

# Latin America’s “Third Left” Meets the U.S. Workplace: A Promising Direction for Worker Protection?

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*In Latin America over the last twenty-five years, as armed left movements have declined and left-populist electoral parties have come to flourish, a “Third Left” has also emerged, combining bottom-up decision making, autonomy from the state, and pursuit of claims on territory via direct action. Examples range from the Movimento dos Trabalhadores Sem Terra (MST) (Landless Workers Movement) in Brazil to worker-controlled businesses in Argentina. This approach finds U.S. parallels in housing rights movements over a similar period, and more recently in the Occupy movement. However, this approach has been little explored in the U.S. workplace, with the exception of worker ownership strategies that largely remain marginal. We consider what legal and social movement steps could facilitate the expansion of such an approach in the U.S. workplace, and the possible implications for worker protection.*

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## INTRODUCTION

Labor and employment law in the United States have become less effective

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in protecting workers over the last several decades, for reasons including the growth of the service workforce, the “fissuring” of the workplace by subcontracting and use of staffing agencies, the increasingly sophisticated antiunion campaigns, and the reduced resources for enforcement.<sup>1</sup> U.S. scholars seeking solutions have tended to look east across the Atlantic to the regulatory and collective bargaining institutions of Northern Europe.<sup>2</sup> But they would do well to look south to Latin America as well. In this Article, we examine the possible application to U.S. workplaces of strategies developed by a particular subset of Latin American social movements that we dub Latin America’s “Third Left.”<sup>3</sup> This stream of movements emphasizes bottom-up decision making, autonomy from the state, and pursuit of claims on territory via direct action.<sup>4</sup> Said direct action often involves seizing productive assets and justifying the seizure by both legal and moral arguments.<sup>5</sup> 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’ repertoires.<sup>6</sup> But we argue that a number of the building blocks of this strategy are available in the United States.

We draw on three sets of sources. We principally rely on the literature, media reports, and organizational websites for evidence. But the ideas in our argument are more grounded in two other sets of sources. The first is a set of visits and interviews with Latin American Third Left organizations and activists in Argentina, Brazil, and Mexico over the period 2002–2009.<sup>7</sup> The second is our own

1. See Annette Bernhardt et al., *An Introduction to the “Gloves-Off Economy,”* in *THE GLOVES-OFF ECONOMY: WORKPLACE STANDARDS AT THE BOTTOM OF AMERICA’S LABOR MARKET* 1, 1–3 (Annette Bernhardt et al. eds., 2008); Chris Tilly, *Trade Unions, Inequality, and Democracy in the US and Mexico*, 2 *RETHINKING DEV. & INEQUALITY* 68, 70 (2013).

2. See, e.g., CYNTHIA L. NEGREY, *WORK TIME: CONFLICT, CONTROL, AND CHANGE* 136–71 (2012); Eileen Appelbaum et al., *Introduction and Overview*, in *LOW-WAGE WORK IN THE WEALTHY WORLD* 1, 1–27 (Jérôme Gautié & John Schmitt eds., 2010); Heather Boushey & Chris Tilly, *The Limits of Work-Based Social Support in the United States*, *CHALLENGE*, Mar.–Apr. 2009, at 81, 107–08; Robert Kuttner, *Labor Market Regulation and the Global Economic Crisis*, in *RETHINKING WORKPLACE REGULATION: BEYOND THE STANDARD CONTRACT OF EMPLOYMENT* 42, 42–56 (Katherine V.W. Stone & Harry Arthurs eds., 2013).

3. See Marie Kennedy et al., *What Is the Potential of Latin America’s “Third Left”?*, in *ENGAGING SOCIAL JUSTICE: CRITICAL STUDIES OF 21ST CENTURY SOCIAL TRANSFORMATION* 233, 234 (David Fasenfest ed., 2011) (defining the “Third Left”).

4. *Id.* at 234–35, 239–42.

5. *Id.* at 239–41.

6. Jim Pope, *Worker Lawmaking, Sit-Down Strikes, and the Shaping of American Industrial Relations, 1935–1958*, 24 *LAW & HIST. REV.* 45, 107–08 (2006).

7. See Marie Kennedy & Chris Tilly, *Argentinean Grassroots Movements at a Crossroads*, *Z MAG.*, Oct. 2005, at 15 [hereinafter Kennedy & Tilly, *Argentinean Grassroots*]; Marie Kennedy & Chris Tilly, *Dancing to a Different Samba*, *DOLLARS & SENSE*, Sept./Oct. 2002, at 26 [hereinafter Kennedy & Tilly, *Dancing*]; Marie Kennedy & Chris Tilly, *Participatory Housing Cooperatives: An Argentinean Experiment*, *PROGRESSIVE PLAN.*, Summer 2005, at 1 [hereinafter Kennedy & Tilly, *Participatory Housing Cooperatives*]; Chris Tilly & Marie Kennedy, *Chiapas: Counter-Campaigns and Autonomous Communities—The Zapatistas’ New Fight*, *AGAINST CURRENT*, Jul./Aug. 2006, at 21 [hereinafter Tilly & Kennedy, *Chiapas*]; Chris Tilly & Marie Kennedy, *From Here to Autonomy: Mexico’s Zapatistas Combine Local Administration and National Politics*, *PROGRESSIVE PLAN.*, Spring 2006, at 12 [hereinafter Tilly &

experience as participant observers in housing rights movements in Boston (and to some extent, in national networks of such movements) in the 1960s and 70s, supplemented with continuing informal conversations with Boston-area housing activists, labor and Occupy activists in several cities, and recent interviews with Paul Filson and Jacqueline Leavitt, both New York housing activists in the 1970s.<sup>8</sup>

Part I of the Article profiles Latin America's Third Left, and Part II comments on analogues in the United States. Part III discusses legal and movement-building steps that could create a stronger basis for a strategy of this kind in U.S. workplaces, and Part IV offers a brief conclusion.

### I. LATIN AMERICA'S THIRD LEFT

We have explored the notion of a Third Left in Latin America at length in other works (especially in *What Is the Potential of Latin America's "Third Left"?*; a far more extensive set of references can be found in that article).<sup>9</sup> Here, we summarize the main points. We number this left "third" to contrast it with a first left of armed guerilla movements that peaked in the 1960s and now is in eclipse, and with a second left of left-populist electoral movements and parties that have been ascendant in Latin America over the last decade.<sup>10</sup> Its distinguishing features are participatory governance, strategies centered on autonomy rather than demands directed at the state, and territorial claims.<sup>11</sup> This conceptualization has much in common with an analysis of "movements of resistance" put forth by Zibechi,<sup>12</sup> and of Argentinean "autonomous movements" by Sitrin.<sup>13</sup> High-profile instances of Third Left movements include Brazil's MST,<sup>14</sup> Argentina's *autonomista*

Kennedy, *From Here to Autonomy*]; Chris Tilly & Marie Kennedy, *From Resistance to Production in Argentina: Worker-Controlled Businesses Take the Next Step*, DOLLARS & SENSE, Nov./Dec. 2005, at 28 [hereinafter Tilly & Kennedy, *From Resistance*]; Chris Tilly et al., *Land Reform Under Lula: One Step Forward, One Step Back*, DOLLARS & SENSE, Jan./Feb. 2010, at 17 [hereinafter Tilly et al., *Land Reform*]; Chris Tilly & Marie Kennedy, "We've Been Fighting for the Land Since Time Immemorial:" *Indigenous Land Struggles in Michoacan, Mexico*, PROGRESSIVE PLAN., Summer 2004, at 21 [hereinafter Tilly & Kennedy, *We've Been Fighting*].

8. Telephone Interview with Paul Filson, N.Y. Housing Activist (Feb. 3, 2013) (on file with authors) [hereinafter Filson]; Telephone Interview with Jacqueline Leavitt, N.Y. Housing Activist (Feb. 3, 2013) (on file with authors) [hereinafter Leavitt].

9. See generally Kennedy et al., *supra* note 3 (describing Latin America's "Third Left").

10. See Jorge G. Castañeda, *Latin America's Left Turn*, FOREIGN AFF., May–June 2006, at 28, 28–43; María Victoria Murillo et al., *Electoral Revolution or Democratic Alternation?*, LATIN AM. RES. REV. 87, 91–97 (2010); Francisco Panizza, 'Brazil Needs to Change': *Change as Iteration and the Iteration of Change in Brazil's 2002 Presidential Election*, 23 BULL. LATIN AM. RES. 465, 465–82 (2004).

11. Kennedy et al., *supra* note 3, at 239–41.

12. See RAÚL ZIBECCHI, DISPERSING POWER: SOCIAL MOVEMENTS AS ANTI-STATE FORCES 82–90, 108–13 (Ramor Ryan trans., 2010); Raúl Zibechi, *The Revolution of 1968: When Those from Below Said Enough!*, AMERICAS PROGRAM (June 3, 2008), <http://www.cipamericas.org/archives/662>.

