

The ‘New’ Labor Regime

Marion Crain & Kenneth Matheny

In *The New Labor Law*, Professor Kate Andrias describes a labor regime founded upon politicized social bargaining emerging from the wreckage of the National Labor Relations Act (NLRA).¹ This regime rejects (for the most part) the NLRA’s employer-employee dyad model of private ordering through worksite-based representation and collective bargaining, in favor of a model involving mobilizing workers across entire sectors and harnessing state power through legislation or other vehicles to strengthen workers’ economic and political clout.² Pointing to the Service Employees International Union (SEIU)-backed Fight for \$15, Andrias identifies what she calls a “coherent vision of unionism” that is transforming unions from representatives of particular workers to advocates for workers generally.³

Professor Andrias’s optimism is striking, although welcome.⁴ While we find her analysis inspiring, we are less convinced that the labor unionism she de-

1. Kate Andrias, *The New Labor Law*, 126 YALE L.J. 1 (2016).

2. *Id.* at 78, 80.

3. *Id.* at 57, 63.

4. Most recent scholarship is deeply pessimistic about labor’s future. *See, e.g.*, THOMAS GEOGHEGAN, ONLY ONE THING CAN SAVE US: WHY AMERICA NEEDS A NEW KIND OF LABOR MOVEMENT 212 (2014) (suggesting that new labor laws may never emerge because of the Democratic Party’s weakening bonds with labor and a Congress that “may be dysfunctional forever”); Alan Hyde, *The Idea of the Idea of Labour Law: A Parable*, in THE IDEA OF LABOUR LAW 88, 97 (Guy Davidov & Brian Langille, eds. 2011) (arguing that labor law as a source of inspiration is dead and that we “will have to be inspired by something else”); Cynthia L. Estlund, *The Ossification of American Labor Law*, 102 COLUM. L. REV. 1527, 1591 (2002) (observing that labor law reform is challenging because “all of the normal institutional channels of legal change are clogged or blocked”).

scribes is either completely coherent or new.⁵ In many respects, she is describing the ideological unionism that animated some quarters of the labor movement in the pre-NLRA era⁶—class-wide political struggles that relied on the First Amendment’s Assembly Clause to protect mass protests and pickets.⁷ That activism eventually produced the Wagner Act and its subsequent amendments, which laid the foundation for the evolution of modern “business unionism”—that is, organizing focused on the immediate concerns of prospective members about bread-and-butter issues, rather than on issues affecting unorganized workers as a class. Business unionism fits comfortably with a worksite-focused labor law regime in which unions exist primarily to advance the interests of their members related to wages and benefits, hours, working conditions, and job security.⁸

Ideological unionism never disappeared, however; it simply lay dormant. It re-emerged in the twentieth century as “social justice unionism,” so named because it was characterized by alliances with other social justice groups and because it connected workplace issues with social justice issues extending beyond the traditional realm of work law.⁹ Perhaps the best example of social justice unionism was the Memphis sanitation workers’ strike, a pivotal turning point for the civil rights struggle in the 1960s. Dr. Martin Luther King joined the sanitation workers’ strike in 1968, calling for an alliance between blacks and organized labor as the linchpin of a broad-based social change movement.¹⁰ The movement’s slogan, “I am a Man,” protested the treatment of black workers as less than human—a legacy from the slaveholding era—and appealed to

