

# Defending U.S. worker rights

## Can we learn from Latin America's "Third Left"?

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U.S. LABOR AND EMPLOYMENT LAWS have become less effective in protecting workers for several decades. Planners seeking solutions have tended to look east across the Atlantic to the regulatory and collective bargaining institutions of Northern Europe. But they would do well to look south to Latin America as well. A set of Latin American social movements that we dub Latin America's "third left" (we first coined the term in a 2006 *Progressive Planning* article) emphasize bottom-up decision-making, autonomy from the state and pursuit of claims on territory via direct action. The direct action often involves appropriating productive assets and justifying the seizure by both legal and moral arguments. It may seem far-fetched to suggest that such a strategy is a promising one in U.S. workplaces; after all, worksite occupations are not a common part of U.S. worker organizations' repertoire. But a number of the building blocks of this strategy are available in the United States.

We number this left "third" to contrast it with a first left of armed guerrilla movements that peaked in the 1960s and now is in eclipse, and a second left of left-populist

electoral movements and parties that has been ascendant in Latin America over the last decade. Its distinguishing features are participatory governance, strategies centered on autonomy rather than demands directed at the state and territorial claims. High-profile instances of third left movements include Brazil's Landless Workers Movement (MST), Argentina's *autonomista* current of workplace and community organizations including the worker-run "recuperated businesses," Mexico's Zapatista movement, and the *Federación de Juntas Vecinales de El Alto* (FEJUVE), "Federation of Neighborhood Councils," in the indigenous metropolis of El Alto, Bolivia (near La Paz). This list is far from exhaustive; such organizations crisscross Latin America.

Each of the three main characteristics of the Latin American third left is worth a closer look. The third left's bottom-up, *participatory decision-making*, is often called *horizontalidad*, a word that translates poorly as "horizontalism". These organizations make much use of popular assemblies, leadership rotation, extensive consultation on major decisions and in general high levels of involvement by rank-and-file members. The first and second lefts have sought to seize control of the state, or at least use pressure to extract concessions and reforms; but for the third left autonomy means sidestepping the state and supplanting it from below. The movements do continue to make demands on the state, but the demands are typically for resources that the movements' base communities can utilize to provide for themselves rather than for state-run programs. The third left's strategy of *gaining control over territory via direct action* is perhaps the most dramatic facet of this set of movements. The central tactic in this strategy is the occupation. MST activists occupy land that they view as unutilized or poorly utilized (an interpretation that is typically



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contested by the owner of record), seeking to gain title to the land. The Zapatistas physically exclude “outsiders,” including the Mexican government and military, from some areas and establish dual power by setting up their own parallel government institutions in others. FEJUVE councils assert governance over neighborhoods in El Alto, sometimes using a combination of political pressure and purchase to acquire land for community purposes. In Argentinean recuperated businesses, workers occupy a closed business and attempt to reopen it and gain title to the enterprise. Though the Zapatistas reject Mexican law and invoke the authority of the Maya peoples who were in the territories they claim before Cortez’s arrival in 1519, some of these movements aim to institutionalize control by using existing laws: in the case of the MST, a clause in Brazil’s 1988 constitution that mandates that land should be put to socially productive uses; in the Argentinean recuperated businesses, the government power of eminent domain.

### U.S. analogues with the Third Left

The most obvious recent U.S. parallel with Latin America’s third left is the 2011–12 Occupy movement,

which made a splash by occupying public spaces, making decisions via frequent assemblies and challenging the government’s authority. The occupations themselves were not able to withstand the combination of winter weather and large-scale police repression, but the Occupy movement has reorganized in varied ways that aim to shift the strategy, and in some cases the occupation tactic itself, to new arenas.

Resonances with the U.S. labor movement are more difficult to identify. Occupations of businesses are not a part of the labor movement’s repertoire of tactics. To be sure, such actions were central during the 1937 sit-down strike wave that helped launch the Congress of Industrial Organizations (CIO)—in fact, 583 sit-down strikes took place between 1936 and 1939. But the courts never recognized such strikes as legal, and the U.S. Supreme Court ruled in 1939 that sit-downs were punishable as trespass and that employers could legally fire plant occupiers, even those who struck over unfair labor practices.