13. See HORIZONTALISM: VOICES OF POPULAR POWER IN ARGENTINA 2–3 (Marina Sitrin ed., 2006) [hereinafter HORIZONTALISM].

14. See ANGUS WRIGHT & WENDY WOLFORD, TO INHERIT THE EARTH: THE LANDLESS MOVEMENT AND THE STRUGGLE FOR A NEW BRAZIL, at xiii–xv (2003); Kennedy & Tilly, *Dancing*, *supra* note 7, at 27–29; Tilly et al., *Land Reform*, *supra* note 7, at 17–20.

current of workplace and community organizations, including the worker-run “recuperated businesses,”<sup>15</sup> Mexico’s Zapatista movement,<sup>16</sup> 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), a grassroots community organization at the center of the strikes and protests that brought down two governments and carried Evo Morales to power (since we have not visited FEJUVE, statements about them in this Article draw heavily on Achtenberg and Vanden).<sup>17</sup> However, this is far from an exhaustive list: Zibechi enumerates other such organizations in Bolivia, Colombia, Ecuador, and Peru,<sup>18</sup> we have described kindred groups elsewhere in Mexico,<sup>19</sup> and the literature points to a variety of other examples around Latin America.<sup>20</sup>

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.”<sup>21</sup> 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.<sup>22</sup> The details vary widely—from the more streamlined, pyramidal organization of the MST to the frequent leadership rotation and lengthy community-based consultation of the Zapatista movement (and with much variation within and between organizations)—but all build in more participation than is typical even in democratic grassroots organizations.<sup>23</sup>

The First and Second Lefts have sought to seize control of the state, or at

15. See Kennedy & Tilly, *Argentinean Grassroots*, *supra* note 7, at 15–20; Kennedy & Tilly, *Participatory Housing Cooperatives*, *supra* note 7, at 7–8; Tilly & Kennedy, *From Resistance*, *supra* note 7, at 28–33; Marie Trigona, *Recuperated Enterprises in Argentina: Reversing the Logic of Capitalism*, UPSIDE DOWN WORLD (Mar. 26, 2006, 7:00 PM), <http://upside-downworld.org/main/argentina-archives-32/235-recuperated-enterprises-in-argentina-reversing-the-lo>.

16. See Tilly & Kennedy, *Chiapas*, *supra* note 7, at 21–25; Tilly & Kennedy, *From Here to Autonomy*, *supra* note 7, at 12–17.

17. See Emily P. Achtenberg, *Community Organizing, Rebellion, and the Progressive State: Neighborhood Councils in El Alto, Bolivia*, in *ENGAGING SOCIAL JUSTICE: CRITICAL STUDIES OF 21ST CENTURY SOCIAL TRANSFORMATION*, *supra* note 3, at 275, 275–87; Harry E. Vanden, *Social Movements, Hegemony, and New Forms of Resistance*, in *LATIN AMERICAN SOCIAL MOVEMENTS IN THE TWENTY-FIRST CENTURY: RESISTANCE, POWER, AND DEMOCRACY* 39, 45–49 (Richard Stahler-Sholk et al. eds., 2008).

18. See ZIBECHI, *supra* note 12, at 1–8; Zibechi, *supra* note 12.

19. See Tilly & Kennedy, *We’ve Been Fighting*, *supra* note 7, at 21–23.

20. See Al Giordano, *Preface* to NANCY DAVIES, *THE PEOPLE DECIDE: OAXACA’S POPULAR ASSEMBLY*, at vii (2007) (Mexico); Richard Stahler-Sholk et al., *Introduction* to *LATIN AMERICAN SOCIAL MOVEMENTS IN THE TWENTY-FIRST CENTURY: RESISTANCE, POWER, AND DEMOCRACY*, *supra* note 17, at 1 (Various); David Bacon, *Blood on the Palms*, *DOLLARS & SENSE*, Jul./Aug. 2007, at 28, 28–34 (Brazil); Anne Kogan, *Can Brazil’s Quilombos Survive?*, in *THESE TIMES* (Sept. 25, 2007), [http://inthesetimes.com/article/3321/can\\_brazils\\_quilombos\\_survive](http://inthesetimes.com/article/3321/can_brazils_quilombos_survive); *NUESTRA HISTORIA ESTÁ EN LA TIERRA* (Centro Nacional Autónomo de Cinematografía 2008) (Venezuela).

21. HORIZONTALISM, *supra* note 13, at 3–5.

22. *Id.*; Kennedy et al., *supra* note 3, at 241–42.

23. HORIZONTALISM, *supra* note 13, at 2–3; Kennedy et al., *supra* note 3, at 241–42.

least to use pressure to extract concessions and reforms; but for the Third Left, autonomy means sidestepping the state and supplanting it from below.<sup>24</sup> Autonomy connects to laying claims on territory, since a central goal is to establish local governance over such territory, accountable to the movement and its constituency rather than the state, and it links as well to participation, since that is a key tool for such local governance. Autonomy is in part a response to the shrunken redistributive and social support functions of the neoliberal state: for example, MST settlements and Zapatista communities run their own schools (though the MST seeks to tap government education funds for the purpose).<sup>25</sup> Third Left organizations also strive for cultural autonomy (thus Zapatista local governments conduct business and run schools in the local indigenous language(s)) and for economic autonomy, often under the rubric of a social and solidarity economy guided by community values rather than profits.<sup>26</sup> 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.<sup>27</sup>

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.<sup>28</sup> MST activists occupy land that they view as unutilized or poorly utilized (an interpretation that is typically contested by the owner of record), seeking to gain title to the land.<sup>29</sup> 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.<sup>30</sup> FEJUVE councils assert governance over neighborhoods in El Alto, sometimes using a combination of political pressure and purchase to acquire land for community purposes.<sup>31</sup> In Argentinean recuperated businesses, workers occupy a closed business and attempt to reopen it and gain title to the enterprise.<sup>32</sup> Though the Zapatistas reject Mexican law and invoke the authority of the Maya peoples who were in the territories to which they lay claim before

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24. Kennedy et al., *supra* note 3, at 329–41.

25. HORIZONTALISM, *supra* note 13, at 78–80; Kennedy et al., *supra* note 3, at 239–40.

26. See Laura Collin Harguindeguy, *Resurrected Enterprises and Social Mobilization in Argentina, in* ENGAGING SOCIAL JUSTICE: CRITICAL STUDIES OF 21ST CENTURY SOCIAL TRANSFORMATION, *supra* note 3, at 253, 258–60; Kennedy et al., *supra* note 3, at 245–47; Tilly & Kennedy, *Chiapas, supra* note 7, at 23–24; Tilly & Kennedy, *From Here to Autonomy, supra* note 7, at 14–16.

27. Kennedy et al., *supra* note 3, at 240–41.

28. *Id.* at 235.

29. See WRIGHT & WOLFORD, *supra* note 14, at xiii–xv, 73–76; Kennedy & Tilly, *Dancing, supra* note 7, at 27–29; Tilly et al., *Land Reform, supra* note 7, at 17.

30. See Tilly & Kennedy, *Chiapas, supra* note 7, at 21; Tilly & Kennedy, *From Here to Autonomy, supra* note 7, at 12.

31. See Achtenberg, *supra* note 17, at 275–76.

32. See Collin Harguindeguy, *supra* note 26, at 253, 260–64; Kennedy & Tilly, *Argentinean Grassroots, supra* note 7, at 15; Tilly & Kennedy, *From Resistance, supra* note 7, at 28; Trigona, *supra* note 15.

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.<sup>33</sup>

## II. U.S. ANALOGUES WITH THE THIRD LEFT

The most obvious recent U.S. parallel with Latin America's Third Left is the Occupy movement, which made a splash by occupying public spaces in fall and winter of 2011–2012, making decisions via frequent assemblies, and challenging the government's authority.<sup>34</sup> The parallel is not accidental: similar anarchist ideologies have contributed to both sets of movements, and the movements' personnel overlapped directly in at least one case—that of Marina Sitrin, a participant observer in Argentina's autonomist movement and editor of the definitive oral history of the early years of that movement, who was also active in the early leadership of Occupy Wall Street.<sup>35</sup> 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.<sup>36</sup>

Resonances with the U.S. labor movement are more difficult to identify. As noted above, occupations of businesses are not a part of the labor movement's repertoire of tactics.<sup>37</sup> To be sure, such actions were central during the 1937 sit-down strike wave that helped launch the Congress of Industrial Organizations (CIO) (Pope reports that 583 sit-down strikes took place between 1936 and 1939).<sup>38</sup> But the courts never recognized such strikes as legal, and the U.S. Supreme Court's 1939 *NLRB v. Fansteel Metallurgical Corporation* ruling definitively

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33. See Tilly & Kennedy, *From Resistance*, *supra* note 7, at 28–30.

