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BOOK REVIEW

WORKING FOR A LIVING

WHICH SIDE ARE YOU ON?—TRYING TO BE FOR LABOR WHEN IT'S FLAT ON ITS BACK, Thomas Geoghegan, New York: Farrar, Straus & Giroux (1991). 287 pp.

RIVETHEAD: TALES FROM THE ASSEMBLY LINE, Ben Hamper, New York: Warner Books (1991). 234 pp.

David L. Gregory*

INTRODUCTION

"When you got nothing, you got nothing to lose."¹ Bob Dylan put it well in his classic song in 1965, *Like a Rolling Stone*. Words to live by; and, unfortunately, during the past two decades, increasingly words to work by, as all workers are transmogrified into Malthusian independent contractors. Of course, this somewhat perversely assumes one is lucky enough to still

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Gary Minda enthusiastically encouraged me to pursue this project from its inception, and he, B. Glenn George, and Marleen O'Connor provided very helpful comments on an earlier draft. As always, my friend and colleague Lawrence Joseph profoundly continues to influence my thinking on this and other labor and employment law projects.

¹ BOB DYLAN, *Like A Rolling Stone, on HIGHWAY 61 REVISITED* (Columbia Records 1965). For the record, I suppose, I should also cite to the late eighties pop hit by HUGHIE LEWIS AND THE NEWS, *Workin' For A Livin, on PICTURE THIS* (Chrysalis Records Inc. 1982)—but I never enjoyed that pretentious working class posing by yuppie (now belly-yuppie?) pop stars. I would hate to think it has had even a subconscious influence on my choice of a title, but one never really knows. Marleen O'Connor and others suggested a veritable litany of other titles, ranging from the group, *Men at Work*, to BOB SEGER, *Making Thunderbirds, on THE DISTANCE* (Capitol Records 1982) to DONNA SUMMER, *She Works Hard For The Money, on SHE WORKS HARD FOR THE MONEY* (Polygram Records 1983). Of course, my late Kentucky Appalachian coal mining father, in an earlier incarnation, would have loved and hated *Working in a Coal Mine*.

have a job in the era of declining real wages and millions of layoffs. From a somewhat different perspective, Harvard-trained Chicago labor lawyer Thomas Geoghegan also put it well in his poignant and fine book, *Which Side Are You On? Trying To Be For Labor When It's Flat On Its Back* ("Which Side Are You On?").² There is a symmetry between Dylan and Geoghegan born both of hopefulness and of desperation that, in a perversely positive way, may yet revitalize and reorganize organized labor. If not, lawyer Thomas Geoghegan and Ben Hamper, the former General Motors assembly line worker from Flint, Michigan, will be remembered as chroniclers and powerfully evocative voices of labor in this last decade of the century and millennium. Geoghegan provides the sense of tragedy in *Which Side Are You On?*, and Hamper, the comedy, in *Rivethed: Tales From The Assembly Line* ("Rivethed").³

This reader would much rather listen to the voices of workers in this tragic comedy than read yet another scholarly obituary mournfully commemorating the death of organized labor. In the conventional academic book reviews of the law journal genre, it is *de rigueur* at the inception to cite a litany *ad nauseam*, *ad infinitum* of scholarly sources attesting to the death of organized labor and the inexorable demise of unions during the Reagan-Bush regime. I confess to having provided such lists in some of my earlier legal scholarship.⁴ *Mea maxima culpa*. No more. No way. I have had it. Why have academic labor lawyers so dutifully helped to compile labor's obituary for more than a decade now? Smash the tombstone—it was an unholy, eerie academic exercise.

Neither of these remarkable books denies the difficult straits of organized labor in this era. But both books, for all of the bleak scenario, issue a call to labor to stand up—if for nothing more than the courageous fighter's dignity of being knocked out in the final round, after landing a few good punches, rather than throwing in the towel from the corner and simply refusing to answer the bell. In labor law, often times, the "law" is the

² THOMAS GEOGHEGAN, *WHICH SIDE ARE YOU ON?—TRYING TO BE FOR LABOR WHEN IT'S FLAT ON ITS BACK* (1991).

³ BEN HAMPER, *RIVETHEAD: TALES FROM THE ASSEMBLY LINE* (1991).

⁴ This is an "antifootnote" footnote, inserted in the standard spot, but deliberately foregoing the usual litany of scholarly sources attesting to the death of organized labor. No thanks. *Mea maxima culpa* for past collaborations in compiling such lists.

least important part of the equation. Geoghegan and Hamper put the reader directly in touch with the lives of those in labor; the law will have to take care of itself and will, as always, follow, rather than precede, the social and political realities. Meanwhile, listen to the voices of those who work for a living! Geoghegan and Hamper are the Studs Terkels of their generation.⁵ They write with great insight, pain, and grim wit—Hamper, with a frantic, anarchic hilarity—about their lives in labor, and they do so with at least as much verve as other notable compilers of oral labor histories. They bear powerful witness to the meaning of work and to the meaninglessness of the absence of dignified work. In their witness to work, Geoghegan and Hamper may have implicitly articulated some possibilities for labor's redemption. There are some encouraging signs that the message is reaching a receptive and growing audience. Geoghegan's book, nominated for the National Book Award, has become a best seller now available in paperback. There is reason to believe the ignominious collapse of the United Auto Workers Union strike at the Caterpillar Corporation in the Spring of 1992 ultimately may not be representative of labor relations in the nineties.⁶

I. WHICH SIDE ARE YOU ON?—TRYING TO BE FOR LABOR WHEN IT'S FLAT ON ITS BACK

Thomas Geoghegan, the labor lawyer, is no utopian. According to him, organized labor may be close to finished in many quarters. If there is to be a restructuring of and within organized labor, it may occur only after labor is flat on its back. That is certainly the current situation.

Some writers claim that we're at the "End of History." Most of them don't put it so pompously or mean it literally. But they do mean that the old nineteenth century problem of the "working class" has been solved, at least in the Western industrial countries, and that there will be hardly any politics. . . .

Looking out from up here, I think maybe it is over. . . . This is the

⁵ STUDS TERKEL, *WORKING* (1974); STUDS TERKEL, *THE GREAT DIVIDE: SECOND THOUGHTS ON THE AMERICAN DREAM* (1988); RANK AND FILE: *PERSONAL HISTORIES BY WORKING-CLASS ORGANIZERS* (Alice Lynd & Staughton Lynd eds., 1973); Staughton Lynd, *The Genesis of the Idea of a Community Right to Industrial Property in Youngstown and Pittsburgh, 1977-1986*, J. AM. HIST. (forthcoming 1992).

