labor union campaigns supported by various community organizations, churches, etc.? And isn't there anything important to learn from these examples, applicable as well to national and international structures?⁸

Fourthly, the 'alternative forms of representation' which Brody calls for are not treated adequately. Just what does he hope for? What are the criteria he uses to determine what form of employee organization is better than another? It is asserted

that company unions—Employee Representation Plans, that is—‘are an attempt to provide “voice” to at least a portion of the workforce *with no leverage to back up that voice*.’⁹ What is Brody’s view of this? Does he consider it to be a problem if unions are given shared responsibility for management policies or does he see that as being the lesser evil? *Labor Embattled* offers no answers to any of these questions.

Finally, there is, to return to my opening remarks, the lack of any discussion about transnational relationships. Recently, the *New York Times* reported that ‘Even as it lays off up to 13,000 workers in Europe and the US, IBM plans to increase its payroll in India this year by more than 14,000 workers.’¹⁰ How should a labor historian view this development? We know from the past that unions usually react in one of two ways (or sometimes a combination of both): either they opt for a protectionist solution, by lobbying, for example, for a law to ban the export of jobs, or they opt for an internationalist solution, and help foreign workers to organize, so that, eventually, a level playing field is created. David Brody offers us no insights into which option is preferred or why.

Labor historians do indeed have much to offer regarding the debate about the future of the labor movement in the United States and elsewhere. And in that process, they would be well advised, as Brody correctly states, to integrate institutional and social–cultural approaches. But it is at least as important that they not only take into consideration the national (legal) operating space of the organizations, but that they also look at other social movements and beyond national borders.

Notes

- [1] I wish to thank David Montgomery for his critical reading of this comment.
- [2] Brenner, ‘Economics of Global Turbulence,’ 139.
- [3] See, for example, Ebbinghaus and Visser, ‘When Institutions Matter;’ Wallerstein and Western, ‘Unions in Decline?’ On the relationship between globalization, union density, and strike propensity see e.g. Piazza, ‘Globalizing Quiescence.’
- [4] See, for example, Clawson and Clawson, ‘What Has Happened to the US Labor Movement?’ Bennett and Kaufman, *The Future of Private Sector Unionism in the United States*.
- [5] Sturmthal, ‘Industrial Relations Strategies,’ 5.
- [6] See, for example, *Trade Unions in the Informal Sector*.
- [7] Lynd’s appeal appears in Lynd, ‘*We Are All Leaders*’.
- [8] It would have been interesting to have had Brody’s views on, for example, Clawson’s *The Next Upsurge*.
- [9] Nissen, ‘Remarkable Rehabilitation of Company Unionism,’ 67.
- [10] Lohr, ‘Cutting Here, but Hiring over There.’

References

- Bennett, James T., and Bruce E. Kaufman, eds. *The Future of Private Sector Unionism in the United States*. Armonk, N.Y.: M.E. Sharpe, 2002.
- Brenner, Robert. ‘The Economics of Global Turbulence.’ *New Left Review* 229 (May–June 1998).

- Clawson, Dan. *The Next Upsurge. Labor and the New Social Movements*. Ithaca, N.Y.: ILR Press, 2003.
- Clawson, Dan, and Mary Ann Clawson. 'What Has Happened to the US Labor Movement? Union Decline and Renewal.' *Annual Review of Sociology* 25 (1999): 95–119.
- Ebbinghaus, Bernard, and Jelle Visser. 'When Institutions Matter. Union Growth and Decline in Western Europe, 1950–1995.' *European Sociological Review* 15, no. 2 (1999): 135–58.
- Golden, Miriam, Peter Lange, and Michael Wallerstein. 'Union Centralization among Advanced Industrial Societies: An Empirical Study.' Dataset available at <<http://www.shelley.polisci.ucla.edu/data>>, dated 28 July 2004.
- Lohr, Steve. 'Cutting Here, but Hiring over There.' *New York Times*, 24 June 2005.
- Lynd, Staughton, ed. *We Are All Leaders'. The Alternative Unionism of the Early 1930s*. Urbana: University of Illinois Press, 1996.
- Nissen, Bruce. 'The Remarkable Rehabilitation of Company Unionism in Recent Industrial Relations Literature.' *Critical Sociology* 25, no. 1 (1999): 59–79.
- Piazza, James A. 'Globalizing Quiescence. Globalization, Union Density and Strikes in 15 Industrialized Countries.' *Economic and Industrial Democracy* 26, no. 2 (2005): 289–314.
- Sturmthal, Adolf. 'Industrial Relations Strategies.' In *The International Labor Movement in Transition*, edited by Adolf Sturmthal and James G. Scoville. Urbana: University of Illinois Press, 1973.
- Trade Unions in the Informal Sector. Nine Country Papers*. Geneva: International Labour Office, 1999.
- Wallerstein, Michael, and Bruce Western. 'Unions in Decline? What Has Changed and Why.' *Annual Review of Political Science* 3 (2000): 355–77.