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5. Professor Andrias acknowledges but gives short shrift to earlier incarnations of unionism that crossed occupational boundaries and pursued explicitly political goals. Andrias, *supra* note 1, at 10.
 6. See Marion Crain & Ken Matheny, *Labor’s Identity Crisis*, 89 CALIF. L. REV. 1767, 1770-74 (2001) (describing pre-NLRA unionism by the Wobblies and the Knights of Labor).
 7. See Marion Crain & John Inazu, *Re-Assembling Labor*, 2015 U. ILL. L. REV. 1791, 1799-1802.
 8. Crain & Matheny, *supra* note 6, at 1779-81, 1784-87.
 9. See VANESSA TAIT, POOR WORKERS’ UNIONS: REBUILDING LABOR FROM BELOW 11-12 (2005) (describing a broad-based labor movement that advocated for “no wage workers” such as workfare workers and those engaged in unwaged household labor); Marion Crain, *White-washed Labor Law, Skinwalking Unions*, 23 BERKELEY J. EMP. & LAB. L. 211, 223-28 (2002) (describing a labor-civil rights/community alliance in Greensboro, North Carolina during UNITE’s effort to organize predominantly African American Kmart workers); Crain & Inazu, *supra* note 7, at 1832-33 (discussing unions’ historical ties with African Americans, women, immigrants, and other political minorities to advance “a wide array of social, political, and economic interests”).
 10. MICHAEL KEITH HONEY, BLACK WORKERS REMEMBER: AN ORAL HISTORY OF SEGREGATION, UNIONISM, AND THE FREEDOM STRUGGLE 292-93 (1999); MICHAEL K. HONEY, GOING DOWN JERICHO ROAD: THE MEMPHIS STRIKE, MARTIN LUTHER KING’S LAST CAMPAIGN 47 (2007) [hereinafter HONEY, GOING DOWN JERICHO ROAD].

the public to support workers' demands for dignity.¹¹ King's assassination in Memphis sparked political and labor protests that not only resulted in tangible gains for the Memphis strikers, but reverberated more widely throughout the nation.¹² This alliance between labor and the civil rights movement ultimately positioned public sector employee unions to emerge as the leading source of union expansion in the U.S. in the 1970s and beyond, as a growing public sector welcomed blacks who had been excluded from the private sector and states enacted public sector bargaining laws in increasing numbers.¹³ Blacks were disproportionately represented in the public sector workforce, and the median wage in the public sector for blacks was significantly higher than in other industries.¹⁴ Ultimately, public sector unionization became a critical force in improving the economic condition of African Americans as a class.¹⁵

The real question, then, is whether the business unionism regime that has dominated union praxis in more recent years can partner with the re-awakened social justice unionism displayed by movements like the Fight for \$15 to mount an effective campaign against corporate power. In the early 2000s, Rick Fantasia and Kim Voss described a reawakened labor movement positioning itself as a counterweight to the power of capital through the resurgence of strategic social justice unionism, largely the brainchild of Andy Stern of the SEIU.¹⁶ Yet despite a relatively friendly climate for labor under the Obama administration's NLRB and successful sectoral organizing like the SEIU's Justice for Janitors

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11. HONEY, GOING DOWN JERICHO ROAD at 211-13. The slogan itself came to be synonymous with the idea of standing up for one's rights by organizing a union and combatting racism: for African American men, manhood meant enjoying self-determination, no longer being thought of as "boy," and exercising the right to organize. *Id.* at 212-13, 506.
 12. *Id.* at 506. King's mentor, Morehouse College President Benjamin Mays, memorialized King on the day of his burial, commenting that King would have said that "If death had to come, I am sure there was no greater cause to die for than fighting to get a just wage for garbage collectors." *Id.* at 482.
 13. See HONEY, *supra* note 10, at 497; Patricia Cohen, *Public-Sector Jobs Vanish, Hitting Blacks Hard*, N.Y. TIMES (May 24, 2015), <http://www.nytimes.com/2015/05/25/business/public-sector-jobs-vanish-and-blacks-take-blow.html> [<http://perma.cc/6RT3-QGL7>]; see also Joseph Slater, *The Strangely Unsettled State of Public-Sector Labor in the Past Thirty Years*, 30 HOFSTRA LAB. & EMP. L.J. 511, 511-13 (2013) (describing the tumultuous rise of public sector unionism and the development of public sector bargaining laws at the state and local level).
 14. See Steven Pitts, *Research Brief: Black Workers and the Public Sector*, U.C. BERKELEY LAB. CTR. (Apr. 4, 2011), http://laborcenter.berkeley.edu/pdf/2011/blacks_public_sector11.pdf [<http://perma.cc/5HSY-YHSH>] (noting that African Americans were thirty percent more likely than other workers to be employed in the public sector).
 15. See *id.* at 2; see also Cohen, *supra* note 13 (describing the impact of the Great Recession and government cutbacks in the public sector workforce on African Americans, and concluding that it erased three decades of gains for the black middle class).
 16. RICK FANTASIA & KIM VOSS, *HARD WORK: REMAKING THE AMERICAN LABOR MOVEMENT* (2004).