⁶ Mike Fitzgerald & Thomas Halpern, *Labor-Management and Common Ground*, CHI. TRIB., July 26, 1992, at C2.

kind of thing you think about when you're a labor lawyer and haven't seen a worker for days.⁷

Geoghegan's book is a poignant, personal reflection by a practicing union and employee-side labor lawyer on his now-almost two decade career in this practice since his graduation from Harvard Law School.⁸ While his Harvard Law School classmates' earn seven-figure annual salaries as partners in megacorporate law firms, he earns \$60,000. But the economics of his choice within the law is not the focus of his attention. He knew he had options, and his economic life at \$60,000 per year is adequate; he confesses that he can even keep up with some yuppie restaurant pretensions, although his old compact car approaches relic status.

The issue of money inevitably implicates issues of class. The median family income in the nation for a family of four is only half that of Geoghegan's. Incredulous, he cannot fathom how these average working families can economically make it, let alone have any quality of economic life.⁹ In fact, for many working class union families, going to Pizza Hut once a week is economically prohibitive. Because of class and economics, he admits he is closer to George Bush's perception of economic life than to that of the rank and file workers he represents in his law practice. At the same time, Geoghegan surely would not have Bush's sense of bafflement and incredulity about basic economic transactions, revealed to the nation in 1992 at a supermarket check-

⁷ GEOGHEGAN, *supra* note 2, at 123.

⁸ He spent two years (1977-79) as a lawyer with the United States Department of Energy. *Id.* at 224.

⁹ *Id.* at 214-19.

In *The Ancien Regime and The French Revolution*, Tocqueville says that the great evil in France on the eve of the Revolution was not the existence of class but the fact that the classes never saw each other. The French upper class, isolated, lost any feeling of responsibility for the common people, or, indeed, for the nation.

Maybe that is happening here. I notice it in the way we talk about the "economy." In fact, it is impossible to talk about the American economy now as if it were a single, seamless thing. If I try to talk about the "economy" with anyone in my "class," it turns into a wild lunging conversation, and I talk about A, and he or she talks about B, and both of us end up utterly frustrated and angry. In the old days, it was pretty clear when the American economy was "good" and when it was "bad." Now, with the growing class division, this is a much trickier exercise. "Good" or "bad" for whom?

Id. at 213.

out counter during a Presidential excursion from Versailles—er, the White House. Geoghegan shares newly appointed Secretary of Labor Robert Reich's sense that the nation is fracturing into the top twenty percent of the elite technocratic intelligentsia, while the nation's majority inexorably slides into a huge and increasingly impoverished mass.

There are heavily Catholic images and references throughout the book, to St. Joseph the Worker,¹⁰ to labor priests and to the sisters of Mother Teresa servicing a soup kitchen in Chicago,¹¹ to the Tolstoyan symbolism of the anarchist, to the eucharist, and to epiphany.¹² One hopes that this curious amalgam, this meditation, in the spirit of St. Augustine's *Confessions*¹³ and Mario Cuomo's *Forest Hills Diary*,¹⁴ will provide some epiphanies in turn for organized labor and for the nation's policymakers.

Geoghegan begins the book by confessing the apparent futility of it all: "'Organized Labor.' Say those words, and your heart sinks. I am a labor lawyer, and my heart sinks. Dumb, stupid organized labor: this is my cause."¹⁵ The first chapter, entitled *Solidarity*, cites the usual litany of gloomy statistics, charting the steady decline of union-represented workers for the past four decades. The cause of this is no mystery. The National Labor Relations Board, controlled by a Republican White House for almost all of the past quarter century, has thoroughly frustrated union organizing initiatives at every turn. The first chapter, had it been presented in fatally dry, grinding academic jargon, would have been more than enough to cause all but the most sadistic, *laissez-faire*, anti-union corporate types to pack it in. But, for Geoghegan, this grim scene is not an abstract, formalized exercise; fighting against this legal regime is the life he loves and the cause to which he has dedicated two decades, virtually all of his adult working life. Hope indeed springs eternal.

[N]one of us would know what socialism means. The very idea of it is gone, blanked out, from the disconnected halves of our labor union brains. No wonder we are weird. Labor shambles around like Frank-

¹⁰ *Id.* at 249-50.

¹¹ *Id.* at 218.

¹² *Id.* at 231-50. See also Chapter 11 (*Bread and Wine*).

¹³ ST. AUGUSTINE, *CONFESSIONS* (R.S. Pine-Coffen trans., Penguin Books 1961).

¹⁴ MARIO CUOMO, *FOREST HILLS DIARY: THE CRISIS OF LOW-INCOME HOUSING* (1974).

¹⁵ GEOGHEGAN, *supra* note 2, at 3.

enstein, half its brain gone, scaring the culture of narcissism, and really, all we want is a little love. Solidarity. Union. It is the love, the only love left in this country, that dare not speak its name.¹⁶

Solidarity contributed to the collapse of the Soviet regime in Poland. Lech Walesa won the Nobel Prize, addressed the United States Congress, and now he is President of Poland. Geoghegan compares this to the pathetic state of labor consciousness in the United States:

In 1989, when democracy swept the world, the Pittston Coal Company tried to destroy what was left of the United Mine Workers.

. . . .

The governor of Virginia was on the company's side. He flooded the area with state police to protect the scabs. The courts limited the pickets and picket signs. The state of Virginia paid over a million dollars a month to maintain the state police like an occupying army around the mines. And my friends kept coming up to me and saying, "Isn't it wonderful about the Soviet Union? Can you believe they now have a coal miners' union, just like *ours*?"¹⁷

Meanwhile, some say organized labor's greatest victory in the United States recently was organizing one thousand low paid women of color at a catfish processing plant in Mississippi.¹⁸ No wonder Geoghegan feels "weird." How did Geoghegan, a bright graduate of Harvard College and Law School, ever get himself into this particular type of law practice? "I should start by answering a question. 'How did you become a *labor* lawyer, when you're just like the rest of us, *i.e.*, you grew up suburban and middle-class and wouldn't have known a union from an onion at least until you were in your twenties?'"¹⁹

This, of course, depends as well on the perspective of the interrogator. For those of us who grew up literally in the shadow of the huge auto assembly plants of Detroit and Flint, Michigan, the obvious question is how you could possibly hope to escape the assembly line to which your grandfathers, father, brothers, uncles, cousins, and most of your non-college prep, vocational education high school class had been consigned, relegated—no,

¹⁶ *Id.* at 8.