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Studying Labor's Decline

A leading figure in the new labor history, David Brody has always blazed his own path. More than any of his peers, Brody has worked the paths laid down by the old labor history. David Montgomery's first book, *Beyond Equality* (1967), told of the labor movement as a political movement in alliance with bourgeois radicals, and his second book, *Workers' Control in America* (1976), told of rank-and-file insurgents and the power of workers on the shop floor. The labor history published by Herb Gutman, *Work, Culture, and Society*, described popular protest and the attitudes of common workers. By contrast, David Brody's first two books, *Steelworkers in America: The Nonunion Era* (1960) and *The Butcher Workmen* (1964) recount a relatively traditional story, the rise of unions and the transformation of working-class institutions. Without ever losing sight of the workers themselves, including both those inside and those outside the union movement, David Brody has always focused on the institutions of the labor movement.

Like his Wisconsin predecessors, John R. Commons, Selig Perlman, and John Dunlop, Brody approached the growth of the American union movement as

something important and worthy of study, but much of his focus and method would have surprised the older institutionalists. Whether 'old' or 'new,' most labor historians have focused on sources of militancy: material grievances, activists, the spread of radical ideas. Without neglecting these, Brody has studied the barriers to union growth and the obstacles to successful labor militancy. In his first book, for example, Brody approached the rise of the CIO and the United Steel Workers of America by studying the 'nonunion era.' Rather than focusing on grievances or militancy, he began with three chapters on the 'sources of stability' and addressed seriously the attitudes and achievements of steel company managers. Later works reflect a continued interest in the barriers to union growth, including studies of the failed steel strike of 1919, and a provocative essay on the welfare capitalism of the 1920s.

Nowadays, Brody's earlier methodological innovations appear prescient. Born in 1930, David Brody reached maturity about the time when the share of American workers belonging to unions peaked. From there, his adult life has been spent with the American labor movement in almost continuous decline. Brody's research background, studying the 'sources of stability' and resistance to labor organization, may have prepared him to analyze labor's decline, and perhaps to chart a path forward. In *Labor Embattled* he builds on earlier insights to try to discern a path forward for a labor movement whose limits he has long understood. This is a work of passionate commitment. Writing with a sense of urgency, Brody sets out to describe the 'calamity...that in recent years has overtaken the working people and institutions whose past I have long studied' (p. viii). But Brody seeks to do more than describe a calamity; seeking a 'usable past,' he looks for a historically informed path out for labor, a path to union revival.

A prescriptive history, Brody's diagnosis of labor's ills informs his policy recommendations. Working within the long tradition of 'American exceptionalism,' Brody relates union decline in the US to circumstances unique to the US, and therefore explicable by reference to conditions and events unique to the US. There, he focuses on the abuse of labor law, notably the National Labor Relations Act. Working from this diagnosis, Brody concludes by advising labor's friends to campaign for labor law reform, 'A Labor Law for the Twenty-first Century' that would protect the right to organize as a fundamental civil right, the right to self-organization and free association.

Labor's Decline in an Unexceptional America

I was a graduate student in the early 1980s when Richard Freeman and James Medoff were writing their study of the American labor movement, *What Do Unions Do?* At Harvard at that time, it was an accepted maxim that union decline was unique to the US and, therefore, could be explained by conditions specific to the US. At that time there was some truth to this. The share of workers belonging to unions peaked in the US in 1956 but it continued to increase for another 20 years in other advanced capitalist economies except France and Switzerland. Yet while American unions