Occasional occupations still occur. In December 2008, 240 laid-off workers organized by the radical United Electrical Workers union occupied the Chicago factory



Zapatistas

Photo: Marie Kennedy

of Republic Windows and Doors, remaining in place six days until their demands were won, sparking some speculation that the tactic might be revived. But so far, no wave of enterprise occupations has materialized, though shortly after the Republic action another union in suit maker HartMarx, located near the Republic factory, extracted a no-offshoring pledge by threatening to sit in. Many unions provided financial and logistical support and person-power to Occupy, but we are not aware of evidence that they occupied leadership positions or sought to diffuse the strategy.

Instead, the third left's primary echo in U.S. workplaces is the worker-owned cooperative movement, and more broadly the fledgling U.S. solidarity economy movement. However, U.S. worker cooperatives account for only a tiny fraction of the workforce and the economy. Moreover, unlike the situation in some countries where unions and worker cooperatives work together within a broader labor movement (a particularly striking example is India, where the largest government-recognized union federation, the Self-Employed Women's Association, includes large numbers

of cooperatives), U.S. unions have had little to do with co-ops and have often regarded them with suspicion. Worker centers have adopted a more open stance, with day laborer, domestic worker, restaurant worker and gardener organizations launching cooperatives. Even so, worker cooperatives are typically launched by non-workplace-focused community-based organizations.

One might be tempted to attribute U.S. labor's very limited attempts to take control of workplaces to the powerful hold of property rights on U.S. law and ideology. But there is a powerful counterexample: the housing rights movement. Dating back to the 1904 New York City rent strike, the housing movement has unleashed rent strikes, eviction blockings, building occupations and squatting, and in some cases attempt to wrest ownership away from landlords—all direct attacks on presumed rights of ownership—in waves in 1917–19, the 1930s, and then in a massive nationwide set of movements from the 1960s into the 1980s.

Strategies to shift formal ownership of housing have taken varied forms. In a colorful Depression-era tactic, rural populations developed the “penny auction”, in which a farmer's neighbors would mob a foreclosure auction, bid a penny for all items on auction, and implicitly threaten anyone who was considering bidding more. More recently, New York City's Article 7A management program of the Real Property Actions and Procedures Law empowers the city to name a receiver to manage abandoned or neglected



Photo: Sunset Park Rent Strike Solidarity Network

Sunset Park Rent Strike



property, so in cases where landlords walked away or were driven away due to a rent strike, tenant unions often lobbied for a receiver allied with the organization, with a longer-term goal of shifting the building to public or nonprofit ownership or in some cases cooperative ownership by tenants. Landlord disinvestment and abandonment in areas like the Bronx meant that by the late 1970s the city government became New York's largest landlord through tax foreclosure. Tenant organizations based in these buildings demanded that the city retain the properties (rather than rapidly turning them over to new private landlords) without raising rents. New York's Union of City Tenants often brokered compromises that turned properties over to tenants as co-ops—in some cases limited equity co-ops that limited speculative gains on resale in order to keep the housing affordable over the long term. Current movements to block foreclosures and evictions are heirs of these earlier mobilizations. In short, while territorial claims backed up by direct action are relatively rare in the U.S. labor movement, they are relatively common in the U.S. housing movement. In the most recent waves of activism, many organizations experimented with more participatory governance structures, marking another point of commonality with the third left.

### **Could U.S. labor use this strategy?**

Could U.S. labor follow this same path, or do major differences from the housing cases make it impractical? One difference is that occu-



Photo: MCT/Chicago Tribune/Bonnie Traflet

Republic Windows and Doors factory occupation by laid-off workers.

pying one's home results in having a place to live, whereas occupying one's workplace, and even gaining collective ownership of it, still presents the problem of producing goods and services that can successfully compete in the market. But in fact, there are economic challenges to seizing housing as well—seized housing is often heavily disinvested—and in fact in Latin America seizures of farmland and workplaces are more common than housing occupations. Different laws govern housing and the workplace, but a set of existing U.S. laws could provide a rationale for workplace takeovers. These legal tools include eminent domain, tax foreclosure, bankruptcy, receivership and the confiscation of the assets of a criminal enterprise (which could in theory be extended to crimes like wage theft).