¹⁷ *Id.* at 241-42.

¹⁸ See James G. Pope, *Labor-Community Coalitions and Boycotts: The Old Labor Law, the New Unionism, and the Living Constitution*, 69 TEX. L. REV. 889, 895-96 (1991).

¹⁹ GEOGHEGAN, *supra* note 2, at 9.

fated—to put in their thirty years. In retrospect, they were probably happy to work for a living—while it lasted (read: the Big Three, in the glory days of triple shifts and overtime, in the sixties and seventies, before the Japanese competition factored in). Or, if you were particularly frenzied, and could push that capitalist ticket of acquiring college degrees, in Flint or Detroit, what other type of law to practice was there but labor law? Whether management or union-side, it didn't really matter—what mattered was being in the belly of the beast . . . or, as we used to say at Ford Motor Company, just another MoFo from FoMoCo.²⁰

Geoghegan, definitely not of the lower-working class, began to answer his labor career question while avoiding the agony of unrequited love at Harvard. Since the French Foreign Legion was not an immediately available option while brooding in his Harvard room in November, 1972, a roommate induced him to take a weekend drive to Pennsylvania. He was driven into the midst of the Miners for Democracy, in the immediate wake of the murder of Jock Yablonski and his wife and family by Tony Boyle, the murderous then-president of the United Mine Workers Union (“UMW”). During that “road to Damascus” weekend, Geoghegan was surrounded by thugs, goons, and hard-scrabble reform miners. One senses that Geoghegan thought he was on the set of the movie *Deliverance*.²¹ At any rate, he walked—or literally, was driven—into labor history. He soon thereafter began his career as a staff labor lawyer at the national headquarters of the UMW in Washington, D.C. His law office-mate, Richard Trumka, went on to become president of the UMW within a decade. Geoghegan gives the reader a fair synopsis of the history and the legend of the union, chiefly through his reflections upon the person of its charismatic president, John L. Lewis: “Maybe the peak of Lewis’s career, or at least his stage career, was the winter of 1936. . . . In 1940, Lewis could give a speech and all three national networks would carry it live. Try to imagine any labor leader today even getting on cable.”²² Geoghegan also pro-

²⁰ “FoMoCo” is the Ford Motor Company. *In re* “MoFo”; if one has no working experience or imagination whatsoever, see *infra* notes 67-69 and accompanying text (discussing the etymology and various uses of “fuck-talk” in the sexist, male-dominated (although not exclusively) world of the automobile assembly line).

²¹ *DELIVERANCE* (Warner Bros., Inc. 1972).

²² GEOGHEGAN, *supra* note 2, at 48-49.

vides some interesting personal recollections of the style and attitude of Trumka in his first years as a young union labor lawyer who, unlike Geoghegan, was a miner and the son of a miner. Geoghegan contrasts and explains his own oddly abstract life as a labor lawyer so removed from the rank-and-file, having never been one of the miners. In microcosm, this may represent part of the pathology of business unionism, with union officials so distanced from the rank-and file constituencies they purportedly represent. Geoghegan, having never been a union rank-and-file miner, learned about the union from reading back issues of the *UMW Journal* at the library of the union's national headquarters.

Though he was not born into generations of miners, or like Ben Hamper, of "factory rat" auto assembly line workers,²³ Geoghegan eventually found that he, too, had labor "in the blood." Better that wisdom—or religion—or labor consciousness—come late, rather than not at all. So, too, for Geoghegan, the self-taught, autodidact convert; beyond that fall, 1972 weekend drive to Pennsylvania, there was no one cataclysmic moment of epiphany. Rather, the book traces the journey of his soul into the fabric of workers' lives. The book weaves together a very personal journal with incisive structural critiques of national labor policies. It is a personally poignant and insightful chronicle.

Geoghegan's sense of labor history leads to analogies between the twenties and the eighties and, now, correspondingly, between the thirties and the nineties. Geoghegan is not alone in sensing the symmetry. George Schultz, President Reagan's Secretary of State, former executive of the anti-union Bechtel Corporation, and now returned to his professorship at Stanford University, recently has also opined on the frightening parallels.²⁴ In each case, social-political-economic events and the more culturally conservative legal order inexorably have reciprocal influences. Geoghegan calls this the labor equivalent of the Big Bang Theory of creation:

²³ HAMPER, *supra* note 3, at 4-7.

²⁴ George Schultz occasionally wrote business columns in the *New York Times*. See generally Business and the Law columns, N.Y. TIMES, weekly, 1991-1992; Geoffrey N. Smith, *Stronger Unions*, FIN. WORLD, Jan. 21, 1992, at 8 (noting that Schultz believes American labor unions need to be strengthened).

"But one thing we do know, from experience. If there ever is another depression, people will turn on these business leaders and say 'You sons of bitches.'"

At least this much has to happen if labor is ever to have a big comeback.

It is not a matter of "culture" or "law" being more important. Each had to influence the other: the culture had to change so the law could change, then the law began to change the culture, and so on.

Then, all at once, there's the Big Bang. . . . [P]eople who have been atomized for years can suddenly bond together. And later it may look like an act of God. But you could jiggle with the labor laws now and perhaps get something like the same Big Bang.²⁵

President George Bush's entourage of multi-millionaire auto executives who visited Japan in early 1992 certainly galvanized mass public consciousness regarding the 160:1 compensation disparity between CEOs and rank-and-file workers in the United States, compared to the 20:1 compensation ratio in most of Europe and Japan. Legislation to constrain the employer's replacement of economic strikers may finally proceed beyond the talking stage of labor law reform.²⁶

The paradox, of course, is that the darkest hour is before the dawn. For labor, just as for religion, when times have been good—when the structures of the state provide "support"—times inevitably become bad. Much of the federal statutory labor law has drained and compromised the energy of organized labor, and the National Labor Relations Board and the courts, almost from the inception, have robbed the law of its radical potential.²⁷ For example, why strike when employers lawfully have been able to replace strikers since 1938?²⁸ During the

²⁵ GEOGHEGAN, *supra* note 2, at 43.