began declining before those in most other countries, decline has since spread to them all. Through the 1970s, unions in most advanced capitalist countries grew rapidly, raising total membership in all 16 to over 90 million members by 1978. But change was already underway in 1984 when Freeman and Medoff published their study attributing union decline in the US to employer repression and labor law. Union decline had already spread. Unionization rates peaked in two countries in 1975 (Australia and Japan) and in two more in 1977 (Canada and the Netherlands). Then the bottom fell out. Total membership declined by nearly 6 million between 1980 and 1987. A majority of workers in the United Kingdom belonged to unions in the peak year of 1979; from there the unionization rate dropped nearly in half by the late 1990s. By 1996, the unionization rate had passed its peak level everywhere with declines even in Scandinavian strongholds. At their peak, unions in these 16 countries enrolled a third of the labor force. By 1995, the unionization rate had fallen to under 25%, the lowest rate since World War II. By the late-1990s, the unionization rate, or the share of the labor force belonging to unions, had fallen in many countries to less than 70% of the peak rate from the 1970s or early 1980s (see Table 2). Since the beginnings of the modern labor movement in the 1880s, there has been no period of comparable sustained decline.

Sustained international union decline raises questions about an exceptionalist focus on conditions specific to the US. This does not mean that Brody (or Freeman and Medoff) are wrong to emphasize employer resistance and the abuse of labor law in explaining union decline in the US. It does, however, suggest that the conditions causing union decline in the US may reflect processes common to a variety of capitalist economies rather than events or personalities specific to the US. Rather than focusing on the particularities of the US, perhaps we should look at conditions common to all advanced capitalist economies.

The Wagner Act

Brody directs his fire at the failure of government to maintain labor laws intended to protect unions. The 'stated purpose and original effect' of the Wagner Act of 1935, he notes, 'was to encourage collective bargaining.' But instead, the law 'has been hijacked by its natural enemies' so that it 'serves today as a bulwark of the "union-free environment" that describes nine-tenths of our private-sector economy' (p. 149).

Much of *Labor Embattled* is devoted to explaining how American labor law 'has been hijacked.' This is a useful analysis that could help inspire political action to restore labor law to its proper role of protecting the right to organize. But viewed from an international context, there is more to the story of union decline than the abuse of American labor law. Indeed, even before union membership began declining, labor militancy, as measured by strike activity and support for radical political movements, entered a steep decline throughout the world. Historically, unions have grown when demonstrations, social upheavals, and strikes have brought new workers into the collective movement and their involvement has been supported

Table 2 The Decline of the Post-1945 Labor Movement

Country	Socialist, labor, or Communist vote			Unionization rate			Quasi-striker rate		
	Peak			Peak			Peak		
	Level (%)	Year	End year value (%)	Level (%)	Year	End year value (%)	Level (%)	Year	End period average (%)
Australia	58.6	1972	38.6	46.1	1975	21.0	110.5	1976	29.0
Austria	52.0	1979	34.9	49.6	1988	40.1	167.4	1962	13.7
Canada	26.3	1965	8.5	32.7	1977	27.2	55.4	1976	6.3
Denmark	50.2	1979	43.1	85.9	1994	81.8	745.3	1985	82.0
France	56.2	1981	30.1	26.2	1946	8.9	90.3	1948	3.2
Germany	46.1	1972	46.0	37.3	1991	28.5	4.4	1984	1.6
Italy	47.4	1976	32.2	53.4	1995	53.2	202.3	1979	31.7
Japan	40.1	1967	20.6	23.4	1975	17.9	28.0	1948	0.2
The Netherlands	38.9	1946	32.5	34.2	1977	21.9	5.9	1946	1.9
Norway	52.6	1946	41.1	67.7	1996	67.0	12.3	1990	4.8
Sweden	54.7	1946	48.6	86.4	1994	82.7	53.9	1980	3.0
UK	48.9	1951	41.9	53.0	1979	30.5	49.4	1979	3.2
US	2.7	1948	2.7	26.4	1956	13.6	26.3	1946	0.9
Belgium	44.3	1946	22.4	70.0	1995	69.6	18.3	1947	1.2
Finland	49.2	1966	35.2	101.3	1993	94.6	103.8	1977	13.6
Switzerland	31.3	1947	24.5	33.1	1957	23.4	0.0	1946	0.0

Note: This gives the peak values of the socialist/labor/Communist vote share, the unionization rate (the share of the census labor force belonging to unions), and the quasi-striker rate (strikers in a year divided by the previous year's union membership).

Source: Friedman, *Reigniting the Labor Movement*.

by friendly state officials who have promoted unions as substitutes for more threatening forms of labor action. The Wagner Act, for example, was an effort by a liberal government to find a moderate, institutional substitute for rank-and-file militancy. The sharp decline in labor militancy reduces the power of strikes as mobilizing devices; and, just as important, state officials, including both conservatives and liberals, have shown less interest in promoting unions as substitutes for strife.