campaign, labor's resurgence never completely materialized. What has shifted to justify Andrias's optimism?

I. RISING INCOME INEQUALITY AND THE END OF THE "AGE OF ACQUIESCENCE"¹⁷

There is no denying the dramatic rise in income inequality and the trend toward centralization of wealth in the United States.¹⁸ Further, there is strong evidence that economic inequality is likely to worsen,¹⁹ with worrying effects for democracy at both the local and national levels. One scholar has argued that the power disparity between the haves and the have-nots is so great that workers have become "in essence a colonized people."²⁰ During the last decade, the over-reaching, greed, and exploitation enabled by this power disparity have sparked social activism calling for economic justice. Occupy Wall Street and the Fight for \$15 were perhaps the two most publicized grassroots movements. Despite these early tremors as the ground shifted beneath us, the presidential election of 2016 revealed a shocking divide: an angry, anti-Establishment populism rejected political, economic, academic, and media elites (represented most vividly by Hillary Clinton), and embraced campaigns by Bernie Sanders and Donald Trump, who tapped into those populist impulses with radical change agendas.²¹

Can that appetite for social change be harnessed for progressive goals through social bargaining? Andrias's version of a labor unionism focused on issues of dignity and voice surely has the potential to direct the anger and passion of American populism toward constructive ends. Nevertheless, framing

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17. In a provocative book, Steve Fraser described how violent struggle between the haves and have-nots during the nineteenth and twentieth centuries gave way to passivity in the late twentieth and twenty-first centuries as the American people quietly acquiesced to the enormous disparities of wealth and income that characterize the United States. STEVE FRASER, *THE AGE OF ACQUIESCENCE: THE LIFE AND DEATH OF AMERICAN RESISTANCE TO ORGANIZED WEALTH AND POWER* (2015).
 18. See JOSEPH E. STIGLITZ, *THE PRICE OF INEQUALITY: HOW TODAY'S DIVIDED SOCIETY ENDANGERS OUR FUTURE* 9 (2012).
 19. In his exhaustive study of wealth and inequality in the Western world, Thomas Piketty marshals evidence suggesting that the tendency of the rate of return on capital to be greater than the rate of growth of the economy makes rising inequality likely. THOMAS PIKETTY, *CAPITAL IN THE TWENTY-FIRST CENTURY* 25 (Arthur Goldhammer trans., 2014).
 20. MARJORIE KELLY, *THE DIVINE RIGHT OF CAPITAL: DETHRONING THE CORPORATE ARISTOCRACY* 151 (2001).
 21. Populism is not necessarily associated with progressive politics. See JAN-WERNER MUELLER, *WHAT IS POPULISM?* (2016) (arguing that populism is characterized by anti-elitism, anti-pluralism, and a moral claim to speak exclusively for all the people).

the issues purely in terms of economic justice is unlikely to ignite sufficient passion to inspire broad-based public support—and passion is what moves people to organize.²² In our view, alliances with other social justice groups that can tap into passion for change are critical. The labor movement can and must forge those bonds.²³ This will not be easy given President Trump’s anti-immigrant rhetoric, which aligns all too well with protectionist strategies historically adopted by traditional manufacturing and construction unions. Further, the President’s outreach to building and trade unions with proposals that appeal to their business unionism-inspired interests while excluding public sector and service industry unions appears poised to deepen historical ideological rifts that have divided the movement, often along racial and ethnic lines.²⁴ But strengthening bonds with other progressive movements across race, ethnicity, and gender divides is labor’s moral duty as much as it is a pragmatic necessity for labor solidarity. Rebuilding America’s social capital—the social bonds between individuals and institutions predicated on trust, reciprocal goodwill, and perceptions of fairness²⁵—is essential to preserving social cohesion, the smooth func-

