Guest Post: Trump, Sunk Cost Fallacies, and the Next Labor Movement

Posted on November 16, 2016 by David Rolf

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This post is part of a series on Labor in the Trump Years.

If one were able to magically scrub the embedded racism, misogyny and xenophobia from Donald Trump's slogan "Make America Great Again," one might conjure up an image of unionized America circa 1946-1976: high wages, high employment, stable jobs, good benefits; expanding investments in infrastructure, education, and home ownership; a growing economy that lifted all boats and created more middle class wealth than in any era before or since. "Solidarity Forever," we would sing, to the tune of the *Battle Hymn of the Republic*, "for the Union makes us strong."
But although Donald Trump spent precious few words on labor law and labor policy during his campaign, it's fair to expect that single-party Republican control of all three branches of the federal government will bring only bad news for America's already-fading unions.

Between now and at least 2021, the best scenario that union leaders can reasonably hope for from the Federal government includes hostile appointments to the NLRB, the DOL, and the judiciary; a rolling-back of progressive Obama-era efforts to modernize both NLRB election procedure and DOL overtime rules; the use of regulation, budget-writing, procurement, and other government powers to chip away around the edges of prevailing wages, wage and hour protections, workplace safety, and nondiscrimination; total or partial repeal of Obamacare; and some short-term job creation if the President-elect is successful in passing an infrastructure package and renegotiating trade agreements on more favorable terms (and assuming he is simultaneously unsuccessful in deporting 11 million wage-earners and triggering a depression by doing so).

A worse but equally likely scenario is a continued and concerted national campaign to weaken and shrink unions themselves. More right to work laws. The return of *Friedrichs* and its ilk. Continued assaults on public employee unions in the two-thirds of state houses controlled by conservatives. And legal challenges to the notion of exclusive representation itself, brought by adherents of previously obscure and cultish legal theories.
A handful of union leaders in the construction, carbon emissions, and law enforcement sectors may choose to align themselves with the incoming administration in hopes of harvesting a few favors or a few jobs for union members.

A far greater number of union leaders will justifiably and eloquently rail against the new order and pledge renewed collaboration with progressive allies, but with increasingly small and besieged audiences of union members left to listen. Wagons will be circled. Drawbridges will be raised. Poorly thought out union mergers will be negotiated and inked, primarily to protect union staff and officers from declining budgets. We will once again be called to stand with mainly uninspiring Democrats (and a few inspiring ones) in the 2018 and 2020 elections, each of which we will call "the most important election of our lifetime." Meanwhile our numbers will continue to shrink and our power continue to wane.

If necessity is the mother of invention, now would be the right time for America's unions to run straight to their laboratories, workshops, incubators, and research hubs to figure out a new model of worker power for the new century. The right time to transfer resources, assets, and talent to exciting new start-up worker organizations that show promise for building powerful, scalable, sustainable new models of worker advocacy. The right time to consult our extensive network of outside experts drawn from the ranks of the world's most accomplished innovators and most prescient scenario-planners. A great moment to empower the ambitious younger generations within our ranks to take the helm of sclerotic institutions currently led by leaders in their sixties and seventies.

Except, with very few exceptions, there are no such laboratories, no such new organizations, no such experts, and no such younger generation. (According to one scholar of retirement policy I spoke with recently, union staff are the demographically second-oldest profession in America, exceeded only by morticians). Old Labor has not prepared its own succession plan, its own emergency kit, or its own escape pod.

For nearly the entire era of the institutional union movement's decline, labor leaders have been committed to using the power of the Federal government to bring back the now-failed American system of enterprise-based exclusive representation that Congress assigned to us in 1935. From attempts to repeal the Taft-Hartley Act under President Johnson, to comprehensive labor law reform efforts under President Carter, to proposals to ban permanent striker replacements under President Clinton, to the Employee Free Choice Act under President Obama, union strategy has been to leverage the power of the Federal government to restore institutional labor's glory days. It hasn't worked yet.

Economists, behavioral psychologists, and military historians describe the *sunk cost* or *escalation of commitment* fallacy as "the phenomenon where people justify increased investment of money, time, lives, etc. in a decision, based on the cumulative prior investment (*sunk costs*), despite new evidence suggesting that the cost, beginning immediately, of continuing the decision outweighs the expected benefit."
Perhaps this election could finally put to rest the union movement's own sunk cost fallacies: the increasingly hallucinatory idea that a future Democratic-controlled Federal government is going to come riding to the rescue of America's existing unions before it's too late, or that our resources should continue to be poured into the same enterprise-bargaining-related activities as they have since the 1940's. Or that the hundreds of millions of dollars the labor movement spent just on Wisconsin gubernatorial elections between 2010 and 2014 couldn't have been better used to build new forms of worker power.