Rather than replacing Brody's exceptionalist argument, we need to expand it, to ask why throughout the capitalist world employers have been able to turn governments against unions. In my forthcoming book, *Reigniting the Labor Movement*, I argue that we will find the answer in the inherent contradiction between unions as instruments for social change and the role they have found for themselves within capitalism, where they maintain order and labor discipline by channeling rank-and-file protest into stable collective bargaining. Within capitalist societies, unions face a cruel, even an impossible dilemma. Unions, indeed the entire labor movement as a social project, are instruments to bring democracy and collective regulation to an authoritarian capitalist economy. But within capitalism, unions act as intermediaries between workers and employers, a place they are granted in exchange for restraining rank-and-file militancy by settling for concessions short of the full democratization of industry. To survive, unions must win advances for their members; but to preserve their place at the bargaining table they must maintain the tolerance of employers and state officials by persuading workers to accept gains compatible with labor discipline and capitalist authority. At the least, these policies undermine the militancy that leads employers and state officials to accept unions in the first place. Worse, walking this thin line between what the capitalists will tolerate and the minimum for which the workers will settle, unions risk discouraging the very collective spirit and idealistic enthusiasm that leads workers into unions in the first place.

Declining strike rates, therefore, are a natural product of the class compromise that led to established unions in liberal capitalist democracies. Unions were tolerated by employers and even encouraged by state officials because they restrained the rank and file. But this compromise with the established powers has distanced unions from their membership and alienated workers from their unions. And, by shutting down rank-and-file militancy, union moderation has undermined the real source of union power in the ability to mobilize the rank and file to disrupt capitalist order and, paradoxically, freed employers and state officials from the fear of militancy that had first led them to tolerate unions. Of course, unions did not need to follow the path of bureaucratic regulation. Some, like the Industrial Workers of the World in the US or some early twentieth-century revolutionary syndicalist unions in France, maintained a commitment to rank-and-file activism and revolutionary militancy; they paid a price in police and employer repression. The clear lesson has been that, to survive, unions must abandon any revolutionary or even militant aspirations.

But a policy of sustained moderation carries its own risks. On one side, union leaders risk an explosion of rank-and-file militancy that will undermine their credibility with management and state officials. By undermining the social contract

between the unions and the Labour government, such an explosion of rank-and-file militancy in Britain in 1979, the 'winter of discontent,' led to the election of Margaret Thatcher and the inauguration of a long period of antiunion rule. Perhaps even more dangerous has been the complacency promoted by the position unions took between labor and management. Busy managing their membership, unions forgot that there were inherent differences between workers and capitalists. But the capitalists remembered. They matched union complacency with a renewed search for ways to erode labor's power. Throughout the long period of social peace of the 1950s and 1960s, American employers in particular never stopped searching for new arguments and tools to undermine unions. Historians like Jefferson Cowie, Elizabeth Fones-Wolf, Michael Goldfield, and Kim Phillips-Fein, and legal scholars like Paul Weiler have shown how employers experimented with ideological arguments, political strategies, legal tactics, management techniques, and economic policies. When, in the late 1970s, employers struck back, they had a new panoply of weapons, including ideological programming, free trade, and new legal strategies. While employers have been most successful in the Anglo-Saxon world, American employers now set an example for their counterparts throughout the world.

Reigniting the Labor Movement?

Probably no labor historian knows as well as David Brody how important it is to study nonunion workplaces from all perspectives, those of employers, workers, and union activists, as well as in terms of both economic and cultural circumstances. That is what Brody did so well in his studies of the steel industry and of welfare capitalism in the 1920s. This broad time-sensitive perspective is what historians can bring to the problem of union decline and rebirth. Brody is certainly right that the defense of unions is the defense of fundamental civil liberties and the rights of working people. But we need to go further. The problem with unions in the labor accord period after World War II was that they forgot that the labor movement is about empowering common working people, bringing full social and economic citizenship to all. This fundamentally revolutionary demand is incompatible in the long-run with peaceful collective bargaining. Employers never forgot this; they never stepped away from the class struggle. It is odd that we need historians like David Brody to remind labor leaders that struggle has been, and remains, not only the vocation of unions, but the only path to union revival.