34. See Tom Angotti & Marie Kennedy, *Occupy Urban Planning!*, PROGRESSIVE PLAN., Spring 2012, at 2, 5, 19; Sarah van Gelder, *Introduction: How Occupy Wall Street Changes Everything*, in THIS CHANGES EVERYTHING: OCCUPY WALL STREET AND THE 99% MOVEMENT 1 (Sarah van Gelder ed., 2011); Jonathan Matthew Smucker, *The Tactic of Occupation and the Movement of the 99 Percent*, PROGRESSIVE PLAN., Spring 2012, at 6–9.

35. See generally HORIZONTALISM, *supra* note 13, at 2–3 (describing autonomous social movements); Mattathias Schwartz, *Pre-Occupied: The Origins and Future of Occupy Wall Street*, NEW YORKER, Nov. 28, 2011, at 28 (describing anarchist influences in the Occupy movement); Luis Moreno-Caballud & Marina Sitrin, *Occupy Wall Street, Beyond Encampments*, YES! MAG. (Nov. 21, 2011), <http://www.yesmagazine.org/people-power/occupy-wall-street-beyond-encampments> (describing similarities between the Occupy movement and the Spanish *Indignados* or May 15 movement).

36. See David Graeber, *Can Debt Spark Revolution?*, NATION, Sept. 24, 2012, at 22, 22, 24; Sarah Maslin Nir, *Storm Causes a Rift in a Shifting Occupy Wall Street Movement*, N.Y. TIMES, May 1, 2013, at A19.

37. See Pope, *supra* note 6, at 108.

38. *Id.* at 46.

affirmed that sit-downs were punishable as trespass and that employers could legally fire plant occupiers, even those who struck over unfair labor practices.<sup>39</sup>

Occasional occupations still occur. In December 2008, 240 laid-off workers organized by the radical United Electrical Workers union occupied the Chicago factory of Republic Windows and Doors, remaining in place six days until their demands were won,<sup>40</sup> sparking some speculation that the tactic might be revived.<sup>41</sup> The union organizer who organized the occupation cited inspiration from the Latin American Third Left movement.<sup>42</sup> But so far, no wave of U.S. enterprise occupations has materialized, though shortly after the Republic action, another union, composed of workers of suit maker HartMarx, located near the Republic factory, extracted a no-offshoring pledge by threatening to sit in.<sup>43</sup> (This points to the potential broader leverage that Ernesto González of the Argentinean recuperated printshop Chilavert explained to us: "The possibility of recuperation means there is one less argument for the boss. It used to be that bosses could say, 'If you don't make these concessions, I'll close down the plant.' But now workers know they can run the factory for themselves."<sup>44</sup>) Many unions provided financial and logistical support and person-power to Occupy,<sup>45</sup> 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,<sup>46</sup> and more broadly, the fledgling U.S. solidarity

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39. *Id.* (citing NLRB v. Fansteel Metallurgical Corp., 306 U.S. 240 (1939)).

40. Republic workers won severance pay and aggressively and ultimately successfully searched for a new buyer. When the new owner, Serious Energy, in turn stumbled, workers built on their history of organizing to form a worker-owned cooperative that opened its doors in 2013. As of July 2013, however, the co-op was only employing 17, down from 240 at the time of the initial shutdown. *Talkin' Socialism, Episode 29—A New Era: Peg Strobel Interviews Armando Robles and Ricky Maclin*, CHICAGO DEMOCRATIC SOCIALISTS OF AMERICA (July 13, 2013), <http://www.chicagodsa.org/ts/ts029.ogg>; see also Laura Flanders, *Chicago Factory Workers to the Rescue*, YES! MAG., Spring 2013, at 30, 30–31.

41. See Michael Luo & Karen Ann Cullotta, *Even Workers Surprised by Success of Factory Sit-In*, N.Y. TIMES, Dec. 13, 2008, at A9; Immanuel Ness & Stacy Warner Maddern, *Worker Direct Action Grows in Wake of Financial Meltdown*, DOLLARS & SENSE, Sept./Oct. 2009, at 19, 19–20.

42. Benjamin Dangl, *Firing the Boss: An Interview with Mark Meinster, Organizer of the Chicago Factory Occupation*, MONTHLY REV. (Jan. 15, 2009), <http://mrzine.monthlyreview.org/2009/dangl150109.html>.

43. Ness & Maddern, *supra* note 41, at 20.

44. Tilly & Kennedy, *From Resistance*, *supra* note 7, at 33.

45. See Steven Greenhouse & Cara Buckley, *Seeking Energy, Unions Join Wall Street Protest*, N.Y. TIMES, Oct. 6, 2011, at A1; Peter Wallsten, *Lending a Little Organized Labor to Occupy Wall Street*, WASH. POST, Oct. 21, 2011, at A1.

46. See generally NICHOLAS IUVIENE ET AL., MIT COLAB, SUSTAINABLE ECONOMIC DEMOCRACY: WORKER COOPERATIVES FOR THE 21ST CENTURY 6–7, 13–14 (2010), available at [http://web.mit.edu/colab/pdf/papers/Sustainable\\_Economic\\_Democracy.pdf](http://web.mit.edu/colab/pdf/papers/Sustainable_Economic_Democracy.pdf) (describing worker-owned cooperatives in the United States); Joyce Rothschild, *Workers' Cooperatives and Social Equality: A Forgotten Route to Social Equity and Democracy*, 52 AM. BEHAV. SCIENTIST 955, 1030–34 (2009) (providing a historical overview of U.S. cooperatives); *How Cooperatives Are Driving the New Economy*, YES! MAG., Spring 2013 (special issue addressing various aspects of worker coops); GRASSROOTS

economy movement.<sup>47</sup> However, U.S. worker cooperatives account for only a tiny fraction of the workforce and the economy (for example, the U.S. Federation of Worker Cooperatives has just over 100 members).<sup>48</sup> Moreover, unlike the situation in other 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),<sup>49</sup> the U.S. unions have had little to do with co-ops and have often regarded them with suspicion<sup>50</sup>—though there are important exceptions, including a major initiative by the United Steelworkers in the Midwest.<sup>51</sup> Worker centers have adopted a more open stance, with day laborer, domestic worker, restaurant worker, and gardener organizations launching cooperatives.<sup>52</sup> Even so, worker cooperatives are typically launched by non-workplace-focused, community-based organizations.<sup>53</sup>

Perhaps the most ambitious labor-based U.S. analogue with the Third Left was the Steel Valley Authority (SVA).<sup>54</sup> SVA grew out of efforts by union and community activists in the Pittsburgh area, beginning in 1981, to reopen steel

ECON. ORGANIZING, <http://www.geo.coop/> (last visited Aug. 24, 2013) (promoting worker-owned enterprises and providing a discussion forum on the topic).

47. See U.S. SOLIDARITY ECON. NETWORK, <http://www.usssen.org/> (last visited Aug. 24, 2013) (promoting U.S.-based worker initiatives reflecting bottom-up decision-making).

48. *USFWC Member Directory*, US FED'N WORKER COOPERATIVES, <http://www.usworker.coop/member-directory> (last visited May 30, 2014).

49. See Ercüment Çelik, *World Class Cities for All: Street Traders as Agents of Union Revitalization in Contemporary South Africa*, 44 LABOUR, CAPITAL & SOC'Y 80, 91–92 (2011); Martha Chen & Donna Doane, *Informality in South Asia: A Review* 8 (Women in Informal Emp't Globalizing & Org., Working Paper No. 4, 2008).

50. See Dan Bell, *Worker-Owners and Unions: Why Can't We Just Get Along?*, DOLLARS & SENSE, Sept./Oct. 2006, at 33.

51. Amy Dean, *Why Unions Are Going into the Co-op Business*, YES! MAG., Spring 2013, at 26, 26–28; Christopher Michael, *Unionized Worker Cooperatives: A Global Comparison* (May 2014) (unpublished manuscript) (on file with author).

52. See Christopher Michael, *Latin American Worker Cooperatives en Nueva York* (May 20, 2014) (unpublished manuscript) (on file with author); see also ASOCIACIÓN DE JORNALEROS DE SAN DIEGO, [http://myajsd.org/Home\\_Page.php](http://myajsd.org/Home_Page.php) (last visited Aug. 24, 2013); *Cooperative Restaurant Ownership/COLORS Restaurants*, ROC UNITED, <http://rocunited.org/our-work/high-road/cooperative-restaurant-ownership-colors-restaurants/> (last visited May 20, 2014); Gilda Haas, *Native Green Gardening Coop*, DR. POP BLOG (June 5, 2009), <http://dpop.org/2010/06/native-green-gardening-coop/>; LA COLECTIVA, <http://www.lacolectivasf.org/> (last visited Aug. 24, 2013); WORKPLACE PROJECT, <http://www.workplaceprojectny.org/> (last visited Aug. 24, 2013).

53. See, e.g., Ken Estey, *Domestic Workers and Cooperatives: Beyondcare Goes Beyond Capitalism, a Case Study in Brooklyn, New York*, 14 WORKINGUSA: J. LAB. & SOC'Y 347, 356–60 (2011) (describing a neighborhood-based family and social services organization which “incubated” a child-care worker cooperative).