As nearly everyone *outside* the institutional labor movement has already known for years, our old unions and our old system of collective bargaining aren't coming back. The question is, rather, whether it will be replaced by something, or by nothing at all. If unions merely escalate our prior commitments, we will spend hundreds of millions of dollars on defense in the next four years and still not maintain today's failed status quo: we'll be weaker then than now.
If we, together with allies, can imagine a massive realignment of resources and strategy, it could be the start of the next workers movement in America.

So instead of spending the next four years repeating old behaviors, putting good money after bad, defending turf we can't defend, and doubling down on strategies from the last century, we need to figure out a new path forward and resource it accordingly.

The next labor movement won't consist of unions as we currently know them in the U.S. It won't be based on contract bargaining at the enterprise level or exclusive representation. It must be based on a value proposition to incentivize voluntary membership (as well as other revenue sources). It must have the power to impact workers lives economically. And it must be able to scale and touch millions of American workers.

The most important single task of today's remaining unions is to seed innovation and discover powerful, scalable, sustainable new models of worker organization, just as the pioneers of industrial unionism did in the early decades of the last century. At least in the short run, they should be able to exist independent of and indifferent to federal power. These experiments should attempt at least seven specific strategies used by other labor movements globally or historically, or other types of membership organizations, for impact and value: politically constructed (at the state or city level) regional and sectoral bargaining over minimum standards, benefits provision, labor standards enforcement, certification and labeling, workforce training, workforce supply, and advocacy. And they should be prototyped in pro-union cities and states where they have the greatest chances of success and the fewest well-resourced enemies.

Resisting the *sunk cost* or *escalation of commitment* fallacy in the age of Trump will require labor unions to act with uncharacteristic discipline and strategic sense. It will require withdrawing resources from failed strategies and failed geographies, which is certain to be unpopular with union members and Democrats alike. And it will require the investment, ultimately, of hundreds of millions of dollars in a search for a new model that isn't guaranteed to succeed.
Nothing will be more difficult for labor to accomplish. But nothing is more necessary for labor's future than the birthing of whatever will grow to replace today's unions.

https://onlabor.org/2016/11/16/guest-post-trump-sunk-cost-fallacies-and-the-next-labor-movement/

Toward a 21st-Century Labor Movement

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The old model of collective bargaining can't be resurrected. Herewith, some new models of how workers can win and wield power.

AP Photo/Wilfredo Lee, File

Florida tomato workers led by the Coalition of Immokalee Workers have had some success in their fight to improve working conditions.

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Between the 1930s and the 1970s, unions and collective bargaining helped to power the creation of America's vast middle class. Unions smoothed the distribution of wealth over the entire economy, constraining the percentage of wealth and income concentrated at the top of the economy while lifting up the bottom and the middle. But union strength has been on the wane since the 1950s and, beginning in the 1980s, suffered a catastrophic free fall in the private sector that continues to this day. The ability to form a union and bargain collectively is inaccessible to more than 93 percent of private-sector workers—a major reason why working people have experienced 40 years of wage stagnation even as the economy grew and the rich got richer. Most progressive economists, scholars, think tank analysts, and centrist or left-of-center politicians in the United States agree: The scale has tipped too far in favor of business and away from workers. Generally, they support government measures to rebalance the power of capital and labor by improving the conditions for union organizing. Such measures include banning the permanent replacement of striking workers, increasing penalties for labor-law violations by employers, allowing workers to achieve union representation more quickly and simply, requiring binding arbitration in labor contract disputes, and repealing the 1947 Taft-Hartley Act (which restricted or banned many effective union tactics and permitted states to go "right to work" and thereby cripple many unions financially).

But these sorts of federal legislative strategies, which attempt to augment or restore America's collective-bargaining framework, have failed repeatedly for the past 50 years: Unions have never been able to secure both a majority in the House and the required supermajority in the Senate, even when both bodies have had substantial Democratic majorities. And as union density fades with each passing year, the probability of gaining support from senators in states with no real union presence declines accordingly.

Underlying this failure is a more fundamental problem: American enterprise-based collective bargaining is an inherently weak model of industrial and labor relations compared with the possible alternatives.