References

- Brody, David. *Steelworkers in America: The Nonunion Era*. Cambridge, Mass., 1960.
 ——. *The Butcher Workman, a Study of Unionization*. Cambridge, Mass., 1964.
 Friedman, Gerald. *Reigniting the Labor Movement*. London: Routledge, forthcoming.
 Gutman, Herbert. *Work, Culture and Society in Industrializing America: Essays in American Working-class and Social History*. New York, 1976.
 Montgomery, David. *Beyond Equality: Labor and the Radical Republicans, 1862–1872*. New York, 1967.

———. *Workers' Control in America: Studies in the History of Work, Technology, and Labor Struggles*. Cambridge, 1979.

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Response

Not many historians ever get the honor of a symposium like this one on a new book of theirs. Even for an old guy like me, it's a new experience and, as is the way with new experiences, more than usually challenging. *Labor History*, moreover, has cast its net widely, so there's a big array of views to contend with. Several of the commentators have done me a service by carefully explicating the substantive arguments my book makes. And, additionally, Judith Stein and Gerald Friedman try to place it in the broader context of labor historiography. So it might seem churlish to complain that I haven't been fully understood. That of course is a common, maybe even universal, authorial complaint. But in this case the effect is misleading or, in a couple of instances, outlandish readings of my book. So it falls to me, the author, to tell you, the reader, what my book is about.

For starters, there's less to it than the commentators let on. It's just a collection of articles, essays, and reviews, 156 pages in all. I don't offer any apologies for the individual pieces; I think they can all be read with profit and pleasure. But they never would have made a book had I not realized, as I proceeded, that the various items were all interlinked and sustained an argument I had made in 1993 (the first item in the book) that labor historians ought to have something helpful to say in a time of troubles. The main justification for the book—inasmuch as all but one item in it were, individually, already in print—was to demonstrate how labor historians might pursue that objective. There's nothing mysterious or after-the-fact about this. I state my aim explicitly, and structure the book accordingly, with that 1993 historiographical essay as my opening gambit. So it puzzles me that Judith Stein, although she begins with Gutman and Montgomery, has nothing to say about that essay, which tries to explain how their influence diverted the new labor history from the kind of intellectual service that had animated the old labor history.

Nor did any commentator take note of my own favorite, the essay somewhat grandly entitled 'World War I and Industrial Democracy; or, Why We Have No Works Councils in America.' It's my favorite because it exemplifies the intellectual payback for thinking about current problems. I would never have written it but for my (slight) involvement with the Dunlop Commission. What especially tickled me, as a historian, was the discovery that the answer I was seeking was embedded in a book I had written years earlier but hadn't, at the time, the wit to see. Just indulging my curiosity? Not quite. In the litany of labor's Section 7 rights, the most

taken-for-granted and in some ways most consequential is the right to ‘representatives of their own choosing.’ The exact origins of that pregnant phrase and how it shaped the labor law can be known by anyone who cares to read my World War I essay.

Where I came out—the glamorous side, so to speak, that grabbed everyone’s attention—has to be seen in relation to my entry point. I was looking for current questions—big questions—some part of which a historian, and only a historian, could answer. *Added value*, that’s what I was after, offered scrupulously, with no bullshit. When I got seriously into it, I fastened first on the debate over the Section 8a(2) prohibition against company-dominated labor organizations (and what this implied for workplace representation) and then, as unions began to rebel against it, the NLRB-supervised representation election. As far as I know, mine was the first article to historicize the representation election—to reveal where it came from, how it evolved, and why, on that basis, unions need not genuflect before it. I thought that was the end of it until, working on a different track, I suddenly saw how the corruption of the NLRA fitted into the larger history of American labor law. Eventually I felt confident enough of the implications that I wrote a couple of magazine pieces trying to tell the labor movement what to do (not, of course, that anyone listened).

It should be evident that this intellectual odyssey is inconsistent with any effort at developing a grand theory about labor’s crisis. I’m not claiming, as Judith Stein suggests, to have ‘found the destiny of the labor movement in the political–legal realm.’ What I came up with I hope will be of interest—it certainly interested me as I explored terrain mostly new to me—but to elevate my findings into a general theory of labor’s decline would require a more ambitious book than mine, one that among other things took account of the global forces that Gerald Friedman and others rightly point to. I can well understand why commentators might be tempted to read more into my book, so I’m grateful to Jim Cronin for resisting that temptation and writing an incisive commentary that treats my contribution for what it is.