54. See Thomas Croft, *Saving Jobs and Investing in Labor's Future: The Steel Valley Authority*, PERSP. WORK, Summer 2004, at 4–7; Ann R. Markusen, *Planning for Industrial Decline: Lessons from Steel Communities*, 7 J. PLAN. EDUC. & RES. 173, 180–82 (1988); Mike Stout, *Reindustrialization from Below: The Steel Valley Authority*, 1 LAB. RES. REV. 1, 19–22 (1986); STEEL VALLEY AUTHORITY, <http://www.steelvalley.org/> (last visited Aug. 24, 2013).



plants that were shuttered during the early 1980s recession.<sup>55</sup> They did not occupy plants, but did forcibly enter some closed factories to assess the state of plant and equipment.<sup>56</sup> The activists won the support of the leadership of the United Steel Workers of America and launched SVA in 1986, proposing use of local government's eminent domain powers to take over plants and reopen them with one-third public, one-third private, and one-third ESOP (Employee Stock Ownership Program, a form of partial worker ownership).<sup>57</sup> Despite these ambitious plans, SVA never used eminent domain powers and has only been involved in the reuse of one major plant, the Hays Ammunition Plant, now publicly owned, but leased to a private manufacturer, GalvTech.<sup>58</sup> SVA does exist to this day, as a consortium of city governments<sup>59</sup> that promotes socially responsible investment in manufacturing,<sup>60</sup> that works on varied community revitalization projects,<sup>61</sup> and that uses monitoring, early intervention, and technical assistance to head off layoffs and plant closings.<sup>62</sup> It has established a program to create cooperatively owned "green economy" businesses, but its website does not yet note any businesses created by the program.<sup>63</sup> This is an impressive track record, but involves little, if any, challenge to property relations.

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. The Great Depression of the 1930s, which spawned the sit-down strike wave, gave rise to tenant movements, at first linked to the Communist Party USA (CPUSA), which used rent strikes and eviction blocking as central tactics.<sup>64</sup> Those tactics harked back to earlier New York rent strikes in 1904, 1908, and 1917–1919.<sup>65</sup> Also during the Depression, rural populations developed the "penny

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55. See Stout, *supra* note 54, at 21–22.

56. *Id.* at 25.

57. See *id.* at 24, 26–29.

58. See *Historical Revitalization*, STEEL VALLEY AUTHORITY, <http://www.steelvalley.org/building-sustainable-communities/historical-revitalization> (last visited Aug. 24, 2013).

59. See *About Us*, STEEL VALLEY AUTHORITY, <http://www.steelvalley.org/about-us> (last visited Aug. 24, 2013).

60. See *Investing Responsibly*, STEEL VALLEY AUTHORITY, <http://www.steelvalley.org/investing-responsibly> (last visited Aug. 24, 2013).

61. See *Building Sustainable Communities*, STEEL VALLEY AUTHORITY, <http://www.steelvalley.org/building-sustainable-communities> (last visited Aug. 24, 2013).

62. See *SEWN*, STEEL VALLEY AUTHORITY, <http://www.steelvalley.org/saving-jobs/sewn> (last visited Aug. 24, 2013).

63. *Who We Are*, STEEL VALLEY AUTHORITY, <http://www.steelvalley.org/about-us/who-we-are> (last visited Aug. 24, 2013).

64. TOM ANGOTTI, *NEW YORK FOR SALE* 86 (2008); see also Mark Naison, *From Eviction Resistance to Rent Control: Tenant Activism in the Great Depression*, in *THE TENANT MOVEMENT IN NEW YORK CITY, 1904–1984*, at 94, 94–97 (Ronald Lawson ed., 1986), available at <http://www.tenant.net/Community/history/hist-toc.html>.

65. See Jenna Weissman Joselit, *The Landlord as Czar: Pre-World War I Tenant Activity*, in *THE TENANT MOVEMENT IN NEW YORK CITY, 1904–1984*, *supra* note 64, at 39, 42–47; Joseph A.

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.<sup>66</sup>

Rent strikes erupted again in Harlem during the 1950s, again with the CPUSA playing an organizing role.<sup>67</sup> In the 1960s, the civil rights and black power movements, and the expectations they aroused, helped spread rent strikes and eviction blocking beyond New York to Baltimore, Chicago, Los Angeles, Philadelphia, and other cities.<sup>68</sup> In the late 1960s and 1970s, other forces converged with these drivers: inflation, disinvestment in urban housing that degraded housing conditions, and an infusion of former student radicals into working class urban communities around the country.<sup>69</sup> The result was another burst of territory-claiming protest by community-based housing movements from the late 1960s into the 1970s, and to some extent, the 1980s, in some of the same cities, notably New York and Los Angeles,<sup>70</sup> but now including movements of varying scales in Boston,<sup>71</sup> Miami,<sup>72</sup> Michigan,<sup>73</sup> New Jersey,<sup>74</sup> San Francisco,<sup>75</sup>

Spencer, *New York City Tenant Associations and the Post-World War I Housing Crisis*, in *THE TENANT MOVEMENT IN NEW YORK CITY, 1904–1984*, *supra* note 64, at 51, 54–64.

66. See DAVID A. TAYLOR, *SOUL OF A PEOPLE: THE WPA WRITERS’ PROJECT UNCOVERS DEPRESSION AMERICA* 98 (2009).

67. ANGOTTI, *supra* note 64, at 91.

68. See FRITZ UMBACH, *THE LAST NEIGHBORHOOD COPS: THE RISE AND FALL OF COMMUNITY POLICING IN NEW YORK PUBLIC HOUSING* 71 (2011); Keeanga-Yamahtta Taylor, *The Housing Struggle Then and Now*, *SOCIALIST WORKER* (Mar. 19, 2010), <http://socialistworker.org/2010/03/19/housing-struggle-then-and-now>; Keeanga-Yamahtta Taylor, *Tenant Unions, Rent Strikes, Fighting Foreclosure, and Eviction Blockades: Black Chicago’s Struggle for Housing Justice* (Jan. 6, 2012) (unpublished paper) (on file with author) (presented at the American Historical Association Annual Meeting, Chicago, IL); see also Grant Kester, *Riots and Rent Strikes: Documentary During the Great Society Era*, *EXPOSURE*, 1989, at 21, 28–33 (describing Urban Planning Aid’s use of documentary videos to support eviction blocking).

69. See ANGOTTI, *supra* note 64, at 97–102; ROBERT GOTTLIEB ET AL., *THE NEXT LOS ANGELES: THE STRUGGLE FOR A LIVABLE CITY* 39 (2005); MIKE MILLER, *A COMMUNITY ORGANIZER’S TALE: PEOPLE AND POWER IN SAN FRANCISCO* 172–74 (2009); Robert Lawson, *Tenant Responses to the Housing Crisis, 1970–1984*, in *THE TENANT MOVEMENT IN NEW YORK CITY, 1904–1984*, *supra* note 64, at 209, 209–10; see also John Atlas, *Shelterforce Turns 20: The Early Years*, *SHELTERFORCE ONLINE* (Nov./Dec. 1995), <http://www.nhi.org/online/issues/84/twenty.html>; Woody Widrow, *The Long and the Short Haul*, *SHELTERFORCE ONLINE* (Sept./Oct. 2000), <http://www.nhi.org/online/issues/books/113.html>; Ann Wilson, *Ann Arbor Tenants Union*, *SHELTERFORCE ONLINE* (Mar./Apr. 1995), <http://www.nhi.org/online/issues/80/annarbor.html>.

70. ANGOTTI, *supra* note 64, at 94–102; GOTTLIEB ET AL., *supra* note 69; Lawson, *supra* note 69.

71. See Kester, *supra* note 68, at 30–32; Patricia Cantor, *25 Years Ago Tenants Organized, Formed Coalitions, Took to the Street, and Won Rent Control in Massachusetts*, *SHELTERFORCE ONLINE* (Mar./Apr. 1995), <http://www.nhi.org/online/issues/80/massrent.html>; John Killilea, *The South End: Puerto Rican Power!*, *HARVARD CRIMSON* (Nov. 16, 1967), <http://www.thecrimson.com/article/1967/11/16/ii-the-south-end-puerto-rican/#>; authors Kennedy’s and Tilly’s personal observations from the housing movement in Boston (1969–2008).

72. See *Rent Strike Prompts Housing Code Re-Examination*, *MIAMI TIMES*, Feb. 7, 1969, at 1, available at <http://ufdc.ufl.edu/UF00028321/00803>.