However, there is also one principal obstacle within the law to third left-type organizing by workers: the legal penalties associated with sit-down strikes. The threat of large financial penalties is particularly problematic for labor unions because, unlike most tenant organizations, unions have substantial assets, which they use for staff, facilities and programs including political campaigns and strike support. This is not to say that absent this legal obstacle, unions would naturally gravitate to a third-left strategy. But unions pay attention to success even when it involves radical and unfamiliar strategies, as seen in their recent partnerships with worker centers and union support for Occupy. In Argentina and in neighboring Uruguay, mainstream trade unions initially

shunned the recuperated business movement, but over time many came to embrace and support it.

Based on this set of ideas and issues, six advances in organizing could facilitate an autonomist approach to defending labor rights:

**1. Increased civil and criminal penalties for abuse of workers.**

Increased civil and criminal penalties, as in the recent wave of wage theft laws, can offer added leverage against bad-actor employers, help precipitate bankruptcy or abandonment of a business and build a case for confiscation.

**2. Make confiscation a viable option.**

Currently confiscation and reassignment of ownership to someone other than the first lien holder is uncommon in situations other than real estate, and it will take innovation and pressure to change this..

**3. Develop a stronger body of law on collective ownership.**

There is no well developed body of law regarding business ownership by cooperatives or nonprofits outside of a small number of states, nor a strong financing system designed for such forms of ownership.

**4. Build a network of support and education that can help sustain worker- and community-controlled businesses.**

The relevant areas for support and education are many. Brazil's MST runs local schools in its communities, manages a teachers' college to train teachers for those schools and collaborates

with universities on agronomy and other programs to train technical experts to serve its cooperatives. The organization is conducting cutting-edge research on sustainable agriculture. It relies on a network of supporters who are willing to physically engage in protest to block evictions or press demands, but also a network of lawyers, engineers and others who can offer expert advice, consultation, and pro bono help.

**5. Find ways to involve labor unions while insulating them from legal penalties.**

Though amendment of the National Labor Relations Act to preempt trespass laws when there is a countervailing right to defend the freedom to organize would be a tall order, more feasible may be devising legally sustainable ways for unions to support independent organizations that can more freely engage in direct action. Unions have already begun to explore this in forming partnerships with worker centers, which can, for example, engage in secondary boycott activity without running afoul of Taft-Hartley's prohibition on unions engaging in such boycotts.

**6. Organize workers in ways that facilitate territory-claiming actions.**

A sit-down strike or occupation of a closed business facility takes a high level of organization and solidarity. Labor organizations cannot just decide this would be a good idea, but must build the type of organization that can carry it out. Unions' increased willingness to experi-

ment with new organizing strategies outside the NLRA framework, for example the minority unionism of the United Food and Commercial Workers' OUR Walmart campaign, may be conducive to experimentation along these lines as well.

## Concluding thoughts

We have argued that a third-left strategy combining horizontalism, autonomy and claims on territory is promising and feasible for U.S. labor, at a time when relatively few promising, feasible alternatives are available in the face of declining labor power and worker protection. But, in closing, we want to raise a few notes of caution. The slogan of "autonomy" does not eliminate the challenges of winning reforms; it just shifts those challenges to new terrain. Local control and participatory governance can be very effective at the local scale, but pose problems for aggregation of interests and decision-making at a larger scale. Also, Latin American and U.S. territory-claiming movements have been most successful in winning control of the least productive and valuable assets: idle land, shuttered businesses and disinvested and abandoned buildings. And even in the best cases, Latin America's third left movements remain small compared to the scale of the economic problems they confront. In short, a third-left approach is no panacea. But we would argue that it is a potentially valuable strategy for labor that should be explored, along with other such strategies, in coming years. **P<sup>2</sup>**