²⁶ Daily Labor Rep. No. 56 (BNA), Mar. 25, 1993, at A-3 (striker replacement legislation is expected to win House approval sometime in April, but faces stiff Republican opposition in the Senate); see also James Risein, *Clinton Seeks Ban on Strike Replacements*, L.A. TIMES, Mar. 31, 1993, at A1.

The tenor of labor relations in this decade is likely to be significantly influenced by the Clinton Administration. As well as campaigning on a pro-labor platform, President Clinton has taken steps within his first 100 days to reconsider the balance of power between management and labor. Secretary of Labor Robert Reich actively promoted a ban on striker replacements and, in so doing, demonstrated the Administration's intent to end the era of hostility and distrust between the two sides. *Reich Affirms Clinton Support for Striker Replacement Measure*, Wash. Insider (BNA) Mar. 31, 1993.

²⁷ See Karl E. Klare, *Judicial Deradicalization of the Wagner Act and the Origins of Modern Legal Consciousness, 1937-1941*, 62 MINN. L. REV. 265 (1978).

²⁸ NLRB v. Mackay Radio & Telegraph Co., 304 U.S. 333 (1938).

past decade, with Reagan's smashing of the PATCO strike, employers have been quick to invoke their legal prerogatives now that the social stigma of crossing a striking picket line and of replacing economic strikers has been dissipated. In 1989 there were only forty-three strikes, "which is about the same as the number of prison riots."²⁹

Geoghegan argues eloquently against the intrusion of corporate welfare statism. The New Deal statutory regulations may have strangled labor much more than they protected it. If the *laissez-faire* free market corporate ownership elites truly want an unregulated private sector, maybe organized labor also would be better off by taking its efforts back to the streets. Imagine the raw power of sweeping secondary boycotts without the specter of section 8(b)(4) unfair labor practices under the National Labor Relations Act.³⁰ State intrusion into labor management relations has, if anything, not-so-subtly recalibrated power relationships even more in favor of ownership.³¹ Geoghegan recalls the sage words of an old college instructor friend, analyzing the perverse ramifications of statism for organized labor:

"We don't know what the New Deal really was. We think of it in terms of the welfare state, and that it was a redistribution of income. But there wasn't much of that. The New Deal wasn't so much a redistribution of income as a redistribution of power."

....

"The thing that was different about American labor . . . well, there was a fatal moment, back in the thirties, when American labor embraced the state, and it really threw in with the New Deal. . . . Now, you look at labor in England . . . they never embraced the state, they never threw in with it, the way labor did here."

So when the state turned on labor, as it did later on, labor didn't know how to fight back. It had no "anti-statist" tradition to fall back on, as Lech Walesa or Solidarity would have now, if their "New Deal" in Poland ever fell apart.

....

We should never, ever, embrace the state.

²⁹ GEOGHEGAN, *supra* note 2, at 231.

³⁰ Gary Minda, *Rediscovering Progressive Labor Politics: The Labor Law Implications of Federal Trade Commission v. Superior Court Trial Lawyers Association*, 16 Vt. L. REV. 71 (1991); Pope, *supra* note 18, at 934-43.

³¹ See WILLIAM E. FORBATH, *LAW AND THE SHAPING OF THE AMERICAN LABOR MOVEMENT* (1991). Professor Lawrence Joseph powerfully elucidates this point in his review essay on Geoghegan's book. Lawrence Joseph, *Union Dues*, THE NATION, Sept. 16, 1991, at 306.

We should never completely join the New Deal.³²

After leaving the national headquarters legal staff of the UMW, Geoghegan returned to Chicago. There he has represented unions and, most poignantly, former steel workers permanently laid off from closed steel mills on the South Side of Chicago and retirees losing pensions and health insurance benefits: "[N]o new employer would hire them and have these cripples walking around, lifting and bending and carrying things. Some of them, when the mill closed, were a year or so away from death."³³

He became very impressed by internal union reform leaders such as Ed Sadlowski of the Steelworkers Union. The ultimate objective of unions, according to Sadlowski, is not to ensure the perpetuation of brute toil, but rather, to ensure meaningful jobs for everyone.

We should live in a country where people don't have to work in coke ovens. . . . So what . . . if the Mineworkers dropped from 400,000 men down to 100,000 or 60,000? That should be the *goal* of American labor, that no one should ever have to go into a mine or a coke oven ever again and just throw away their lives. When would we end all this waste?³⁴

The point is nearly moot, since the unionized steel industry—and *any* kind of steel job—has died in Geoghegan's Chicago during the past decade:

Now, on the North Side, when I walk along the beach, I cannot even see South Chicago, except on a clear day. Even then, I just barely see the mills and the smokestacks far, far to the south, and the whole steel industry like a ship slowly sinking into the waves. I think of the men of Wisconsin Steel who are still on it, who could not get off.

It was a shipwreck. And nobody planned it, it just happened.³⁵

He also represents "Teamster dissidents who get beaten up at the Union hall."³⁶

It was like being in a French Resistance that could never end. Yet these TDU [Teamsters for a Democratic Union] kept on going, with

³² GEOGHEGAN, *supra* note 2, at 56-57.

³³ *Id.* at 107.

³⁴ *Id.* at 79-80.

³⁵ *Id.* at 121.

³⁶ *Id.* at 137.

hope or not, and if you talked to them, most of them would say, "We're the *real* Union. We're the *real* Teamsters Union." They would go to every local meeting. They would sit there in the front row. In Chicago, they'd lose, and lose, but sometimes they'd win, and they'd keep coming back, getting up on their feet, screaming, forcing the Teamsters to be a real union, whether it wanted to be or not. They were heroes, all of them. I wish I could have represented them all the time.³⁷

For Geoghegan, the romance of being a labor lawyer is siding with the underdog—quintessentially, the dissidents. "To me, the best part of being a labor lawyer, or the only part of it that is any fun in this dark age, is to be with the dissidents."³⁸ Hope springs eternal, and the good guys do occasionally win, even within the Teamsters. Of course, the paradox now facing Geoghegan, the reformers, and the anti-statists within labor is the realization that the election in 1991 of reformer Ron Carey as the first genuinely rank-and-file elected President of the Teamsters Union was possible only as the result of the lawsuit brought by the United States Department of Justice in 1989.³⁹ The suit had threatened to place the entire Teamsters Union under a government supervised trusteeship under the Federal Racketeering Influenced and Corrupt Organizations ("RICO") Act of 1970.⁴⁰

Geoghegan's most withering criticisms are directed at labor's stultified and insular so-called "leadership."