73. ANDERS CORR, *NO TRESSPASSING!: SQUATTING, RENT STRIKES AND LAND STRUGGLES WORLDWIDE* 94, 152 (1999); Wilson, *supra* note 69.

and St. Louis,<sup>76</sup> among other places. In New York, sixty-seven neighborhood tenant organizations existed in 1969, and eighty-three by 1973.<sup>77</sup>

Rent strikes combined with eviction blocking themselves constituted a claim on territory and were supplemented by squatting in vacant buildings and units, and by occupying vacant buildings to block demolition.<sup>78</sup> But tenant movements often went beyond these tactics to shift formal ownership in ways that adapted to local circumstances and laws—again, in some cases on a very large scale.<sup>79</sup> 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 property,<sup>80</sup> 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.<sup>81</sup> 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, holding housing in a status known as "in rem."<sup>82</sup> In response, tenants formed the In Rem Tenants Organization (IRTO) in 1979. IRTO joined together with other local tenant groups in city-controlled housing to constitute the Union of City Tenants (UCT) in 1980.<sup>83</sup> They and the Metropolitan Council on Housing (Met Council), an organization with CPUSA roots, demanded that the city retain the properties (rather than rapidly turning them over to new private landlords as was the city's practice) without raising rents.<sup>84</sup> While the Met Council held out for ongoing public ownership, the UCT began striking compromises that turned properties over to tenants as co-ops and, in some cases, limited equity co-ops that limited speculative gains on resale in order to keep the housing affordable

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74. Atlas, *supra* note 69; Widrow, *supra* note 69.

75. See MILLER, *supra* note 69, at 108, 189 (describing "militant action" taken by the Mission Coalition Organization, for example, blocking access to a San Francisco housing project); DAVID TALBOT, SEASON OF THE WITCH: ENCHANTMENT, TERROR, AND DELIVERANCE IN THE CITY OF LOVE 228–29 (2012); Eric Mar, *From Vincent Chin to Kuan Chung Kao: Restoring Dignity to Their Lives, in ANTI-ASIAN VIOLENCE IN NORTH AMERICA: ASIAN AMERICAN AND ASIAN CANADIAN REFLECTIONS ON HATE, HEALING AND RESISTANCE* 77, 80 (Patricia Wong Hall & Victor M. Hwang eds., 2001); Mike Miller, *The Plague of the Nonprofits*, SHELTERFORCE ONLINE (Winter 2010), [http://www.shelterforce.org/article/2113/the\\_plague\\_of\\_the\\_nonprofits1](http://www.shelterforce.org/article/2113/the_plague_of_the_nonprofits1).

76. Laurie Goldman, *4 Lessons from "Envisioning Home,"* ROOFLINES: SHELTERFORCE BLOG (Apr. 30, 2013), [http://www.rooflines.org/3206/4\\_lessons\\_from\\_envisioning\\_home](http://www.rooflines.org/3206/4_lessons_from_envisioning_home).

77. Lawson, *supra* note 69, at 210.

78. *Id.*; author Kennedy's and Tilly's personal observations from the housing movement in Boston (1969–2008).

79. See Lawson, *supra* note 69, at 210.

80. *Directory of New York City Affordable Housing*, FURMAN CENTER FOR REAL EST. & URB. POL'Y, <http://furmancenter.org/institute/directory/entry/7a-management-program> (last visited Sept. 28, 2013).

81. Leavitt, *supra* note 8.

82. *Id.*

83. *Id.*

84. *Id.*

over the long term.<sup>85</sup> Tom Gogan, one UCT founder, had previously been a leader of the “People’s Firehouse” movement, in which community members occupied a firehouse shut by the city as a major fiscal crisis hit in 1975, and successfully got it reopened.<sup>86</sup> In all of these movements, community-based organizations combined direct action, such as eviction blocking with lawsuits (above all, restraining orders to stay evictions and demolitions) and lobbying for new laws to allow tenants to stay in place. The influence of new left ideology meant that organizations often attempted to implement more participatory, bottom-up decision making—though this varied significantly by organization.

Some organizations with roots in 1970s rent strikes and eviction blocking, such as Boston’s City Life/Vida Urbana, continued doing related work—in City Life’s case, including, in the 1990s, declaring and organizing around an “Eviction Free-Zone” in areas where low-income housing earlier threatened by disinvestment, was now vulnerable to gentrification and displacement.<sup>87</sup> When foreclosures exploded in 2008, City Life and others ramped up and adapted long-standing tactics.<sup>88</sup> In Boston, where the main form of rental housing is owner-occupied two- and three-family buildings, City Life organized the Bank Tenants Union, which made demands on foreclosing banks with content very similar to the demands UCT made on the City-as-owner in the 1970s: allow the owner-occupant and tenants to stay while paying an affordable rent, and defer resale until a solution can be found that keeps current residents in place.<sup>89</sup> The Republic Windows and Doors occupiers’ demand of severance pay was timid by comparison.<sup>90</sup> Other community organizers around the country began building similar movements of homeowners, including the California-based Home Defenders League launched by the Alliance of California Cities for Empowerment,<sup>91</sup> and when the Occupy encampments were shut down, many activists shifted into anti-foreclosure organizing, including eviction blockings.<sup>92</sup>

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85. Filson, *supra* note 8; *see also* ANGOTTI, *supra* note 64, at 92; Alan S. Oser, *Perspectives: In Rem Housing: Sales of Tax-Foreclosed Buildings to Tenants to Rise*, N.Y. TIMES, July 13, 1986, at R7.

86. Dan Schneider, *Fighting for the People’s Firehouse*, BROOKLYN RAIL (Dec. 1, 2003), <http://www.brooklynrail.org/2003/12/local/fighting-for-the-peoples-firehouse>; *see also* Filson, *supra* note 8.

87. Lawrence K. Kolodney, *Eviction Free Zones: The Economics of Legal Bricolage in the Fight Against Displacement*, 18 FORDHAM URB. L.J. 507, 507 (1991).

88. John Leland, *Finding in Foreclosure a Beginning, Not an End*, N.Y. TIMES, Mar. 22, 2010, at A12; Steven Wishnia, *Fighting on Frontlines of the Foreclosure Crisis: Citizens Take on the Monster Banks*, ALTERNET (Jan. 27, 2010), [http://www.alternet.org/story/145392/fighting\\_on\\_frontlines\\_of\\_the\\_foreclosure\\_crisis%3A\\_citizens\\_take\\_on\\_the\\_monster\\_banks](http://www.alternet.org/story/145392/fighting_on_frontlines_of_the_foreclosure_crisis%3A_citizens_take_on_the_monster_banks).

89. Leland, *supra* note 88; *see also* Micah Uetricht, *Home Is Where the Fight Is*, IN THESE TIMES (Mar. 7, 2011), [http://inthesetimes.com/article/6955/home\\_is\\_where\\_the\\_fight\\_is](http://inthesetimes.com/article/6955/home_is_where_the_fight_is); Wishnia, *supra* note 88.

90. *See* Monica Davey, *In Factory Sit-In, an Anger Spread Wide*, N.Y. TIMES, Dec. 8, 2008, at A16.

91. *See* Ellen Reese, *Defending Homes and Making Banks Pay: California’s Home Defenders League* (Mar. 2013) (unpublished article) (on file with author).

92. Graeber, *supra* note 36, at 22, 24; Alexandra Bradbury, *Union Members Fight Foreclosure*

The union UNITE HERE's Local 26 in Boston (representing hotel workers) has recently allied itself with City Life in campaigning against foreclosures and evictions.<sup>93</sup>

The point of this somewhat lengthy selective history of housing rights movements and protest is that 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. For housing activists, such claims are part of a recurrent, though discontinuous, repertoire that dates back to at least 1904, and which has, in some cases, gone beyond rent strikes to eviction blocking, building occupations, and often successful attempts to shift ownership to tenants, foreclosed owners, or community-based organizations. In the most recent waves of activism, many organizations experimented with more participatory governance structures, marking another point of commonality with the Third Left.

### III. COULD U.S. LABOR USE THIS STRATEGY?

In considering whether a similar strategy could be viable for labor organizations—current or future—in the United States, we address several questions. Is there an essential difference between housing and labor organizing that would impede rolling out a "Third Left" strategy in the labor movement? What are the legal footholds or obstacles to such an approach? What other obstacles are most critical? What steps in terms of law and organizing could be taken to make a Third Left-like strategy viable?

One possibility is that deep differences between housing and workplace environments make a labor version of Third Left strategies implausible. The most obvious candidate would be the fact that occupying 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.<sup>94</sup> The need to solve this competitive challenge would seem to call for economies of scale, hence a certain amount of centralization (via private or government ownership). Thus in some sense, decentralized occupation may be more viable in the case of housing than in the labor case. However, we would suggest that this difference is not as decisive as it might at first appear. First of all, there are economic challenges to seizing housing as well. True, closed businesses are often those that are economically marginal and have obsolete technology.<sup>95</sup> But likewise, housing that reaches the point of rent

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*Evictions with Sit-Downs and Blockades*, ALTERNET (Mar. 6, 2013), <http://www.alternet.org/labor/union-members-fight-foreclosure-evictions-sit-downs-and-blockades>; OCCUPY AUCTIONS/EVICTIONS, <http://occupytheauctions.org/wordpress/> (last visited Sep. 9, 2013) (detailing Occupy Auctions/Evictions's past and upcoming eviction blocking events).

