

## 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,<sup>1</sup> 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]actically 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.'<sup>2</sup> 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.<sup>3</sup> 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'<sup>4</sup> 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.<sup>5</sup> 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,<sup>6</sup> 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.'

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## What Is the Problem? And How Can We Be Part of Its Solution?<sup>1</sup>

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