It is chilling to look at the presidents of Big Labor now. I mean, just look at their faces. Some are lawyers, and others, in scary numbers, have post graduate degrees. Men like Lane Kirkland and Lynn Williams, the Steelworkers president, look and talk like the kind of professors whose lectures I used to cut.⁴¹

No wonder he sides with the dissidents advocating reforms within labor—after this assessment of the pathetic state of the major unions, who except for the most banal, venal and corrupt would *not* side with the reformers?

³⁷ *Id.* at 138-39.

³⁸ *Id.* at 182.

³⁹ See *U.S. v. Int'l Bhd. of Teamsters*, 708 F. Supp. 1388 (S.D.N.Y. 1989).

⁴⁰ *Id.* at 1392. The parties ultimately entered into a consent decree providing for court supervised elections. *U.S. v. Int'l Bhd. of Teamsters*, 728 F. Supp. 1032, 1036 (S.D.N.Y.), *aff'd*, 907 F.2d 277 (2d Cir. 1990).

⁴¹ GEOGHEGAN, *supra* note 2, at 161.

So, where does labor go from here? Will it get up off its back, or just roll onto its side and die? The successful organization of Harvard and Yale University clerical and technical workers is promising. So too is the election in 1991 of reformer Ron Carey as President of the Teamsters Union an important and interesting sign of life. Perhaps even more so is the ascendancy of Dennis Rivera, the young Puerto Rican union leader of Local 1199, the large hospital and home care workers union in New York.

The late seventies were the last viable period for structural labor law reform . . . or, at least until after the November, 1992 national elections. The 1980s should have been a good period for union organizing, given the steady decline in real wages throughout the decade. While there are pockets of union successes in professional sports, the public sector, and among white collar workers, increased organizing did not occur. Professor Paul Weiler of Harvard Law School has empirically ascertained what many viscerally knew and experienced. Given the absence of compensatory and punitive damage remedies, the protracted and cumbersome administrative bureaucracy, and the pro-employer ideology of the Reagan-Bush NLRB, it is cost efficient for employers to violate federal labor law, by summarily terminating workers during union organizational initiatives.⁴² Geoghegan found the Democratic Party boring and irrelevant; his experience of marching in a Dukakis Rally parade in Chicago at the end of the 1988 presidential campaign was particularly frustrating.⁴³

Geoghegan confesses that he is no saint, no paragon of virtue. But, I think he is close enough, especially for a lawyer. The Tom Geoghegans and Robert Hayeses of the world are rare characters; so too was Thomas More, a Man for all Seasons—although, admittedly, the stakes potentially were literally higher for More. We are defined, in part, by our choices, and Geoghegan has chosen and written about his choices with true grace and decency.

There are strains of messianic desperation percolating occasionally in the book, a nihilistic counterpunch to reduce every-

⁴² *Id.* at 253; see also PAUL C. WEILER, *GOVERNING THE WORKPLACE: THE FUTURE OF LABOR AND EMPLOYMENT LAW* (1990).

⁴³ GEOGHEGAN, *supra* note 2, at 280-83.

one and everything to ground zero. Geoghegan confronts and dismisses it:

Without the strike, and without stock, what hope is there for labor? We can always hope for the Great Depression. I think many people in labor believe: "Hey, that's when our ship'll really come in." Great. Just what labor needs. A Depression. That would really kill off whatever was left of us.⁴⁴

He points out that organized labor has historically had an ambivalent relationship with the unemployed.⁴⁵ The AFL originally opposed unemployment compensation insurance, and it has not been a primary lobbyist for the unemployed (other than its advocacy of extended benefits and the need for national health insurance). Geoghegan has lived a life in labor and in law that certainly transcends self-interest; he rightly expects organized labor likewise to transcend parochial interests and to return to its soul—the pursuit of broad social justice for all people.

Organized labor will either remain flat on its back and eventually die, will roll over and die now (little difference), or at least try to stand up. Geoghegan is still standing and he expects labor to do the same. There is only one viable choice and time soon will tell. If labor dies, there will be these chronicles of the final days of organized labor, via both Geoghegan and the retrospective tragic-comedy musings of Ben Hamper, a.k.a., the *Rivethead*.

II. RIVETHEAD: TALES FROM THE ASSEMBLY LINE

Thomas Geoghegan's *Which Side Are You On?* is not the sort of book to receive extensive attention in the law review genre, via the academic book review. The academic labor lawyers have been preoccupied with Harvard Law Professor Paul Weiler's *Governing The Work Place*.⁴⁶ But Weiler's fine book, for all

⁴⁴ *Id.* at 247.

⁴⁵ *Id.*

⁴⁶ WEILER, *supra* note 42; see Simon Deakin, Book Review, 1991 CAMBRIDGE L.J. 360; Matthew W. Finkin, *Back to the Future of Labor Law*, 32 WM. & MARY L. REV. 1005 (1991) (book review); Michael H. Gottesman, *Wither Goest Labor: Law and Economics in the Workplace*, 100 YALE L.J. 2767 (1991) (book review); Alan Hyde, *Endangered Species*, 91 COLUM. L. REV. 456 (1991) (book review); Samuel Issacharoff, *Reconstructing Employment*, 104 HARV. L. REV. 607 (1990) (book review); Marc Linder, Book Review, 9 LAW & INEQ. 343 (1991); James B. Raskin, *Reviving the Democratic Vision of Labor Law*, 42 HASTINGS L.J. 1067 (1991) (book review).

of its obvious erudition, remains somehow too abstract, formal and distant from the lives of workers. Weiler's much-reviewed academic analysis charts the likely structural future of the legal regime of labor and employment law. Geoghegan challenges the soul of labor, but it is Ben Hamper's *Rivethead* that best captures the heart—and the careening, nihilistic despair and graveyard wit—of the rank-and-file worker at the end of the post-mature heavy manufacturing period in the United States.⁴⁷ If you don't laugh, you'll cry. Some choice, eh? Ben Hamper's *Rivethead* inspires plenty of both.