93. Bradbury, *supra* note 92.

94. We thank Katherine Stone, Arjay and Frances Fearing Miller Distinguished Professor of Law at the University of California, Los Angeles School of Law, for this important insight.

95. Regarding Argentina, see, e.g., Collin Harguindeguy, *supra* note 26, at 260; Tilly &

strike or foreclosure has usually suffered from disinvestment—and the necessary investments enjoy economies of scale (in know-how, if not in physical technology).<sup>96</sup> And though scattered squatting may be tolerated, large-scale takeovers in Latin America and elsewhere, outside of exceptional revolutionary situations, typically end in some form of government compensation for the owner and gradual repayment by the new occupants, both of which also require economic resources.<sup>97</sup> Moreover, in Latin America, collective seizures of farmland and workplaces are, if anything, more common than housing occupations, and despite the importance of subsistence agriculture in some of these settings, virtually all must contend in some way with the demands of the market for their products.<sup>98</sup> Though large-scale solidarity economy success stories are rare, they point to important possibilities. Indeed, Third Left takeovers of housing and productive facilities both require extensive political and economic support structures.<sup>99</sup> Perhaps the mix inclines toward the political end with housing (in part because housing is often more dispersed in location and ownership), and toward the economic end with farmland or factories, but the basic currency for both is networks, coalitions, expertise, and people-power.

It might be supposed that another powerful explanation for the greater importance of territorial claims in the housing sphere than in the workplace in the United States is a friendlier legislative environment. But we would suggest that existing law offers a number of plausible handles for legal accommodation of territorial claims by labor. We make this suggestion with some hesitation since we are not legal scholars and lack expertise in the areas of law in question. Moreover, we are quite sure that many of the areas of law would require judicial or legislative modification to legitimize property transfers by means other than sale. However, part of the housing movement's history is winning precisely such modifications as a response to large-scale organizing and direct action.<sup>100</sup> The five areas of law we view as promising, or at least worthy of investigation, are:

1. *Eminent domain*.<sup>101</sup> Argentinean workers who “recuperate” closed businesses rely on this power: following an occupation, the local government seizes the property, compensates the owner, and turns the title over to the

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Kennedy, *From Resistance*, *supra* note 7, at 28; Jose Itzigsohn, Associate Professor, Brown Univ., Presentation in Section RC-44 of the International Sociological Association Forum: Recuperated Enterprises: Changing Work? (Aug. 4, 2012).

96. See MILLER, *supra* note 69, at 107–08; TALBOT, *supra* note 75, at 228–29; Atlas, *supra* note 69; Widrow, *supra* note 69; Filson, *supra* note 8; Leavitt, *supra* note 8; author Kennedy's and Tilly's personal observations from the housing movement in Boston (1969–2008).

97. Kennedy et al., *supra* note 3, at 239–42.

98. Tilly & Kennedy, *From Resistance*, *supra* note 7, at 29.

99. Kennedy et al., *supra* note 3, at 247–52.

100. See ANGOTTI, *supra* note 64, at 121; GOTTLIEB ET AL., *supra* note 69, at 165–66; Lawson, *supra* note 69, at 209; Cantor, *supra* note 71; Wilson, *supra* note 69; Filson, *supra* note 8; Leavitt, *supra* note 8.

101. For a similar argument on eminent domain, see Peter Ranis, *Promoting Cooperatives by the Use of Eminent Domain: Argentina and the United States*, 28 SOCIALISM & DEMOCRACY 51 (2014).

workers (often as recompense for unpaid wages and benefits), typically with a relaxed schedule for the cooperative business's repayment of the compensatory amount to the government.<sup>102</sup> In some high-profile cases, the workers have failed to win title and maintain control only through direct action, but that has not proven to be a viable large-scale option.<sup>103</sup> In the United States, eminent domain is notorious for its use by governments to turn property over to private developers,<sup>104</sup> but the potential exists for other uses of the power—as the early Steel Valley Authority recognized.<sup>105</sup> There are also exceptional cases, such as that of Boston's Dudley Street Neighborhood Initiative, a community-based organization in a highly disinvested neighborhood, that in the 1980s demanded and was granted a local power of eminent domain by the city government.<sup>106</sup> Currently, even mainstream city governments are proposing use of eminent domain powers to wrest foreclosed housing from financial institutions in order to address the ongoing foreclosure crisis.<sup>107</sup>

2. *Tax foreclosure.* The Union of City Tenants came into existence on the basis of large-scale tax foreclosure by the City of New York.<sup>108</sup> Cities are typically slow to foreclose and anxious to resell foreclosed property quickly to the highest bidder (as was the case in New York).<sup>109</sup> However, some cities have created land banks to put tax-foreclosed property to strategic development use.<sup>110</sup> A similar logic could be applied to businesses. Organizing and pressure could be used to hasten tax foreclosure, to delay resale, and to target resale to cooperatives or other worker or community organizations. This tool might be particularly useful in areas and sectors hit by widespread business closings (which indeed is where land banks are most often used).

3. *Bankruptcy.* Chapter 7, which dissolves a company, as opposed to the now more common Chapter 11, which reorganizes it, holds the potential for reassigning assets.<sup>111</sup> Currently, workers rank behind secured creditors in order of

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102. Kennedy & Tilly, *Participatory Housing Cooperatives*, *supra* note 7, at 29; Tilly & Kennedy, *From Resistance*, *supra* note 7, at 29.

103. For discussion of the Hotel Bauen, a key example, see Tilly & Kennedy, *From Resistance*, *supra* note 7, at 29 and Trigona, *supra* note 15.

104. Dick M. Carpenter II & John K. Ross, *Do Restrictions on Eminent Domain Harm Economic Development*, 24 ECON. DEV. Q. 337, 337–51 (2010).

105. Markusen, *supra* note 54, at 182.

106. William H. Simon, *The Community Economic Development Movement*, 2002 WIS. L. REV. 377, 385 (2002); Elizabeth A. Taylor, Note, *The Dudley Street Neighborhood Initiative and the Power of Eminent Domain*, 36 B.C. L. REV. 1061, 1061 (1995).

107. Alejandro Lazo, *Eminent Domain Proposal for Mortgages Gains Traction in California*, L.A. TIMES, Aug. 7, 2013, at B1.

108. Lawson, *supra* note 69, at 209, 243.

109. *Id.* at 209, 241.

110. Diana A. Silva, *Land Banking as a Tool for the Economic Redevelopment of Older Industrial Cities*, 3 DREXEL L. REV. 607, 608 (2011).

111. *Corporate Bankruptcy*, U.S. SEC. & EXCHANGE COMMISSION, <http://www.sec.gov/investor/pubs/bankrupt.htm> (last visited Sept. 8, 2013).

payment,<sup>112</sup> and we are not aware of instances in the United States in which a bankrupt company has been turned over to its employees (as in the Argentinean recuperated business case).<sup>113</sup> In this instance, changes in the letter of the law and precedent will almost surely be required to give workers and their organizations better opportunities to acquire the assets.

4. *Confiscation of the assets of a criminal enterprise*, through civil or criminal forfeiture proceedings. The Racketeer Influenced and Corrupt Organizations (RICO) Act and similar state statutes were designed for use against organized crime, especially against organizations involved in illicit drug sales, and penalties include forfeiture of property of, or acquired by, a criminal enterprise.<sup>114</sup> The federal list of applicable criminal offenses under RICO, laid out in 18 U.S.C. § 1961, includes theft and fraud, and for better or worse, has been interpreted expansively by the courts; some state statutes have been applied even more broadly.<sup>115</sup> Such laws could arguably be applied to a company whose business model depends on defrauding workers of pay and benefits to which they are legally entitled. Consider one example: in the attempt to organize carwash workers in Los Angeles, the CLEAN Carwash Campaign targeted the Pirian brothers, owners of two carwashes who were egregious lawbreakers.<sup>116</sup> They brought and won a class-action lawsuit against the brothers, and in the meantime, the LA City Attorney charged the brothers with criminal wage theft and they were tried and sentenced to a year in prison.<sup>117</sup> As a result, the brothers sold one of their carwashes to pay the lawsuit settlement.<sup>118</sup> What if, instead, the judge had been convinced to confiscate the carwash and turn it over to the Campaign, or perhaps a new nonprofit created for the purpose, to run as a worker-owned, high-road carwash? Brazil's Landless Workers Movement uses a similar logic to argue that when its members occupy agricultural land that is idle or is the site for massive violations of law (which in Brazilian agricultural often include peonage that comes close to slavery), they are simply enforcing the constitution's mandate that land

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112. *Employer Bankruptcy, Sale, or Abandonment*, LEGAL AID SOC'Y EMP. L. CENTER, <http://www.las-elc.org/factsheets/bankruptcy.pdf> (last visited Sept. 13, 2013).