Under America's current "enterprise bargaining" framework, agreements are reached between a single union and a single employer. Under enterprise bargaining, the right to a voice in the workplace is considered an *optional* right that workers must *opt into* on a workplace-by-workplace basis via a majority vote. This means that only a minority of workers is ever likely to benefit from collective bargaining, a fact that weakens political support for unions and worker bargaining rights. It also means that employers are highly incentivized to avoid unions before they form or to crush them once they exist. Where unions do form and exist, employers who agree to union demands often perceive that they have been placed at a competitive disadvantage on price or flexibility within their industries—unless a supermajority of their competitors is also unionized. In addition, under the current system of enterprise bargaining, unions can't require that employers negotiate over some of the most important factors in worker prosperity, such as the overall strategic direction of a firm; worker equity in a firm; or worker control of health, pension, and training funds.

The confluence of these facts means that unions are hard to form, difficult to maintain, and limited in the scope of their bargaining. It means they face constant workplace and political opposition from employers. That political opposition in turn leads to the repeated failure of labor-law reform in Congress. As Marx once speculated about capitalism, we can now say with some certainty about our system of collective bargaining: It sowed the seeds of its own destruction.

Organized labor's legislative strategy since the 1950s—restoring the old model of union bargaining—is unlikely to prevail in the 21st century. That model thrived in an era of standardized industrial production, long-term or even lifelong employment in an industry or firm, and the relative geographic immobility of both workers and capital. This was also a period that witnessed mass worker militancy, industrial strikes, and rampant inter-union competition—overlaid with fears of communism abroad. Added to this mix was a domestic Communist Party that trained skilled anti-capitalist organizers; organized-crime syndicates that cynically promoted unions so they could loot union treasuries and extort employers; and a federal government broadly committed to using collective bargaining to maintain industrial stability during world wars, cold wars, and depressions. One could no more bring back such a unique set of historical factors and conditions than one could repeal refrigeration, globalization, or the Internet (each of which also in its own way helped hasten union decline).

But workers still need mechanisms to exercise power and to do so at a scale that improves the lives of millions of workers. They need to build organizations that can sustain worker bargaining power for the long haul. If 20th century–style unions as we knew them aren't going to play that role, we'll need to invent new forms of powerful, scalable, sustainable worker organizations if any effort to rebuild the middle class is going to succeed.

Such organizations might take several forms. Borrowing from labor law in other countries, from U.S. history, and from promising experiments happening in the United States today, there are several potential overlapping strategies for how future forms of worker power might operate and that suggest what U.S. labor policy might eventually look like.

Geographic and/or sectoral bargaining. With changes in federal law, unions could represent workers throughout an entire industry and not on a firm-by-firm basis, eliminating much of the dysfunction of firm-by-firm bargaining. But even without federal statute changes, cities or states could develop stakeholder or tripartite (government, company, and union) bargaining by geography or by industry. Wage-setting boards, for example, were commonplace at the state and municipal levels in the early 20th century. Representatives of workers, employers, and government could determine legally binding standards for wages and benefits throughout an industry or within a geographic area. This is similar to the stakeholder process we used in Seattle for the minimum-wage negotiations, and is exactly how New York’s fast-food workers achieved a $15 wage policy in 2015.

Co-determination. Common in Europe, co-determination allows employees a greater role in the management of a company, increasing worker voice and aligning incentives for quality and productivity between labor and management. Germany is home to the most successful example of this model, but a variation is used in the United States by health giant Kaiser Permanente. Under co-determination, labor agreements are made at the national level by unions and employer associations, and then local plants and firms meet with “works councils” to adjust the national agreements to local circumstances. In Germany, large firms are required to have worker representation on their boards of directors and workers elect works councils to solve problems at each worksite.

Since 1997, Kaiser and its 28 unions, which represent more than 100,000 workers, have partnered to give unions and individual workers a seat at the table in management decisions over quality, efficiency, and performance. Bargaining over employment conditions happens nationally. And in each facility, managers, unions, frontline workers, and physicians form thousands of Unit-Based Teams empowered to make patient-care decisions together. Two goals of the Kaiser Labor Management Partnership are to continuously improve the quality of health care Kaiser delivers while also becoming the employer of choice in the health-care industry.