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22. See Brishen Rogers, *Passion and Reason in Labor Law*, 47 HARV. C.R.-C.L. L. REV. 313, 318-19 (2012) (explaining that union organizing is a “struggle for hearts and minds” involving powerful emotional appeals and shaping workers’ perceptions of their social group affinities and identities (footnote omitted)).
 23. The Fight for \$15’s alliance with Black Lives Matter was effective not only because it signaled a commitment to an inclusive form of social justice unionism, Andrias, *supra* note 1, at 49, but because it connected labor unionism with a moral claim for dignity and full citizenship that extends beyond the boundaries of the workplace. For examples of other effective labor-social justice alliances, see Marion Crain, *Feminism, Labor, and Power*, 65 S. CALIF. L. REV. 1819 (1992), which describes labor’s alliance with feminism; and Crain, *supra* note 9, which describes labor’s advocacy for racial justice; see also RUTH MILKMAN, ORGANIZING IMMIGRANTS: THE CHALLENGE FOR UNIONS IN CONTEMPORARY CALIFORNIA (Ruth Milkman ed., 2000), which describes labor’s alliance with immigrant rights campaigns.
 24. President Trump’s outreach to the construction and building trade unions on the Keystone XL Pipeline and the Dakota Access Pipeline and his proposal to build a wall on the Mexican border yielded enthusiastic endorsements for his policies from union leaders for the Laborers’ International Union of North America and the Building Trade Unions, which jettisoned nascent efforts to align labor with other progressive movements in the face of an opportunity to create jobs for their members. Erik Loomis, *The Unions Betraying the Left (Smell Their Fear)*, NEW REPUBLIC (Feb. 6, 2017), <http://www.freerepublic.com/focus/bloggers/3521975/posts?page=14> [<http://perma.cc/L64V-NW3H>]; see also Harold Meyerson, *The Building Trades’ Faustian Bargain*, AM. PROSPECT (Feb. 2, 2017), <http://prospect.org/article/building-trades%E2%80%99-faustian-bargain> [<http://perma.cc/J4GY-JFRP>] (describing a racial split within the labor movement over support for President Trump, and its implications for labor solidarity).
 25. See ROBERT D. PUTNAM, BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY (2000) (documenting membership decline in civic organizations including labor unions, and a consequent reduction in social capital); STIGLITZ, *supra* note 18, at 153-59 (discussing the urgent need to address America’s dangerous deficit of social capital).

tioning of markets, and democracy itself.²⁶ And those are precisely the goals of labor laws.

II. SUSTAINABLE UNIONISM RESTS ON THE OLD LABOR LAW'S FOUNDATION

Andrias observes that worksite representation under the old labor law remains a necessary complement to social bargaining in the resurgence of labor.²⁷ We agree. Elements of traditional labor law doctrine established by the National Labor Relations Board during the Obama Administration will be critical to the movement's strategy, including especially the expanded interpretation of employee coverage.²⁸ Further, in combination with a re-invigorated First Amendment freedom of assembly, Section 7 can help to protect workers who participate in social bargaining by joining public assemblies, worksite-based protests, and social media-based campaigns.²⁹ Finally, painstaking shop-by-shop organizing through worker-led initiatives is still critical because worker empowerment is not merely an end, but a process by which workers themselves are transformed and communities are built.³⁰ In this sense, the NLRA retains its most "radical" potential³¹ to achieve dignity for workers and democratic governance in the workplace.