113. Tilly & Kennedy, *From Resistance*, *supra* note 7, at 29.

114. G. Robert Blakey and Brian Gettings, *Racketeer Influenced and Corrupt Organizations (RICO): Basic Concepts—Criminal and Civil Remedies*, 53 TEMP. L.Q. 1009, 1110–14 (1980); Terrance G. Reed and Joseph P. Gill, *RICO Forfeitures, Forfeitable "Interests," and Procedural Due Process*, 62 N.C. L. REV. 57, 57–75 (1983); A. Laxmidas Sawkar, *From the Mafia to Milking Cows: State RICO Act Expansion*, 41 ARIZ. L. REV. 1133, 1133–44 (1999).

115. Sawkar, *supra* note 114, at 1133–44 (1999).

116. William Rogers, *LA Carwash Workers Win Payment for Wage Theft*, LEFT LAB. REP. (Nov. 10, 2011), <http://leftlaborreporter.wordpress.com/2011/11/10/la-carwash-workers-win-payment-for-wage-theft/>.

117. *Id.*

118. *Eblast Article 1 2011–12: Bet Tzedek and Busb Gottlieb Announce Landmark Carwash Class Action Lawsuit Settlement*, BET TZEDEK (Nov. 9, 2011), <http://www.bettzedek.org/eblast-article-1-2011-12/>.



should be put to productive use—and they have won support from judges and governors for this contention, though only through extended struggles.<sup>119</sup>

5. *Receivership*. The previous four legal concepts specify rationales for the transfer of assets. What receivership adds is that in some circumstances, transfer of assets occurs not through government seizure or resale, but through assignment of a receiver to be steward of the assets, pending longer-term disposition. New York City tenant organizations used the Chapter 7A receivership provision to leverage tenant or nonprofit ownership.<sup>120</sup> Edell and Lee suggest that amidst the current housing crisis, municipalities could place abandoned, blighted, or foreclosed properties under receivership to make strategic use of the property for long-run development (a similar argument to that of Silva with regard to land banks).<sup>121</sup> Again, this principle could be applied to businesses as well, and there may be ways for worker organizations to make use of receivership to achieve worker or nonprofit ownership.

This is not meant to be an exhaustive list, but it suggests to us that there are varied possibilities within the law for legitimizing worker claims on productive property. 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.<sup>122</sup>

Stripping assets is not the only way that the law can be used to cripple an organization. In the 1970s, Max Kargman, owner of Boston-based First Realty, which owned thousands of subsidized housing units, responded to a rent strike by bringing a civil conspiracy nuisance suit against the organization Tenants First and Urban Planning Aid, a nonprofit providing technical assistance to organizing, as well as against individuals associated with both groups.<sup>123</sup> Neither group had substantial assets.<sup>124</sup> But Kargman's strategy did not involve ever bringing the suit to trial or winning a judgment, but instead involved using the subpoena power to disrupt the lives of anyone who attended a meeting or took part in an action.<sup>125</sup> Tenants First disintegrated, and Urban Planning Aid was weakened as a result.<sup>126</sup>

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119. WRIGHT & WOLFORD, *supra* note 14, at 23–27.

120. Lawson, *supra* note 69, at 209, 222; Leavitt, *supra* note 8.

121. Chris Edell & Kai-yan Lee, *Receivership: A Coordinated Strategy to Stabilize Troubled Properties*, COMMUNITY DEV. DISCUSSION PAPERS, July 2010, at 1, 4–5, available at <https://bostonfed.org/commdev/pcadp/2010/pcadp1003.pdf>. For a similar argument, see Silva, *supra* note 110, at 608.

122. Chris Tilly, *An Opportunity Not Taken . . . Yet: U.S. Labor and the Current Economic Crisis*, 14 WORKINGUSA: J. LAB. & SOC'Y 73, 73–85 (2011).

123. Marie Kennedy, *Observations as Urban Planning Aid and Tenants First Staff Organizer (1971–1975)*.

124. *Id.*

125. *Id.*

126. *Id.*

And of course, in the case of Occupy, large-scale police repression extinguished the movement's central tactic.<sup>127</sup>

But in the case of unions, the threat to union financial assets is a serious impediment to territory-claiming direct action. Since unions are the only large scale and well-resourced players among labor organizations, this barrier is problematic indeed.<sup>128</sup> This is not to say that absent this legal obstacle, the AFL-CIO and Change to Win labor federations would naturally gravitate to a Third Left strategy. But the unions pay attention to success even when success involves radical and unfamiliar strategies, as seen in their recent partnerships with worker centers<sup>129</sup> and in 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.<sup>130</sup>

Based on this set of ideas and issues, what steps in the arenas of law and organizing could facilitate an autonomist approach to defending labor rights? We would suggest six:

1. *Increased civil and criminal penalties for abuse of workers.* Part of the reason that the National Labor Relations Act has become ineffective is that financial penalties for violations of the right to concerted action are small compared to the benefits firms perceive from engaging in such violation.<sup>131</sup> There is increasing evidence that low levels of enforcement have similarly shifted incentives in favor of violations of employment law (such as minimum wage, break times, or the overtime premium).<sup>132</sup> 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.<sup>133</sup>

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127. Graeber, *supra* note 36, at 22, 24; Mike King, *Occupy Oakland and State Repression: The Struggle for Public Space*, PROGRESSIVE PLAN., Apr. 1, 2012, at 20.

128. Tilly, *supra* note 122, at 74–80.

129. Janice Fine, *A Marriage Made in Heaven? Mismatches and Misunderstandings Between Worker Centres and Unions*, 45 BRITISH J. INDUS. REL. 335, 335 (2007).

130. Jaisal Noor, *Worker-Run Businesses Flourish in Argentina*, INDEPENDENT (Aug. 13, 2009), <http://www.independent.org/2009/08/13/worker-run-businesses-flourish-argentina>; Yeidy Rosa, *A New Form of Resistance: Argentina's Recovered Factories*, NONVIOLENT ACTIVIST, <http://www.warresisters.org/nva/nva0505-4.htm> (last visited Aug. 2013); Trigona, *supra* note 15; Anabel Rieiro, Universidad de la Republica, Montevideo, Uruguay, Presentation in Section RC-44 of the International Sociological Association Forum: Empresas Recuperadas: El Caso Uruguayo (Aug. 4, 2012).

131. See Andrew Strom, *US Labor Law—Stacked Against Workers*, in REAL WORLD LABOR 8, 9 (Immanuel Ness et al. eds., 2d ed. 2011); see also John Logan, *The Union Avoidance Industry in the United States*, 44 BRITISH J. INDUS. REL. 651, 651 (2006) (explaining how consultants, law firms, industry psychologists, and strike management firms help employers avoid worker unionization).

132. Bernhardt et al., *supra* note 1, at 1–3, 11–12.

133. See, e.g., KIM BOBO, WAGE THEFT IN AMERICA: WHY MILLIONS OF WORKING AMERICANS ARE NOT GETTING PAID—AND WHAT WE CAN DO ABOUT IT, at xiii (2011) (calling to strengthen the power of the Wage and Hour Division of the Department of Labor to deter wage theft).

2. *Make confiscation a viable option.* Currently, confiscation and reassignment of ownership to someone other than the first lienholder is uncommon, perhaps unheard of, in situations other than real estate. As we have outlined above in terms of the five areas of law, we believe that a combination of activation of existing government powers and legislative creation of new ones could make this possibility real.

3. *Develop a stronger body of law on collective ownership.* There is not a robust body of law regarding ownership of businesses by cooperatives or nonprofit entities outside of a small number of states,<sup>134</sup> nor a strong financing system designed for such forms of ownership.<sup>135</sup> Again, housing law is ahead of the game, with community land trusts (which assign title of the land to a nonprofit and allow just the building to be resold), limited equity co-ops (in which the unit owner holds only limited equity), and similar devices allowing individual ownership while curbing speculation and keeping housing affordable.<sup>136</sup> For example, specialized quasi-public financial institutions designed to support community development helped seed the surge of housing-focused community development corporations in Massachusetts.<sup>137</sup> Political scientist Elinor Ostrom's research on the many ways that communities around the world manage common property reminds us that there exists many models for collective ownership beyond those developed by Latin America's Third Left.<sup>138</sup> On the financing end, federal, state, and local offices of small business could develop loan programs targeted to alternative 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

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134. See Edward W. De Barbieri & Brian Glick, *Legal Entity Options for Workers Cooperatives*, GRASSROOTS ECON. ORGANIZING (2011), <http://www.geo.coop/node/628>.