Worker ownership. Through worker-owned cooperatives, or employee stock ownership plans (ESOPs), workers gain an equity stake in the firms where they work and gain control over the selection of a management team, reinvestment in the firm, and compensation. Neither model has yet been perfected in the U.S.: co-ops have proven hard to scale, in part because many co-op leaders adhere to "small is beautiful" principles of economics, and some ESOPs that formed in the 1980s effectively dumped poorly performing stock onto their employees. But both models hold promise. Cooperative Home Care Associates in the Bronx, the nation's largest employee cooperative, provides employees with superior wages and training compared with industry norms, and has cut employee turnover in half. Veteran hourly employees at the Publix grocery chain, an ESOP, can accumulate hundreds of thousands of dollars of equity in the company and earn tens of thousands of dollars in dividends. Such experiments should be encouraged. With no federal statute changes, cities and states could provide tax breaks and other incentives to help these sorts of businesses grow and expand.

Control of work-distribution platforms. The majority of the new on-demand applications are similar to technologically enhanced union hiring halls—a mechanism for selling labor to consumers and distributing work among workers. Through bargaining, co-determination, or co-ownership, these work-distribution apps could be transformed from mechanisms for suppressing wages into ones for fairly allocating the proceeds of labor, maximizing hours, and collaborating on multi-worker tasks. One could even imagine algorithm-based smartphone applications that allow on-demand-economy workers to effectively bargain with—or strike against—work-distribution platforms.

Labor standards enforcement. Voluntary worker associations could develop the capacity to "represent" workers through onsite worker-led enforcement of labor standards and employment laws within a geographic area or an industry. This could take the form of publicly financed organizations that advocate for workers under municipal law. Experiments with these sorts of worker-community organizations are already happening in San Francisco and Seattle to help enforce those cities' minimum-wage ordinances and other laws. San Francisco's Office of Labor Standards Enforcement distributes enforcement dollars to community-based worker centers and immigrant-advocacy groups to educate workers on their rights. In Seattle, the newly formed Fair Work Center receives city funds to do outreach, education, case management, and run a workers'-rights legal clinic, all in partnership with a network of community organizations and unions. The hypothesis underlying both programs is that culturally competent, bottom-up, community organizing–style worker outreach is both empowering to workers and a more effective law enforcement strategy than a top-down, complaint-based system that's hard to access for workers who are often high school–educated, have limited English language proficiency, or are undocumented. Other examples empower workers to set and enforce labor standards across private-sector employers with no government role. Promising efforts of this sort are already under way among Florida tomato workers led by the Coalition of Immokalee Workers, among Austin construction-industry employees led by the Workers Defense Project, and among California janitors led by SEIU's Maintenance Cooperation Trust Fund, in each case paid for by contributions from employers or upstream purchasers.

Certification and labeling. The LEED standard signifies excellence in environmental design for new construction, and the Fair Trade label indicates ethical supply-chain practices for coffee, tea, and chocolate. Similarly, a worker organization could develop, or a government could even require, an ethical workplace certification and labeling system for consumer-facing brands, businesses, products, and services. As with a health department letter grade on a restaurant, consumers would know to what extent an employer, manufacturer, or service provider follows best practices in paying living wages, offering benefits and paid leave, implementing fair scheduling procedures, practicing gender and racial equity in hiring and promotion, and adhering to labor and employment laws. As with LEED and Fair Trade, businesses could earn such a label (let's call it a WorkScore) by registering with a worker-led nonprofit organization, adhering to certain minimum standards, and agreeing to workplace audits by the worker organization. Consumers could then easily "vote with their feet" and economically reward businesses for doing the right thing.

Benefits administration. In a world of increasingly short-term, temporary, and employer-less employment, worker organizations could replace employers as the primary provider and administrator of worker benefits that are universal, portable, and prorated. Nick Hanauer and I proposed a Shared Security System in 2015, which we now refine one degree further to add that these universal, portable benefits would be administrated by worker-advocacy organizations. The system would be similar to the health and welfare funds administered by unions in the construction industry, which provide workers with health, pension, and training benefits, and to the Ghent system of collective unemployment insurance in several northern European countries.

Under the Ghent model, unions in Belgium, Denmark, Finland, Iceland, and Sweden—rather than those governments—administer unemployment insurance for workers.

When it comes to how workers exercise collective power over wages, benefits, hours, and working conditions, now is the time for risk-taking and experimentation in search of a new model that can replace traditional union collective bargaining. Rather than throwing up their hands in frustration or wishing for the resurrection of a collective-bargaining regime that peaked in 1958, progressives (and conservatives too, if any pro-worker conservatives still exist) in all levels of government should promote, finance, encourage, and protect such experiments. Just as 20th-century labor law was originally prototyped at the city and state levels, today's workers and their supporters should demand that mayors and city councils, governors and state legislatures enlist in the search for the next labor movement.

http://prospect.org/article/toward-21st-century-labor-movement