

Roy J. Adams. (2006). *Labour Left Out: Canada's Failure to Protect and Promote Collective Bargaining as a Human Right*. Ottawa: Canadian Centre for Policy Alternatives. 152 pages.

In fifty-five pages and a host of exhibits and appendices, Roy Adams raises an important issue: the low level of legal protection for collective bargaining and the almost non-existent role for organized labour as a partner in Canadian society.

Professor Adams points out that the Supreme Court of Canada recognized that workers have a constitutional right to organize, to form associations, and to make representations to employers. Adams believes it would be logical for the Supreme Court to extend the right to associate to the right to bargain. Unfortunately, this is not the case.

With Pierre Elliott Trudeau's repatriation of the constitution and the emergence of the Charter of Rights and Freedoms, basic equality rights were established, but not the right to bargain collectively or the specific obligation for employers to bargain fairly with unions. The labour movement, either indifferent to - or suspicious of - the Charter as a fundamental rights instrument, probably lost the strategic moment to enshrine in the Constitution the right to bargain collectively. Surprising, since it would have been in keeping with the general trend in the United Nations including the International Labour Organization (ILO). Even Guatemala had the right to bargain collectively in its constitution!

Most of the book records Canada's lack of accomplishment in securing labour rights and, especially, the right to representation for Canadian workers. Professor Adams contrasts ILO standards and the practice in Canada. He correctly points out that the federal and provincial public sectors have experienced the most frequent limitations on their bargaining rights with legislation directed to break strikes, tie up unions in government-serving essential service procedures, and to control compensation.

Canada's failure to provide constitutional protection for collective bargaining is the most flagrant example of a state that avoids a commitment to "industrial democracy" in its institutional architecture. Adams provides us with data to confirm the generally known fact that union density is declining. He exposes the role of both federal and provincial governments in undermining unions by eroding free collective bargaining: 170 interventions since 1982.

Adam's enthusiastic advocacy of a constitutional amendment to protect collective bargaining is a welcome one. However, both to achieve such a human

rights amendment and to provide “industrial democracy”, much more would have to be accomplished.

Canadians should look for their models elsewhere - good examples abound outside of the U.S. and Canadian experience. Adams refers to the “social partnership” model promoted by the ILO and adopted in Europe.

The European Union model alluded to is much more complex than the solutions, albeit laudable, recommended by Professor Adams.

First, the “European” model is not the same throughout Europe. The right to organization and representation for workers varies dramatically in Europe. However, what makes the European model valuable is the policy commitment in the European Union to “social partnership” in the workplace and “social cohesion” as a basic social norm. “Social partnership” recognizes the role of workers in the enterprise and their “proprietary” interest in the wellbeing of the firm, as well as their specific interests as wage or salaried workers. The concept goes beyond the narrower view of compensation and working conditions prevalent in Canada. It provides for a worker - and union - role in “[...] modernising employment relations, continuing training, health and safety, better integration of disadvantaged groups, active ageing, reconciliation between work and family life and modernising work organisation in general”; as well as the operations of the enterprise.

“Social cohesion” seeks to end the exclusion of disadvantaged and vulnerable groups from the economic and social order. In the words of a recent European Commission statement, “European Values in the Globalised World”

*[...]national economic and social policies are built on shared values such as solidarity and cohesion, equal opportunities and the fight against all forms of discrimination, adequate health and safety in the workplace, universal access to education and healthcare, quality of life and quality in work, sustainable development and the involvement of civil society. These values represent a European choice in favour of a **social market economy**. They are reflected in the EU treaties, its action and legislation, as well as in the European Convention of Human Rights and our Charter of fundamental rights.*

Many European states, reflecting the EU mission, have adopted legislation that makes it mandatory for employers to provide workers with an opportunity to organize. The Roux Laws in France, for example, made it a legal requirement for employers to have a works council in large enterprises and provided for the option to have one in smaller enterprises. The key principle here is the opportunity for workers to have representation, whether a union is organized or

not. Councils are a feature throughout Europe. Co-management (“auto gestation”) models abound. The EU has also made strides in policies to advance social cohesion.

In our essentially “liberal” environment the emphasis is primarily on individual rights and protection of fundamental freedoms - including freedom from discrimination (“negative” human rights). But it does not provide social or economic human rights (“positive” rights). Recognition of collective bargaining, as Adams argues, would be a good start on the road to constitutionally established positive rights. However, workers - and others who are subject to the market economy - require much more of their state’s constitution and laws: the right to a living income, meaningful work, shelter, health care, education, culture, among others (EU, DG Employment). A struggle for the human right to bargain collectively must also be the struggle for rights to enhanced social outcomes, inclusion and participation. However, in raising the issue of expanding the Constitutional rights of workers, Adams has made a useful contribution to this wider debate.

Ed Lavalle
Department of Political Studies,
Labour Studies Program,
Capilano College
British Columbia, Canada