135. See Sven Eberlein, *Cooperative Takeover*, YES! MAG., Spring 2013, at 42; Daniel Fireside & Christopher Gunn, *Workers' Cooperatives: New Strategies for Finance 2* (Oct. 2013) (unpublished manuscript) (on file with authors); Micha Josephy, *The Cooperative Fund of New England*, GRASSROOTS ECON. ORGANIZING (2013), <http://www.geo.coop/story/cooperative-fund-new-england> (recognizing that co-ops may have historically faced great competition in seeking out working capital). However, Josephy also notes that the U.S. Small Business Administration (SBA) authorized SBA lending to cooperatives in 2011, potentially opening up a significant new source of financing. *Id.*

136. See Michael Stone, *Social Ownership*, in *A RIGHT TO HOUSING: FOUNDATION FOR A NEW SOCIAL AGENDA* 240, 250–56 (Rachel G. Bratt et al. eds., 2006); see also Tom Angotti, *The Real Estate Market in the United States: Progressive Strategies 10* (Dec. 1999) (unpublished working paper) (on file with the Graduate Center for Planning and Environment, Pratt Institute), available at [http://www.plannersnetwork.org/wp-content/uploads/2012/07/brazil\\_angotti.pdf](http://www.plannersnetwork.org/wp-content/uploads/2012/07/brazil_angotti.pdf) (describing the importance of social ownership of land and New York City's implementation of social ownership policies).

137. THAD WILLIAMSON ET AL, *MAKING A PLACE FOR COMMUNITY: LOCAL DEMOCRACY IN A GLOBAL ERA* 225–26, 230 (2002).

138. ELINOR OSTROM, *GOVERNING THE COMMONS: THE EVOLUTION OF INSTITUTIONS FOR COLLECTIVE ACTION 2* (1990).

agronomy and other programs to train technical experts to serve the settlements.<sup>139</sup> The organization is conducting cutting-edge research on sustainable agriculture.<sup>140</sup> It relies on a network of supporters who are willing to physically engage in protest to block evictions or press demands, but also on a network of lawyers, engineers, and others who can offer expert advice, consultation, and pro bono help.<sup>141</sup> The Argentinean recuperated businesses are toiling to establish backward (to suppliers) and forward (to buyers) linkages within the social and solidarity economy.<sup>142</sup> In one case, a cooperative of small cotton farmers sells cotton to a recuperated textile producer, which produces and cuts fabric to be sold to a recuperated garment factory, which stitches and decorates T-shirts that are sold outside Argentina through an Italian fair trade network.<sup>143</sup> Many cooperatives require new members to take classes in cooperative values and history. In the U.S. housing sector, in addition to government-run financing systems, community development has relied on specialized, nonprofit financial intermediaries—sustained in part by laws like the Community Reinvestment Act and federal certification of community development financial institutions.<sup>144</sup>

5. *Find ways to involve labor unions while insulating them from legal penalties.* Again, the unions are the labor organizations with deep pockets, but the applicability of criminal and civil trespass laws makes it risky for them to support extralegal territory-claiming actions. Amendment of the National Labor Relations Act to recognize a countervailing right to defend the freedom to organize (or even to ban the firing of occupiers) is one fairly utopian option, but amending labor law is a tall order at best,<sup>145</sup> and the unions have higher priorities in amending the NLRA, namely the Employee Free Choice Act.<sup>146</sup> More viable 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 supporting and forming partnerships with worker centers, which can, for example,

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139. See WRIGHT & WOLFORD, *supra* note 14, at xiii–xiv; Kennedy et al., *supra* note 3, at 233, 240.

140. See WRIGHT & WOLFORD, *supra* note 14, at 152–63.

141. See *id.* at 124–48.

142. See Collin Harguindéguy, *supra* note 26, at 264–65, 272.

143. Marco Coscione, *Tejer el Futuro: Campesinos, fábricas recuperadas y comercio justo*, REVISTA GEOGRÁFICA DIGITAL 10 (May 2008), <http://hum.unne.edu.ar/revistas/geoweb/Geo10/archivos/crisar08.pdf> (Arg.).

144. Lehn Benjamin et al., *Community Development Financial Institutions: Current Issues and Future Prospects*, 26 J. URB. AFF. 177, 178, 182 (2004).

145. David Weil, *Mighty Monolith or Fractured Federation? Business Opposition and the Enactment of Workplace Legislation*, in *THE GLOVES-OFF ECONOMY: WORKPLACE STANDARDS AT THE BOTTOM OF AMERICA'S LABOR MARKET*, *supra* note 1, at 287, 308–09.

146. See generally ACADEMICS ON EMPLOYEE FREE CHOICE: MULTIDISCIPLINARY APPROACHES TO LABOR LAW REFORM (John Logan ed., 2009), available at <http://laborcenter.berkeley.edu/pdf/2009/efca09.pdf> (explaining the importance of the Employee Free Choice Act).

engage in secondary boycott activity without running afoul of Taft-Hartley's prohibition on unions engaging in such boycotts.<sup>147</sup>

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. The sit-down strike wave of the 1930s and the repeated waves of rent strikes and eviction blocking in the housing rights movement suggest it can be done, but in both cases, years of organizing preceded the actions. Unions' increased willingness to experiment with new organizing strategies outside the NLRA framework, for example, the minority unionism of the United Food and Commercial Workers' OUR Walmart campaign,<sup>148</sup> may be conducive to experimentation along these lines as well. Such high levels of organization are likely to require implementation of some of the horizontal and participatory governance methods adopted by Latin American Third Leftists; current U.S. workers seem unlikely to be willing to join military-style top-down organizations.

This is an ambitious wish list, which we propose as a starting point for discussion, rather than as an agenda for the labor movement.

#### CONCLUSION

After summarizing the accomplishments of the Third Left in Latin America, 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. We ground the argument for feasibility in the history of the U.S. housing rights movement, in which territory-claiming strategies have often succeeded at the large scale, and in the existence of several elements of law that may be co-opted to ratify territorial claims.

In closing, we want to caution that Third Left strategies should not be viewed as a panacea for labor's problems and challenges. Fernando Leiva and we have highlighted four issues faced by Latin America's Third Left, which would also apply to adoption of similar strategies by U.S. labor.<sup>149</sup> First, despite a discourse of autonomy from the state, all of the Third Left organizations have engaged in processes of negotiation and extraction of resources and reforms from the state. This process has been even more explicit in U.S. housing rights movements. The slogan of "autonomy" does not eliminate the challenges of winning reforms; it just shifts those challenges to new terrain. Second, local

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147. See *Worker Center Partnerships*, AFL-CIO, [www.aflcio.org/About/Worker-Center-Partnerships](http://www.aflcio.org/About/Worker-Center-Partnerships) (last visited Sept. 13, 2013).

148. See ORG. UNITED FOR RESPECT WALMART, <http://forrespect.org/> (last visited Sept. 13, 2013).

149. Kennedy et al., *supra* note 3, at 239–52.

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. Loose federations do not function in the same way as tightly integrated organizations or parties, and there is a built-in tension between voice and autonomy for local interests, and unity of action and priorities at the larger scales. As a one-time activist in the antinuclear Clamshell Alliance in the 1970s, coauthor Tilly keenly remembers a sign at one of the occupations of the site of the future Seabrook nuclear power plant: “Consensus means endless discussion”; casual observation of the trajectory of much Occupy activism points in the same direction. A third issue is how to go beyond claiming marginal assets. 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. Redistribution on the margin is better than no redistribution at all, but will not come close to rectifying the increasingly unequal distribution of wealth. Amsden’s critique of small business and microenterprise strategies as failing to generate scalable businesses, and therefore qualitatively important economic development, is also relevant here.<sup>150</sup> Fourth, what reach can these strategies achieve? Estimates put Argentina’s number of recuperated businesses around two hundred, with most small- and medium-sized. The largest of Latin America’s Third Left movements, Brazil’s Landless Workers Movement, claims around 1.5 million members,<sup>151</sup> which is a huge number, but is small compared to the approximately forty million Brazilians living below the country’s poverty line.<sup>152</sup> Still, direct acquisition of property may be the tip of the iceberg with much larger ripple effects, as suggested by the quotation above from Chilavert’s Ernesto González about the “threat effect” of recuperations, and as was the case with New York City’s rent strikes.<sup>153</sup>

A Third Left approach is no panacea. But we would argue that it is a potentially valuable strategy that should be explored, along with other such strategies, in coming years.

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150. Alice H. Amsden, *Say’s Law, Poverty Persistence, and Employment Neglect*, 11 J. HUM. DEV. & CAPABILITIES 57, 58–60 (2010).

151. MOVIMENTO DOS TRABALHADORES RURAIS SEM TERRA (MST), LUTAS E CONQUISTAS 11 (2d ed. 2010), available at <http://www.mst.org.br/sites/default/files/MST%20Lutas%20e%20Conquistas%20PDF.pdf>.

152. *Brazil*, WORLD BANK, <http://data.worldbank.org/country/brazil> (showing a total population of 198.7 million in 2012 and a poverty headcount ratio of 21.4% in 2009) (last visited Sept. 13, 2013).

153. Tilly & Kennedy, *From Resistance*, *supra* note 7, at 33.