Sustaining this old/new unionism requires funding. When Andrias wrote her paper, pundits were still widely predicting that Hillary Clinton would win the Presidency. The challenge of funding social bargaining looms ever-larger in the post-election era. Social bargaining has been largely underwritten by labor

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26. See STIGLITZ, *supra* note 18, at 156-57 ("The breaking of the social bonds and trust—seen in our politics, our financial sector, and in the workplace—will, inevitably, have broader social consequences. Trust and reciprocal goodwill are necessary not only for the functioning of markets but for every other aspect of societal cooperation [T]he long term success of any country requires social cohesion")
27. Andrias, *supra* note 1, at 94 (noting that political agitation, i.e., social bargaining, has softened employer opposition at the bargaining table for worksite-based unions).
28. See, e.g., Trustees of Columbia University & Graduate Workers of Columbia—GWC, UAW, 364 N.L.R.B. No. 90 (2016) (finding graduate student assistants at private colleges and universities to be statutory employees for purposes of NLRA coverage).
29. See Crain & Inazu, *supra* note 7, at 1822 (discussing the importance of section 7 in realizing assembly rights for workers).
30. Arun Gupta, *Beyond the Fight for \$15: Worker-Led Fast Food Union Campaign Building Power on the Shop Floor*, WORKING THESE TIMES (Oct. 25, 2016), http://inthesetimes.com/working/entry/19576/beyond_the_fight_for_15_the_worker_led_fast_food_campaign_at_burgerville [<http://perma.cc/VJP4-WGZ6>].
31. Karl E. Klare, *Judicial Deradicalization of the Wagner Act and the Origins of Modern Legal Consciousness, 1937-1941*, 62 MINN. L. REV. 265, 265 (1978).

unions and workers' rights organizations, including most notably the SEIU, which has invested millions in the Fight for \$15.³² The SEIU is already planning for a 30% budget cut over the next year in anticipation of a Republican-controlled Congress and a presidential administration overtly hostile to unionism.³³ An additional challenge to union coffers will undoubtedly take the form of a continuing press to overturn *Abood v. Detroit Board of Education*³⁴—an effort likely to be successful once President Trump fills Justice Scalia's vacancy on the Court.³⁵

Andrias points to an array of possible new funding mechanisms, including fee-for-service arrangements, local and state government grants supporting union-run training programs, and employer-funded hiring halls.³⁶ While these have some promise, we worry that they might further enshrine unions as service organizations—a model of unionism at odds with social justice unionism and the sectoral solidarity that has characterized social bargaining. A more effective strategy might be to utilize social bargaining at the local or state level to enact ordinances or statutes requiring employers to automatically deduct fees from workers' pay checks and direct these tax-deductible payments to a membership organization of the employees' choice, which would in turn advocate on their behalf through organizing and lobbying (though not collective bargaining). In New York City, a pending bill inspired by the Fight for \$15 creates a similar, but optional, program for fast food employees to automatically contribute funds to nonprofit organizations, which must be registered with the city's Department of Consumer Affairs and which advocate on behalf of workers in the fast food sector.³⁷

32. Arun Gupta, *Fight for 15 Confidential: How Did the Biggest-Ever Mobilization of Fast-Food Workers Come About, and What Is Its Endgame?*, WORKING THESE TIMES (Nov. 11, 2013), http://inthesetimes.com/article/15826/fight_for_15_confidential [http://perma.cc/Y5V6-SNKS].

33. Josh Eidelson, *Fear of Trump Triggers Deep Spending Cuts by Nation's Second-Largest Union*, BLOOMBERG BUSINESSWEEK (Dec. 27, 2016, 5:00 AM), <http://www.bloomberg.com/news/articles/2016-12-27/fear-of-trump-triggers-deep-spending-cuts-by-nation-s-second-largest-union> [http://perma.cc/QP2U-7674].

34. 431 U.S. 209 (1977).