He finds it ‘bittersweet,’ delivering a ‘very gloomy’ message. That’s a hazard I hadn’t considered, that mine would be construed as a scholarship of pessimism. Pessimism implies defeatism, and I’m not a defeatist. When LAWCHA solicited comments on the recent AFL-CIO split, I entitled mine ‘Keep Punching,’ because I favor anything that, like Change to Win, shows signs of fight in the labor movement. I’m not inclined to contest in this forum the super-sized charges that Joel Rogers levels against me, except to say that, if the question is whether I have faith in the future of the labor movement, the answer is, yes, I most certainly do. What seems more fitting, more likely to produce light than heat, is to consider Cronin’s reading of my findings on the labor law.

On the basis of recent British history, Cronin suggests that we not underrate the value of a collective bargaining law. American unionists don’t need reminding, and Cronin’s comparative analysis shows why. Both systems offer employers the option of voluntarily recognizing unions that claim to meet the representation criteria prescribed by the respective laws. British employers routinely take that option.

American employers? Not on your life. They have to be dragged kicking and screaming to the bargaining table. That's what the NLRA gave labor: it imposed the duty to bargain on employers whenever employees opted, by the demonstrated support of a majority, for union representation. Not even those who want to bypass the majority-rule provision think of abandoning that benefit. The heart of Charles Morris's recent book (cited in Rogers' bibliography) making an argument for a members-only strategy is his claim that the duty to bargain is inherent in labor's right to organize and engage in collective bargaining and that therefore employers would be obliged to recognize and deal with members-only unions.

The problem that the law presents (for which Morris's proposal is one highly dubious remedy) is that access to the majority status that imposes duty to bargain on employers has become ever more constricted and hazardous. If the channel is reduced exclusively to the NLRB election, as Republicans now propose, only a trickle of workers—under 50,000 a year at the moment—will find their way to collective bargaining. In my book, I work out how we arrived at this juncture, and it is, as Cronin suggests, a history that makes one groan. The AFL-CIO riposte has been to turn the Republican gambit on its head. It has introduced a bill (the Employee Free Choice Act) that eliminates the representation election (save for de-certifications) in favor of card check, provides for arbitration of first contracts, and enforces more robustly the right to organize. If it had shown the foresight to make these demands in 1978, or even 1993, the AFL-CIO might have succeeded. Today, it doesn't stand a chance in hell. If the bill ever gets seriously debated, this is what Republicans will say: What! You're against the secret ballot? You oppose democratic elections? You want to expose decent, hard-working Americans to the coercion of union bosses? I can't even bear to think about the hash an AFL-CIO spokesperson would make of these accusations on the *Lehrer NewsHour*.

Several commentators have remarked on the alternative I advance. Judith Stein finds it 'puny.' Joel Rogers thinks it slightly reactionary (and gets backward my position on preemption). Cronin is sympathetic and accurate, but somehow doesn't quite catch my meaning. So let me try again. It's not an accident that first among the Section 7 rights is the right to self-organization. The authors of the Wagner Act understood perfectly that the essence of a free labor movement is self-organization, and they made every effort, in a law aimed at promoting duty to bargain, to preserve self-organization. They were keenly aware of the tension between these objectives and, moreover, especially anxious about the representation election. No one seems ever to have noticed this inner history, but it's there all right, and fully laid out in my discussion. Labor's enemies, just as aware of this tension, capitalized on it, working with remarkable skill and tenacity to wring self-organization out of the law and reduce the act of organizing to casting a ballot. And that, thanks to half a century of inattention by the AFL-CIO, is where we stand today. So what's my objective? It's right there in the article's title: 'Rescuing Self-Organization.' It's also perfectly clear that the way back to self-organization is to light a fire under the right to organize. And the way to do that, I argue, is through the blue states, where organized labor still has clout and where, thanks

to the referendum, the issue can be taken directly to the people. What we want to do is raise the level of popular outrage at the scandal that an employer can fire workers for asserting their freedom of association and get away with it. Let me say it again: favoring the right to organize means valuing self-organization. Then that AFL-CIO spokesperson on the *NewsHour* will have a way of explaining why card check is better than NLRB elections. And we just might get the Employee Free Choice Act. Anyone got a better idea?

Ordinarily, I would turn at this point to the interesting issues raised by Stein's and Friedman's comments. Nothing would have given me greater pleasure. But respect for the line of work I follow obliges me to use my remaining space for a less happy task.