Ben Hamper is the literary colleague of the anarchic movie director and producer Michael Moore, whose scathing film documentary satire *Roger and Me*,⁴⁸ about the ruthless mass layoffs by General Motors in Flint, Michigan during the seventies and eighties, energized the film world and embarrassed even the shameless totalitarian, then-Chairman of General Motors, Roger Smith.

Geoghegan was surprised that he became a labor lawyer; he confesses that he did not know what a union was until he was in his twenties. Ben Hamper's fate was sealed earlier; inexorably, he was sucked into the maw of the General Motors assembly lines in his hometown of Flint, Michigan. It was in his bloodlines, as the son of a "factory rat" father.⁴⁹ Hamper was socialized by the pervasive influence of the General Motors Corporation in Flint—the site of the mass sit down strikes by the auto workers in the thirties that forced General Motors to recognize the United Auto Workers Union.

I was seven years old the first time I ever set foot inside an automobile factory. The occasion was Family Night at the old Fisher Body plant in Flint where my father worked the second shift.

General Motors provided this yearly intrusion as an opportunity for the kin of the work force to funnel in and view their fathers, husbands, uncles and granddads as they toiled away on the assembly line.

⁴⁷ HAMPER, *supra* note 3.

⁴⁸ ROGER & ME (Warner Bros., Inc. 1989).

⁴⁹ Like me, Dave came from a fertile background of shoprats. His grandfolks and parents had been lifers at GM. We joked about this constantly—how factory servitude was something so predestined within our genes that we have probably both lain in our mother's wombs practicing assembly maneuvers. ("Bernard, I can feel the baby kicking. No, wait—he's RIVETING!"). We referred to ourselves as thoroughbreds.

HAMPER, *supra* note 3, at 98.

If nothing else, this annual peepshow lent a whole world of credence to our fathers' daily grumble. The assembly line did indeed stink. The noise was very close to intolerable. The heat was one complete bastard. Little wonder the old man's socks always smelled like liverwurst bleached for a week in the desert sun.⁵⁰

Two decades later it is Hamper, the son, punching rivets on General Motors' Blazer/Suburban assembly line, with the volume of the workers' huge stereos rising above the din of the usual deafening noise and close-to-intolerable heat of the assembly line.

Dead Rock Stars are singin' for me and the boys on the Rivet Line tonight, Hendrix, Morrison, Zeppelin. The Dead Rock Star catalogue churnin' outta Hogjaw's homemade boom box. There's Joplin and Brian Jones and plenty of Lynyrd Skynyrd. Dead Rock Stars full of malice and sweet confusion. . . . The Dead Rock Stars yowling at us, as we kick out the quota.

We're all here. Department 07, Blazer/Suburban Line—factory outpost FF-15 stenciled in black spray paint on the big iron girder behind Dougie's workbench. We're building expensive trucks for the General Motors Corp. We've come back once again to tussle with our parts and to hear the Dead Rock Stars harmonize above the industrial din.⁵¹

Put it this way: if you have never seen the inside of an auto factory, Hamper seems to paint a surreal picture of a hazy hell. It is a hell, all right. But, for the uninitiated, be assured that Hamper speaks the truth. I know three labor law professors who, in earlier incarnations, worked on the Detroit assembly lines in the late sixties and early seventies: Gary Minda, who teaches at Brooklyn Law School, my faculty colleague Lawrence Joseph, whose brilliant poetry perfectly captures the lunacy of the line⁵²

⁵⁰ *Id.* at 1.

⁵¹ *Id.* at xvii.

⁵² Hands of the West Virginian who insists you're a Greek hillbilly and hands of Jesse who insists "Can't be all that bad if you a son of David"; long, bone-fingered hands of Milton who wears his 57th Infantry combat fatigues and your hands at General Motors Truck & Coach in 1967 sandpaper primed bodies. Imitate Milton: cut the thumb and forefinger from a glove. Squirt the foreman's eyes bleed;

(poetry on the line is not unprecedented);⁵³ and yours truly.⁵⁴ How three Detroit former factory rats ended up two decades later teaching labor law in New York City in the nineties is an interesting, but entirely other, story. Suffice it to say that Hamper is not raving—well, he is raving—but he speaks the truth of the line. If this is the epitome of mind-numbing monotonous work, small wonder that within the past few years, there have been several mass murders committed within Postal Service facilities by employees or former employees. Life on the auto assembly line is much more dirty, dangerous, hot, noisy, and chaotic. While the work is mind-numbing, the physical labor is partially cathartic and provides a release for the tremendous

he's drunk—"Don't sand with that
half-assed glove on"—the same night
the psycho pushing bodies onto the line
doesn't look and catches your knees. Jones,
at break time, excited about the girl
younger than his daughter he meets
on Sunday in a bar on Wide Track Road.
Pee Wee, nearby, negotiates with Red,
suddenly opens his mouth, wiggles
his tongue "They love it!"
The newspaper admits in July Pontiac burns
—do you want any trouble?
Forget the dust from the sandpapered primer
is flakes of metal. When Jesse
repeats "Hebrew!" and repeats
"What's the matter, Rabbi?" just smile.
When the relief man cheats cheat him back.
When you walk through the gate
you know the time. When a stranger asks
"Why's someone young as you work here?"
don't answer. You don't answer
when he answers "You're a factory rat like me."

LAWRENCE JOSEPH, *Factory Rat*, in CURRICULUM VITAE 12 (1988).

⁵³ I laid out the paper towel on the picnic bench. The printing was barely legible. Grease spots and sealer smudges covered the page. I began reading and was quickly amazed. Franklin was writing *poetry* of all things. The poetry was not only a surprise, the damn shit was red-hot. He had some great lines in there, plenty of imagery and anger and this passionate raw beauty that welded together in a furious glide. The guy wasn't writing as much as he was attacking the beast. The poetry leapt at your spine and shook you down.

HAMPER, *supra* note 3, at 52.

⁵⁴ I spent my college summer "vacations" in the early seventies plating bumpers for Cadillacs and performing various other assembly line jobs at the antiquated General Motors Cadillac auto assembly line plant on Clark Street in Detroit, following my factory rat lifer uncles in the (for me, temporary, thank God!) service of G.M.

tensions in the land of the undead. Supervisors cut their line workers slack—*quid pro quo* was the order of the day—or, believe Hamper, mass murder would have been a daily event.