35. Eidelson, *supra* note 33.

36. Andrias, *supra* note 1, at 95-98.

37. Cora Lewis, *Fast Food Worker Groups Could Get a Big Financial Boost in NYC*, BUZZ FEED NEWS (Dec. 5, 2016, 5:34 PM), <http://www.buzzfeed.com/coralewis/fast-food-worker-groups-could-get-a-big-financial-boost> [http://perma.cc/3M24-EDB8].

III. THE PREEMPTION STRAITJACKET AND LOCAL TENSION BETWEEN LABOR AND ITS ALLIES

That social bargaining is likely to be most effective at the state and local levels in a post-election era seems clear: the Fight for \$15's efficacy was dramatically illustrated by the passage of higher minimum wage statutes at the state level during the 2016 elections,³⁸ even as Republican legislators were voted into office. Further, two-thirds of the country's largest cities (where the electorate is most inclined toward progressive politics) are led by Democratic mayors.³⁹

The primacy of local battlegrounds, however, will exacerbate tensions between local unions and their social justice allies thanks to the NLRA's powerful federal preemption doctrine. For example, in *UAW Local 3047 v. Hardin County*,⁴⁰ labor unions relied upon the NLRA's broad preemption doctrine in arguing that right-to-work ordinances adopted by several Kentucky counties should be struck down.⁴¹ The Sixth Circuit nonetheless upheld the power of the counties to bar union security agreements; it reasoned that NLRA Section 14(b)'s exception to federal labor law preemption for state or territorial law barring union security agreements includes local law where the state delegates its decisionmaking authority to local governments via a home rule statute,⁴² which

38. David Klepper, *Pay to Rise for Millions As 19 States Increase Minimum Wage*, ASSOC. PRESS (Dec. 29, 2016, 5:59 PM), <http://bigstory.ap.org/article/93a8043e3a2e4d41aabf388350925412/pay-rise-millions-19-states-increase-minimum-wage> [<http://perma.cc/U3LG-62YR>].

39. Eric Rosenbaum, *Democratic Party Mayors Dominate Big-City Landscape Across US*, CNBC (Nov. 11, 2016, 11:30 AM), <http://www.cnbc.com/2016/11/11/are-american-cities-the-only-place-left-for-democrats-to-feel-at-home.html> [<http://perma.cc/Z8MS-7WLH>].

40. 842 F.3d 407 (6th Cir. 2016).

41. *Id.* at 409. Locals affiliated with the UAW, UFCW, IBEW, IUE-CWA, and the Teamsters union challenged the ordinances, which barred union security agreements that require all represented workers to pay dues or an agency fee or fair share fee to the union, made dues deduction authorizations revocable at any time, and prohibited unions from charging non-members a fee for the use of hiring halls. The lower court struck down all three aspects of the ordinances, holding that Section 14(b)'s exception does not encompass the law of a local subdivision. *UAW v. Hardin County*, 160 F. Supp. 3d 1004, 1008-10 (W.D. Ky. 2016). The Sixth Circuit upheld the trial court's ruling as it pertained to the regulation of dues check-off and hiring halls, but reversed the portion dealing with the banning of union security agreements. 842 F.3d at 418, 421, 423.

42. Home rule refers to the prerogative of states to delegate authority to their constituent subdivisions to regulate for the protection of public health, safety, morals, and welfare. Authority may be granted narrowly on particular topics pursuant to statutes enacted by the state government, or more broadly through amendment to the state constitution authorizing self-government by political subdivisions. *See generally* *Hunter v. City of Pittsburgh*, 207 U.S. 161, 178 (1907) ("The number, nature and duration of the powers conferred upon [municipal] corporations and the territory over which they shall be exercised rests in the absolute discretion of the State.").