As the international representative on this panel, Dr. van der Linden admonishes me for neglecting the rest of the world. It does make me smile that he exclaims over the 'American nightmare'—is that really the going phrase in Amsterdam?—and then berates me for doing my bit to help. It might be a small bit, but, wouldn't you agree, Dr. van der Linden, better than nothing? I stand ready, in any case, to be instructed in how, beyond the comparative analysis already in my book, I might have cast my net more widely. It's difficult to sit still, however, when I all get are grand pronouncements and precious little engagement with the text.

Van der Linden chastises me for being an American parochial, with a deplorable tendency for treating other countries as just a 'problem' for the US, and offers, as an example, that I think 'Mexican industrial relations "threaten basic premises about American trade unionism".' This is how my full sentence reads: 'A Free Trade Agreement unaccompanied by at least the possibility of a true North American labor movement threatens basic premises about American trade unionism' (22–23). The sentence concludes an argument I was making, at the height of the North American Free Trade Agreement (NAFTA) debate in 1993, about the importance of strong labor protections in the Agreement (not fulfilled, alas). My contribution was to describe, in a couple of paragraphs, how and why US and Canadian unions had, uniquely in the industrialized world, fashioned a true transnational labor movement and to argue, on that basis, that with strong labor protections Mexico, Canada, and the US might aspire to a North American labor movement covering the entire NAFTA jurisdiction. So, with unerring aim, van der Linden has hit upon the one example that undermines his case that I am uninterested in transnational history.

An unfortunate slip? How about this one? Van der Linden reports me as believing that the labor law 'is now urgently in need of revision because "alternative forms of workplace representation" are severely impeded.' The sentence from which he lifts that phrase (58) suggests no such thing. It comes at the end of a sustained historical argument in which I work out how the Wagner Act came to the remarkable decision that all forms of workplace representation not created via collective bargaining be banned. In that essay I say that was the right outcome in 1935, and that it remains the right outcome today. Might I suggest why van der Linden has gotten me exactly wrong on a major concern of my book? From a European perspective, it's hard to credit the possibility that employers might be so relentlessly antiunion that the only

way to prevent them from establishing phony labor organizations is to prohibit yellow unions altogether, including even shop committees. Attentive reading of my account of Section 8a(2) would have made that utterly clear, but I suppose it does take attentive reading, and a certain curiosity about how American and European experiences might in fact be different. And then, to add insult to injury, van der Linden criticizes me for not being more explicit about what kinds of alternative forms of workplace representation I had in mind.

In another of his six admonitions, van der Linden complains that I exclude interpretations that I have ‘not actually studied on their own merits,’ like, for example, Lynd’s work on community organizing. In fact, I do know something about Lynd’s work. I was the interlocutor when he presented his paper at the NALH conference in 1992. I wrote a 20-page comment that probably remains the most complete critique of it in existence. Moreover, the resulting book of essays Lynd edited appeared in a series of which I was an editor and, if my memory is correct, I was the reviewer. My discussion of Lynd was brief, but proportionate to the other issues I was discussing in that preliminary 1994 essay, and by no means offered in an ‘offhand manner.’ Why would van der Linden think otherwise?

Finally, I cannot let pass his suggestion that, for me, collective bargaining is a ‘hidden assumption,’ a subject ‘about which [I] no longer [feel] a need to reflect.’ For Eric Arnesen’s new labor encyclopedia, I elected to contribute the entry on collective bargaining because I wanted to take a shot at historicizing it. The essay concludes with a discussion of the narrowing circle of contract-protected workers and ends on this note:

As for the 120 million others, inhabitants of a burgeoning service economy, a question arises about the relevance of a collective-bargaining system shaped by the nation’s industrial past. Among labor’s challenges—one sure to increase over time—is what kind of representation to offer to workers whose needs are not met by seniority, or work rules, or defined-benefit pensions, and perhaps cannot even be reduced to the terms of a union contract. The term ‘collective bargaining’ was coined in the 1890s. It might be that a new term will have to be coined, corresponding to an economic transformation just as sweeping as the industrial revolution that gave rise to collective bargaining over a century ago.

Of course, van der Linden could not have read my piece, but why would he assume that I take collective bargaining as an unexamined given? It’s an assumption consistent with every judgment of his that I’ve cited and carries the whiff of someone determined to be negative about my book. That’s his privilege. But next time he really ought to take great pains at getting his facts straight.