Hamper captures the heart and the gritty essence of it all, the madness of the line, in all its total weirdness—heat, light, smoke, sparks, noise—a high industrial version of a ring of Dante's inferno. Through a series of vignettes that frequently leave the reader laughing and crying aloud, Hamper chronicles the hilarious escapades that the workers engage in to break the deadly monotony and to relieve the tension, from the "crucified" wallet and the "charging tarantula" trap,⁵⁵ to Howie Makem, the plant "mascot" created by GM to boost morale—a poor fool paid to walk the plant dressed in a tiger suit, waving at the other workers⁵⁶—to the creative alteration of the employer's electronic

⁵⁵ Another Dan-O favorite was his "crucified wallet" trick. He would nail down an old wallet into the woodblock floor in the aisleway, flip the wallet closed to conceal the nail, and insert the torn corner off a \$20 bill. Invariably, some guy would stroll by and notice the apparent gold mine. As we pretended to look the other way, the victim casually glanced around and, feeling unnoticed, swooped down for the wallet only to wind up tumbling on his face or developing an instant hernia. The Jungle would explode in laughter as the victim retreated sheepishly.

The most entertaining of Dan-O's pranks, from a spectator's view, was the "charging tarantula" trap. Dan-O would take fishing line, attach it to a very realistic-looking rubber tarantula, and rig the fish line so that at the flick of his wrist the tarantula would come scampering out from beneath a stock crate near the aisleway. For bait, Dan-O would crumple up a dollar bill and place it in the aisle. The innocent pedestrian would come along, start to reach for the dollar, and . . . SHIT GOD ALMIGHTY . . . the bug-eyed terror you would see in the faces of these victims was enough to send you howling to your knees. After the victim had fled, Dan-O would leisurely reset the trap and we'd await the next pigeon. Man, the time just flew.

HAMPER, *supra* note 3, at 48-49.

⁵⁶ Case in point: the management at the Truck Plant decided what the Quality concept really needed was a mascot. Conceived in a moment of sheer visionary enlightenment, the plan was to dress up the mascot as a large cat. Fittingly, this rat-in-cat's clothing was to be called Quality Cat. Somewhere along the line, an even more brilliant mind upstairs decided that Quality Cat was sort of a dull title. Therefore, a contest was organized in an attempt to give the Quality Cat a more vital name.

Hundreds of crafty welders, screw jockeys and assorted shoprats immediately began clunking their heads in an effort to christen the hallowed cat. Management announced that they would reward the most creative of these entries with a week's use of a company truck. Hot damn! The eventual winner of the contest was a worker who stumbled upon the inspired moniker Howie Makem. Sadly, my intriguing entry, Wanda Kwit, finished way the hell down the list somewhere right between Roger's Pussy and Tuna Meowt.

bulletin board, beaming its Orwellian message of the day.⁵⁷

From the boom days of the mid-seventies, the blur of overtime and double shifts kicks in.⁵⁸ Hamper and friends deaden the experience with their *de facto* residence in the local bars and unlawful ingestion of mass quantities of various controlled substances, while, ingeniously enough, being paid by "Generous Motors." Through the workers' ingenuity and the supervisors' acquiescence, the device of the "double up" becomes the line worker's equivalent of the bi-location of medieval saints or the astral projection of futuristic science fiction aficionados. Simply put, your line partner does your job *and* his job, while you disappear within the plant (sleep, for example, believe it or not, in a deserted corner of hell), or for the particularly daring, leave the premises entirely, while another worker punches your card out at the end of shift. If caught, the likelihood was discharge—economic capital punishment in a one-horse (car) town. The "double up" is an extension of the incremental first step, the "Double Lunch."⁵⁹ The classic "double up" is risky business, but an agenda that eventually claims almost every one on the

Howie Makem was to become the messianic embodiment of the Company's new Quality drive. A livin', breathin' propaganda vessel assigned to spur on the troops. Go ahead and laugh, I know I did. Just for a moment, imagine the probing skull session that took place in some high-level think tank the day Howie was first brought to mention.

"You know, slogans on coffee cups just ain't gettin' it, Bill."

"You're absolutely right, Ted. We need something more dynamic. More upbeat."

"Hey, why don't we give the men their own kitty cat!"

"Kitty cat? Hmmm, I like it! A large kitty cat! Ted, you're a genius!"

Howie Makem stood five feet nine. He had light brown fur, long synthetic whiskers and a head the size of a Datsun. He wore a long red cape emblazoned with the letter Q for Quality. A very magical cat, Howie walked everywhere on his hind paws. Cruelly, Howie was not entrusted with a dick.

Howie would make the rounds poking his floppy whiskers in and out of each department. A "Howie sighting" was always cause for great fan fare. The workers would scream and holler and jump up and down on their workbenches whenever Howie drifted by. Howie Makem may have begun as just another Company ploy to prod the tired legions, but most of us ran with the joke and soon Howie evolved into a crazy phenomenon.

Id. at 112-13.

⁵⁷ This one is just too rich to detail, and it is worth reading the book for this episode alone—to better appreciate the marvels of what creative and righteously cynical workers can do with some cardboard and felt pens. *See id.* at 160-61.

⁵⁸ *Id.* at 44.

⁵⁹ *Id.* at 57.

line: "four hours work, eight hours pay."⁶⁰

In the precipitous and deep auto industry recession of 1979, the bubble suddenly burst. Hamper, after months of layoff, with unemployment benefits exhausted, feels the initial stirrings of irony and panics, since he is now faced with losing the work environment he was so desperate to avoid, or at least to minimize, while working the lush overtime schedules a few years earlier. He dreads the line at the state unemployment compensation insurance office even more, if possible, than the assembly line. "THE UNEMPLOYMENT LINE! Just the sound of that phrase makes me wanna fling lunch."⁶¹ Alas, the recession of the late seventies and early eighties ominously augured the structural downsizing of the early nineties, with more than a score of plants now slated for closure and more than 70,000 workers scheduled for permanent layoff by General Motors.⁶²

He recounts his initial factory line journalistic efforts in local alternative newspapers, at the behest of then-editor Michael Moore of the *Flint Voice*. In the early eighties, the Rivethead, *ad hoc* journalist, emerges, with his pseudonym, a.k.a., "*nomme de line*" born of his job—punching rivets on the line.⁶³ The auto business began a series of deeper, cyclical layoffs into the early eighties. Meanwhile, Hamper-a.k.a. the Rivethead—"was becoming somewhat of a favorite read in the pages of the *Flint Voice* . . . some kind of Chuckie Kuralt from Septicland."⁶⁴ Fleeting fame follows. He and other worker-writers are profiled in *The Wall Street Journal*, leading to the tentative *Sixty Minutes* and *Today Show* producers' incursions into the turf of General Motors to feature the Rivethead.