Kentucky had done.⁴³ In subsequent cases sure to follow,⁴⁴ if unions challenge the breadth of a state's home rule power to support a claim that right-to-work laws fall outside the authority delegated to local governments, their arguments would potentially undermine their allies' claim that home rule authority should extend to raising the minimum wage and adopting other minimum standards legislation, such as those providing for paid sick leave or imposing limitations on scheduling.⁴⁵

IV. RETHINKING THE OLD LABOR LAW

Andrias also suggests that social bargaining could augment alternative mechanisms for worksite representation, including minority unionism and members-only bargaining.⁴⁶ Here we think there is the most cause for optimism. Workers represented at their worksites by non-exclusive unions that charge dues only to their members could extend and advance the social bargaining agenda in immediate and sustainable ways, enhancing their voice at the worksite level and simultaneously joining with allies in the political and legislative arenas.⁴⁷ The potential to combine social bargaining with worksite representation to secure "real democratic participation" in lawmaking,⁴⁸ and simultaneously to attain Senator Wagner's goal of empowering workers to provide genuine consent to workplace governance structures and democratic consent to the political order⁴⁹ is exciting.

43. The plaintiffs did not challenge the legitimacy of Hardin County's ordinance as an exercise of state-delegated authority. *Hardin County*, 842 F.3d at 415 n.2.

44. A district court in Illinois found a parallel ordinance preempted, making appeals to the Seventh Circuit and ultimately the Supreme Court likely. See *IUOE Local 399 v. Vill. of Lincolnshire*, 2017 U.S. Dist. LEXIS 2464 (N.D. Ill. 2017); Hannah Meisel, *NLRA Preempts Ill. Town's Right-to-Work Law, Judge Say* [sic], LAW360 (Jan. 10, 2017, 10:21 PM), <http://www.law360.com/articles/878948/nlra-preempts-ill-town-s-right-to-work-law-judge-say> [<http://perma.cc/M2Y8-Q3TQ>] (noting the attorney's statement that the village plans to appeal the ruling).

45. Andrias acknowledges this risk in the context of progressive legislation at the local level. Andrias, *supra* note 1, at 90-91.

46. *Id.* at 98-99.

47. See Marion Crain & Ken Matheny, *Beyond Unions, Notwithstanding Labor Law*, 4 U.C. IRVINE L. REV. 561, 604-05 (2014) (arguing that a "robust freedom of assembly doctrine could be deployed to challenge the majority rule and exclusivity doctrines"); Marion Crain & Ken Matheny, "Labor's Divided Ranks": *Privilege and the United Front Ideology*, 84 CORNELL L. REV. 1542, 1544 (1999) (arguing that the exclusivity and majority rule doctrines have outlived their utility in a diverse workforce where coalition organizing is critical).

48. Andrias, *supra* note 1, at 100.

49. See Mark Barenberg, *The Political Economy of the Wagner Act: Power, Symbol, and Workplace Cooperation*, 106 HARV. L. REV. 1379, 1425 (1993).

In the end, our main quibble with Andrias's article is that the "new labor law" is not new. Andrias's labor regime would entail a re-commitment by labor unions to a model of social justice unionism that relies upon the kind of coordinated action that has historically been most successful, as Andrias says, "in workplaces, on the streets, in legislatures, and before agencies."⁵⁰ Further, we think the new labor frame must be more capacious than economic justice. Alliances with non-labor organizations around social issues that extend beyond workplace boundaries will be instrumental in igniting the passion necessary to produce sustainable change, accomplished at a legislative level as well as at a negotiated worksite level.⁵¹ While the prospects for solidarity across racial and gender lines may seem daunting in the Trump era, history reminds us that solidarity is forged in opposition to a common adversary.⁵²

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50. Andrias, *supra* note 1, at 101.

51. Andrias alludes to this when she describes how the Fight for \$15 campaign embraced the Black Lives Matter movement and included veterans from the civil rights movement in key organizing meetings. Andrias, *supra* note 1, at 49 & n.255.

52. See generally RICK FANTASIA, CULTURES OF SOLIDARITY: CONSCIOUSNESS, ACTION, AND CONTEMPORARY AMERICAN WORKERS (1988).