In van der Linden’s case, I at least have some notion of how he’s thinking. Joel Rogers simply flummoxes me. A lot of effort obviously went into his comments, and as a platform for hawking his own views, there’s something to be said for them. But as a response to my book, his comments are useless or, since he so distorts what I say, worse than useless. They put me in mind of the reading I got many years ago from the distinguished labor economist Philip Taft when my dissertation was being considered for publication. Taft said he couldn’t see the point of it, and he recommended that the

manuscript be rejected. It feels a bit eerie to be receiving, so late in the game, the same kind of reading from Professor Rogers. Of course, Rogers is nothing like Taft. Taft, bless his memory, was the ultimate empiricist. Rogers is a Big Thinker. And an Optimist! He doesn't like, he really doesn't like, my 'bloodless eye,' or the 'mournful wake' being performed in my essays, or my 'stunned sadness' at the situation facing American working people today. And that's only the first page.

So, naturally, I am curious to see what Rogers has to say about the kind of history I am trying to write in these essays. Child's play, he suggests. It's 'self-evidently good' that 'we should rummage in the past (and anywhere else) for anything that might help us now.' In a footnote, he offers a dumb quotation from Harry Truman, and the further thought that 'when old institutions are falling apart and new ones wait to be created, a better knowledge of what's been tried before and cast aside, for good reasons and bad, would do the American left much good.' Then he adds, in a neat little coda, 'End of platitude.' Anyone who could write such rubbish hasn't got a clue about the craft that historians practice. And that last little twist—the bit about platitudes—exemplifies the extra edge that Rogers brings to my work. Nothing new here, he suggests; we already know all this. That's the eerie part. It's the same tone that Taft adopted toward my book on the steelworkers.

Rogers' eye, as his title says, is on the 'history we haven't made yet.' So he's impatient with the history we've already made and, by extension, impatient with me, its messenger. That of course is at the root of our differences. But not entirely. I suggest that readers take a closer look at Rogers' 'vision' of labor's future (starting at fifth paragraph from the end). Any mention there of the issue of power in American employment relations? Or of labor's rights? It's all dressed up, but embedded in Rogers' discourse is an old story—that if labor behaved, if it was 'more attentive to questions of production, not just redistribution,' if it downplayed wages and benefits in favor of 'growing value and reducing waste,' then employers might change their minds about unions. My reading of the past utterly rejects that view, as it does the variant that touted the virtues of alternative forms of employee participation in the debate over Section 8a(2). Predictably, Rogers was in the crowd that favored lifting the ban on company-dominated labor organizations. Considering what came of their advocacy, I'm not surprised that his voluble commentary doesn't dwell on that stretch of my book, although Rogers had plenty to say at the time. I beg his pardon for raising these details. It must be my cramped vision acting up. As for Rogers' vision, achieving it, he assures us, is 'doable.' It's only a matter of summoning up 'the democratic public'—this in quotation marks even for Rogers—to take on the job. An inspiring prospect. Too bad it wasn't drawn by someone who grasped the nature of economic conflict in this country and placed labor's rights where they belong, at the center of that conflict. Then I might have been more confident that it wasn't just devil's dust I was being shown, but the real promise of a better day.

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Other symposiums on important employment relations topics are planned for future issues of the Employee Responsibilities and Rights Journal. If any of the journal's readers have suggestions for symposiums on specific topics or would like to write reviews on books related to employment relations, please do not hesitate to contact me. I hope that you enjoy this symposium and book review and find them most illuminating. Victor G. Devinatz, Editor of "Perspectives" Section. Author information. Labor history or labour history is a sub-discipline of social history which specialises on the history of the working classes and the labor movement. Labor historians may concern themselves with issues of gender, race, ethnicity and other factors besides class but chiefly focus on urban or industrial societies which distinguishes it from rural history. The central concerns of labor historians include industrial relations and forms of labor protest (strikes, lock-outs), the rise of mass politics Anner, Mark ; Voss, Kim ; Buhlungu, Sakhela ; Robinson, Ian ; Seidman, Gay W. / Labor History symposium : Gay W. Seidman, beyond the Boycott. In: Labor History. 2008 ; Vol. 49, No. 3. pp. 341-368. @article{3773ff66b8c443acac68ecc2c45a5544, title = "Labor History symposium: Gay W. Seidman, beyond the Boycott", author = "Mark Anner and Kim Voss and Sakhela Buhlungu and Ian Robinson and Seidman, {Gay W.}", year = "2008"