So much for fleeting fame. Ugly mundane reality intrudes; by the conclusion of the book, it is the late eighties. After a decade on the line, Hamper recounts—with a poignancy and a deeply evocative truth—his debilitating anxiety attacks, finally drifting from the assembly line, and with the car radio at full tilt, blasting the Beach Boys, ultimately into the Holly Road Mental Health Clinic.

⁶⁰ *Id.* at 191.

⁶¹ *Id.* at 69.

⁶² Paul Vitello, *Job Seekers at Threshold of Anxiety*, *NEWSDAY*, Feb. 25, 1992, at 33.

⁶³ HAMPER, *supra* note 3, at 88.

⁶⁴ *Id.* at 100.

The Rivethead's personal history of perhaps the last bitter-sweet decade of the auto assembly line era easily rivals anything in the labor histories by Studs Terkel.⁶⁵ The Rivethead resurfaced briefly in Michael Moore's savagely brilliant movie, *Roger and Me.*⁶⁶ One suspects he may yet have more to say from the perspective of the worker, though probably not again from the auto assembly line in this age of capitalism, as it approaches the next millennium.

III. THE FUTURE

These two books are must reads for anyone seeking greater understanding of the condition of organized labor, the pathologies of materialism, and especially of the plight of the individual worker in this volatile matrix of money, uncertainty, despair, and hope of the soul.

For all of his sensitivity, labor lawyer Geoghegan probably would have benefitted had he been able to have first spent some time working on the line before law school. For one with two Harvard degrees, Geoghegan is neither sufficiently attuned to the nuances of the language of labor nor to the perverse virtues of "fuck-talk."⁶⁷ He finds that the near-ubiquitous use of vulgar language by workers is "the most degrading thing about being a labor lawyer. The whole English language drops away, and this 'fuck talk' takes over."⁶⁸ Ah, but as the inimitable World War II era labor organizer, and for the past two decades, the irrepressible Mayor of Detroit, Coleman Young, best appreciates, "fuck-talk" has its own energy and code and subtlety: "Swearing is an art form. You can express yourself much more directly, much more exactly, much more succinctly with properly used curse words."⁶⁹ When conventional language is inadequate, when the hope of achieving justice through law collapses, when despair is deepest, the lyric of the street and of the shop floor may best reflect what it is like to work for a living in an era that has contempt for work, workers and their lives.

If labor lawyers like Geoghegan were a bit more earthy, and

⁶⁵ See *supra* note 5.

⁶⁶ See *supra* note 50.

⁶⁷ GEOGHEGAN, *supra* note 2, at 193.

⁶⁸ *Id.*

⁶⁹ COLEMAN A. YOUNG, *THE QUOTATIONS OF MAYOR COLEMAN A. YOUNG* (1991).

if workers like Hamper were marginally less nihilistic, the energy, intelligence, and the reality of their lives in labor could perhaps combine to forge realistic prospects for organized labor empowering all of us who wish to work for a living. Alas, perhaps this is an ever more remote possibility. If labor remains flat on its back, then "fuck-talk" will be all that remains, an aptly perverse comment and social graffiti, not only on the "tombstone" of organized labor, but also on that of most of the working people in this country and, ultimately, on that of capitalism itself. If organized labor dies (through murder or suicide), there assuredly will be many other corpses in the graveyard. And, after the prayers for the dead, "fuck-talk" will be, perhaps fittingly enough, all that remains of the late twentieth century's legal and socio-political-economic orders.

But there are positive signs that labor is being reenergized, from *The Daily News* strike aftermath in New York City⁷⁰ to the Pittsburgh paper strike⁷¹ to the election of Ron Carey, the reform President of the Teamsters Union,⁷² and the national labor leadership ascendancy of Dennis Rivera of the New York hospital workers.⁷³ Most promising of all is the growing influence of feminism in the world of work, ranging from the nation's higher consciousness of the evil of sexual harassment, through the testimony of Professor Anita Hill, to the successful women-led organizing initiatives of clerical and technical workers at Harvard and other major universities.⁷⁴

⁷⁰ The strike began October 25, 1990, resulting from an ongoing feud between the 2200 news union workers and management over union practices. Robert McFadden, *The News Strike: From Job Dispute to Maelstrom*, N.Y. TIMES, Oct. 30, 1990, at B4.

⁷¹ See *The Press: Oyez, oyez*, ECONOMIST, Nov. 21, 1992, at 31; Wes, *Newspaper Strike: Teamster Victory or Haunting Error?*, PITT. BUS. TIMES & J., Nov. 9, 1992 § 1, at 1.

⁷² See Damon Stetson, Abstract, N.Y. TIMES, Nov. 13, 1974, at 26.

⁷³ Nick Ravo, *Hospital Union Elects Leader*, N.Y. TIMES, May 1, 1989, at B3.

⁷⁴ B. Glenn George presents a powerful feminist critique in her review of Geoghegan's book. See B. Glenn George, Book Review, 67 TUL. L. REV. 581 (1992). Marion Crain has presented the most comprehensive analysis to date of the intersections of feminist theory and labor law. See Marion Crain, *Feminism, Labor, and Power*, 65 S. CAL. L. REV. 1819 (1992); Marion Crain, *Feminizing Unions: Challenging the Gendered Structure of Wage Labor*, 89 MICH. L. REV. 1155 (1991); Marion Crain, *Images of Power in Labor Law: A Feminist Deconstruction*, 33 B.C. L. REV. 481 (1992).

CONCLUSION

Geoghegan and Hamper surely capture the pervasive despair of the pathological eighties from the perspective of labor. One senses that all is not lost, that the nineties may yet witness happier developments, and that Geoghegan and Hamper will grace labor literature a decade hence with their reflections on the nineties.

