

Spring 2023

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### Recommended Citation

Joe Lindsay, *Book Review: For Labor to Build Upon: Wars, Depression and Pandemic, William B. Gould IV*, Cambridge University Press, 2022, 88 Mo. L. REV. (2023)

Available at: <https://scholarship.law.missouri.edu/mlr/vol88/iss2/8>

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## BOOK REVIEW

### ***For Labor to Build Upon: Wars, Depression and Pandemic*, William B. Gould IV, Cambridge University Press, 2022**

Joe Lindsay\*

Despite truly noteworthy workplace organizing and strikes across the country—from Amazon, Starbucks, Peet’s Coffee, and now Trader Joe’s to the nascent movements in the heart of the tech sector—union membership is not keeping pace with the growing workforce. Recent data from the Bureau of Labor Statistics shows that the “share of US workers belonging to labor unions hit a historic low last year.”<sup>1</sup> What’s up?

This is the question William Gould addresses in his latest book, *For Labor to Build Upon: Wars, Depression and Pandemic*.<sup>2</sup> Gould traces how the U.S. labor movement got to where it is today and proposes a course of action to reverse the downward trend of the past fifty-plus years. Gould, a professor emeritus at Stanford Law School, is a seasoned labor arbitrator and former Chair of the National Labor Relations Board (“NLRB”) under President Clinton. In recent years, Gould—a member of the National Academy of Arbitrators for over half a century—has remained active in the labor law community, serving as Chair of the Agricultural Labor Relations Board in California. Among Gould’s many notable accomplishments, my fellow baseball enthusiast successfully mediated an end to the long Major League Baseball players’ strike in the mid-1990s.<sup>3</sup>

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\* Union activist, leader, and staff for over forty-five years, first in the International Longshore and Warehouse Union (Warehouse Division), and then the California Nurses Association/National Nurses United. Retired in 2015, and since then remains active as an arbitrator and mediator, mostly serving in Northern California.

<sup>1</sup> Ian Kullgren, *Union Membership Rate in US Dips Even Amid Economic Recovery*, BLOOMBERG LAW (Jan. 19, 2023), [https://www.bloomberglaw.com/bloomberglawnews/daily-labor-report/X8PKOBGK000000?bna\\_news\\_filter=daily-labor-report#jcite](https://www.bloomberglaw.com/bloomberglawnews/daily-labor-report/X8PKOBGK000000?bna_news_filter=daily-labor-report#jcite) [<https://perma.cc/UL83-AGR2>].

<sup>2</sup> WILLIAM B. GOULD IV, *FOR LABOR TO BUILD UPON: WARS, DEPRESSION AND PANDEMIC* (Cambridge Univ. Press 2022).

<sup>3</sup> Gould chronicled his experience mediating the strike in *BARGAINING WITH BASEBALL: LABOR RELATIONS IN AN AGE OF PROSPEROUS TURMOIL* (McFarland & Co. 2011).

In this piece, Gould digs deep into the history of labor law before and since the depression-era inception of the National Labor Relations Act (“NLRA”), and its degradation since World War II, both through the Taft-Hartley and Landrum-Griffin amendments, as well as through Supreme Court decisions and the effects of the politicization of the NLRB itself.

*For Labor to Build Upon* provides a valuable historical perspective of the development of the labor movement in the United States, from the early organization of workers in Philadelphia in the 1830s, through the Civil War years, the key thirteenth, fourteenth, and fifteenth amendments to the Constitution, Reconstruction (and the betrayal of Reconstruction), and the founding of the American Federation of Labor. Key differences emerged between the labor movements in the United States and through most of Europe. As Gould notes, unions in the United States for the most part have opted to pursue member-only rights and benefits, while throughout most of Europe, labor rights, benefits, and often wage rates, have applied to all through national legislation. A corollary of these differences has been that the U.S. movement has been consistently more conservative than that in Europe. Many U.S. unions, for example, adopted racist and anti-immigrant exclusion clauses and practices in the late nineteenth and the early twentieth centuries. And in the 1960s and 70s, much of the U.S. labor movement supported the U.S. war in Vietnam at a time when progressive forces both in the United States and throughout the world opposed that war.

The great upheavals of the day—wars and the depression—led to significant gains for the working class, as Gould explains. The Civil War led to the defeat of slavery and to what Gould justifiably refers to as the great post-war amendments—the thirteenth, fourteenth, and fifteenth—promoting free labor, equal protection, due process, and universal (male) suffrage. During World War I, the first National War Labor Board was established—leading to the recognition of the right of unions to exist and bargain collectively. Union organizing increased markedly, although most of those gains were lost in the 1920s with the red scare and the Palmer raids. But the onset of the Depression and the defeat of Herbert Hoover in the 1932 election set the stage for the mass organizing movements of the 1930s, swelling the ranks of the labor movement and leading to major developments in labor law and labor relations.

