James B. Atleson, *Values and Assumptions in American Labor Law*, Amherst: The University of Massachusetts Press, 1983. Pp. x, 240. $25.00 (ISBN: 0 87023 389 0).

Reviewed by Nick Salvatore

In this polemical study, James B. Atleson expresses serious misgivings about the political orientation, legislative history and contemporary practice of American labor law. He argues that judicial decisions in this area are derived from 'often unarticulated values and assumptions' that are not present in either 'the language of the statute or its legislative history'.(p. 2) One such controlling assumption, he suggests, which he claims has neither statutory nor historical justification, 'is that continuity of production must be maintained, tempered only when statutory language *clearly* protects employee interference'.(p. 7) Such assumptions, in his view, have systematically perverted the intent of the National Labor Relations Act of 1935, as 'an act seemingly created to radically alter economic power is [now] used to institutionalize employer power'.(p.

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20) In presenting this argument Atleson employs an historical analysis as subtext for his legal interpretation. He seeks to show that the historical record of America's working people supports his belief in the concept of workers' control and, by extension, in the more contemporary postulate of a worker's 'right of possession in a job'.(p. 91) This historical interpretation, sketched in with reference to the late nineteenth and twentieth centuries, then allows Atleson the purview to comment on the more contemporary practice in labor law. In chapters on protecting the right to strike (*NLRB v. Mackay Radio & Telegraph Company*); on circumscribing areas of federal protection (*NLRB v. Elk Lumber Company*); and in an extended discussion of management rights and the process of collective bargaining, the author develops his central argument that the effect of 'the narrowing of the Wagner Act . . . was to limit collective activity primarily to the specific relation of employer and certified or legally recognized bargaining agent. Activities that were based on class or worker solidarity or that existed outside the contractual regime were often defined as outside the protective ambit of the law'.(p. 47) In short, he concludes, the institutional development of collective bargaining since the 1930's 'does not seem to have altered the basic legal assumptions about the workers' place in the employment relationship'.(p. 180)

Ironically, Professor Atleson, in that last sentence in his book, is essentially right for all the wrong reasons. If the emphasis is placed on the first word in the phrase, 'basic legal assumptions', it is clear that those assumptions remained relatively constant over the intervening half-century since the Wagner Act became law. But two other points are equally as clear. First, even a cursory familiarity with the historical writing on the period should have made the author sensitive to the fact that a fundamental change in those assumptions was the intent neither of Senator Robert Wagner, sponsor of the bill, nor of President Franklin Roosevelt, who hesitantly supported it after the Supreme Court declared the National Recovery Act unconstitutional. The same may be said for others in Congress and in Roosevelt's 'brain trust'. At times the author seems to recognize this, as when he cites Irving Bernstein in a footnote (p. 192, note 7) to the effect that it was the Court's decision on the NRA that moved Roosevelt from a concern with recovery to an interest in reform. But, Atleson quickly notes, Bernstein is 'not completely convincing on this point'. Such a cavalier and unsubstantiated a dismissal of as careful a scholar as Bernstein suggests the rather sloppy scholarship in this book. There is a second, corollary point as well, one even more damaging to Atleson's argument. If Washington's 'movers and shakers' had no intention to challenge those assumptions, it can be sharply argued that neither did the majority of the nation's workers. That many were angry at a capitalist system gone awry, and at specific employers as well, is obvious. But as the work of David Brody, Melvyn Dubofsky and Daniel Nelson suggests, this anger was anything but a prelude to a fundamental restructuring of American society. In a society where workers have not sustained a conscious class self-identity, it is simply foolish to deride a piece of legislation for failing to give legal protection to class-based actions by self-conscious workers.

The failure here is a failure in research and in rigorous thought. History as subtext is utilized to try to legitimize a contemporary legal and political analysis. A broader understanding of the history of industrial relations would have cautioned the author to treat more carefully that elusive if evocative phrase, 'workers' control'. At a minimum Atleson might have recognized the fact that, in the limited examples where the phrase has historical meaning in this country, workers gained elements of control over the work process in an *extra*-legal fashion, even at times through union negotiations with employers. Similarly, in discussing the manner in which contemporary arbitration decisions allow for the '"residual" rights of management', the author suggests that this approach ignores that the steel industry, 'for instance, began with worker-controlled

production processes'. Instead, such arbitration awards 'reflect only management's victory in taking control of the production process in these industries from the skilled employees'.(p. 123) Such a narrow reductionist view of changes in the process of work is embarrassing, given the rich literature that is available.

Reading this book it is difficult not to think that the intent of the author was less to understand the origins and developments of the values and assumptions that gird the practice of labor law than it was to 'prove' that labor law in America is really capitalist law and thus it invalidates itself. This is not only circular reasoning, but it is unfortunate as well. For there is another book to be written that would analyze these questions through a serious and sustained reading in the history of industrial relations and then apply that knowledge to specific case studies of more contemporary court cases and/or arbitration decisions. For the problems alluded to by James Atleson are indeed important and the legal scholar and trade union activist alike could benefit from an historically informed critical study.