Gould explains how the passage of the Norris-LaGuardia Act in 1932 helped facilitate the mass organizing that followed by protecting the right to strike, a primary organizing tactic at the time. The NLRA, at that time more widely known as the Wagner Act, followed in 1935. But, almost immediately, union rights won under the NLRA came under attack from right-wing forces in Congress and the Supreme Court, starting in 1938 with the Court’s approval of so-called “permanent replacements” for strikers, which undermined the right to strike. The NLRA suffered further degradation following World War II, through the Taft-Hartley and

Landrum-Griffin amendments, adverse Supreme Court decisions, and the effects of the politicization of the NLRB itself.

During World War II, with the establishment of a second National War Labor Board (“NWLB”), union and worker rights were extended, albeit under the condition of a no-strike pledge during the war. The NWLB encouraged the establishment of union security clauses, requiring workers to become and remain union members. Following the war and the expiration of the no-strike pledges and wage freezes, pent-up demand resulted in a wave of strikes. Wide-spread strikes took place in auto, coal mining, rail, meat-packing and other industries, with the steelworkers’ strike being the largest in U.S. history. In reaction, Congress adopted the Taft-Hartley amendments to the NLRA, limiting strikes and secondary boycotts and enacting other anti-union provisions. Despite the Taft-Hartley restrictions, union membership continued to increase through the Korean War and into the mid-1950s. But beginning in the late 1950s and continuing to the present, the percentage of U.S. workers represented by unions has been steadily declining.

Seeking to reverse or mitigate the anti-union provisions of the Taft-Hartley and Landrum-Griffin amendments to the NLRA, as well as anti-union decisions by the Supreme Court, the labor movement—particularly the AFL-CIO—has lobbied for labor law reform over the past 40-50 years. Linked closely to the Democratic Party, the AFL-CIO has been successful in getting the party to adopt various labor-friendly proposals into its platforms. Regardless of who has become President, however, attempts at labor-law reform have been largely unsuccessful, and union membership has continued to fall.

Gould argues persuasively that while reform of labor law in the United States is necessary and long overdue, it is not enough by itself to reverse the negative trend in overall union membership. The key, according to Gould, is labor’s renewed commitment to mass organizing. He points to the formation of Change to Win in the early 2000s when a group of unions coalesced to demand that the AFL-CIO require its member unions to budget a significant portion of their dues income to organizing. When that demand was rejected by the larger body, the Change to Win unions broke off and formed their own organization. But despite their stated goals, the Change to Win unions were generally no more successful in turning back the tide of declining membership than the AFL had been and continues to be, and most of those unions have since returned to the AFL.

The past several decades have been characterized by sharper growing attacks on democratic institutions, and the concurrent attacks on labor are not a coincidence, as Gould points out. A strong labor movement is key to organizing public support for progressive politics and legislation, he argues. Beginning with Ronald Reagan’s destruction of the Air Traffic Controllers’ union, PATCO, continuing through the Gingrich years, the

establishment of the Tea Party caucus in Congress, through the more recent openly anti-democratic Trump years, and culminating with the capitulation of Kevin McCarthy to the most extreme wing of the Republicans, democracy and labor rights have both been under attack in the United States. Gould makes a strong case linking democratic rights in general with democracy in the workplace which he shows is “a valuable legacy of the antislavery cause in the War of the Rebellion, or Civil War.”

After examining the history of the labor movement into the twenty-first century, Gould discusses the present-day plight of gig workers and the rightwing push to allow virtually any worker to be classified as a “contractor” without the rights ordinarily available to employees. Gould offers useful insight on the role of “essential” workers during the recent and on-going pandemic and discusses the fights to compensate student-athletes, who have provided a chief source of income to prominent universities. The jury is still out on whether the pandemic, like the previous major disruptions of wars and the Great Depression, will be characterized by gains for the labor movement and working people in general.

Despite the past failures and shortcomings of the labor movement, Gould argues that unions remain the best avenue for protecting and building the rights of workers—from those in the mass “essential worker” industries such as health, agriculture, and food processing, to steel, auto, transportation and other previous bulwarks of labor, to service workers, and to gig and tech workers, among other newer categories of workers. All need basic workplace rights and, as Gould states in the introduction to his book, “democracy in the workplace is an essential part of democracy itself.” To fulfill the needs of the U.S. working class, Gould concludes, the labor movement must not only fight for labor law reform but must also recommit itself and its resources to the kind of mass organizing seen in the 1930s.

*For Labor to Build Upon* is a valuable contribution to labor literature and will be useful in evaluating the issues of the day not only for those with an academic interest in labor law and labor history, but also for current and future leaders of the labor movement.