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Which Side Are You On?: Trying to Be for Labor When It's Flat on Its Back

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WHICH SIDE ARE YOU ON?: TRYING TO BE FOR LABOR WHEN IT'S FLAT ON ITS BACK. By *Thomas Geoghegan*. New York: Farrar, Straus & Giroux. 1991. Pp. 287. \$19.95.

The other day, I saw a friend, a journalist, who used to write about labor. Now he writes about something else. He said, "A few years ago, when labor was dying, that was interesting. But now it's dead, and it's been dead. People want to hear about something else." [p. 7]

Undaunted, Chicago labor lawyer Thomas Geoghegan wants to "at least try to get people interested in the subject of the labor movement. Maybe [through] some raw, bald appeal to romanticism."¹ It is hard to imagine a better attempt at this than *Which Side Are You On?*, Geoghegan's bittersweet and wittily anecdotal account of his life in labor law. To judge from the splash it has made,² Geoghegan's book may revive ideas about collective bargaining considered dead in the popular mind³ and stagnant in the university;⁴ Geoghegan has brought back to life, at least on the page, the forgotten rank-and-file landscapes of West Virginia and South Chicago. Despite its often slipshod and inconsistent account of how the larger forces have created the prevailing conditions,⁵ *Which Side Are You On?* succeeds — where more careful and more explicitly political writing "for labor" has failed — because the book, beside being artfully written throughout, displays a relentlessly contemporary ambivalence about the hard facts

1. Thomas Geoghegan, *Labor Among the Ruins*, N.Y. TIMES, Sept. 2, 1991, at A19.

2. The book was widely reviewed in the popular press, and appeared on best seller lists in *The Chicago Tribune*, *The Washington Post*, and *The Village Voice*; a paperback edition will be published later this year. This is particularly uncommon for a book about *labor*, a word so deadly in the publishing industry that Farrar, Straus and Giroux "were leery of having [it] anywhere in the title" of Geoghegan's book, and "finally sandwiched [it] in the subhead." Paul Galloway, *Workhorse for Labor*, CHI. TRIB., Sept. 2, 1991, at C1.

Early this year the book was nominated for the National Book Critic's Circle award in the general nonfiction category, David Streitfeld, *The Book Critics' Picks*, WASH. POST, Jan. 13, 1992, at D2, but it did not win. David Streitfeld, *Smiley, Roth Win Book Awards*, WASH. POST, Feb. 17, 1992, at D1.

3. In a famous interview in the middle of the Reagan years, AFL-CIO President Lane Kirkland "called federal labor law a 'dead letter' that gave labor little protection, and said that workers may be 'better off with the law of the jungle.'" Cathy Trost & Leonard M. Aparcar, *AFL-CIO Chief Calls Labor Law a 'Dead Letter'*, WALL. ST. J., Aug. 16, 1984, at 8.

4. "American unionism has apparently entered a new stage in its long history, a stage of permanent and irreversible decline." Henry Weinstein, *Cappuccino, Croissants a New Tool: Unions Re-Examining Recruitment Strategies*, L.A. TIMES, Apr. 7, 1986, at A1, A15 (quoting Rutgers Economics professor Leo Troy). However, recent legal scholarship on the plight of unions and the future of collective bargaining — particularly PAUL C. WEILER, *GOVERNING THE WORKPLACE* (1990) and responses to it — belies any charge that legal academic thinking about unionism is stagnant. See Michael H. Gottesman, *Wither Goest Labor Law: Law and Economics in the Workplace*, 100 YALE L.J. 2767 (1991) (book review of WEILER, *supra*); Samuel Issacharoff, *Reconstructing Employment*, 104 HARV. L. REV. 607 (1990) (same).

5. See *infra* notes 16-24 and accompanying text.

of union life. Irony, frustration, and self-doubt⁶ saturate Geoghegan's writing — as does the oppressive sense of living with labor's stout-hearted past.⁷ Geoghegan can find it "wonderful" (p. 241) to witness workers' valor through a bitterly destructive nine-month strike — "the good war, the old cause" (p. 236). Yet, "[s]ince the eighties, it has been insane to go on strike" (p. 5), and Geoghegan must fight his instinct to implore each worker wearing a union button: "My God, take that thing *off*" (p. 260). For his legal audience, Geoghegan's habit of sacrificing rigorous analysis to hyperbole and "raw, bald romanticism" will tarnish the book's appeal. Nevertheless, *Which Side Are You On?* remains exemplary for the legal community. Geoghegan has enriched his life as a lawyer by casting what he does into nonlegal, vividly personal terms. A missing sense of "solidarity" has been restored, and some of his self-doubt and frustration erased, through this act of writing (p. 287).

Born nine months after the Taft-Hartley Act took effect in 1947 ("as if [it], astrologically, had called me into being" (p. 53)), Geoghegan grew up a baby-boomer in suburban Cincinnati, the oldest son in an affluent Democratic family.⁸ He was a sluggish "student moderate" at Harvard (p. 9) — it was only to stop his "grieving over a junior at Radcliffe" (p. 12) that Geoghegan agreed to accompany a friend to Sheridan, Pennsylvania, as an observer of the 1972 rerun election that ousted Tony Boyle from the presidency of the United Mine Workers. Geoghegan observed with characteristically double-edged passion:

And then, all day, the old women drove up and stopped and would drag their husbands up the steps, poor old men, eyes shut, stiff as corpses

I was affected by the women (the men were just inert). I was affected by the way they wanted . . . revenge on the companies, revenge on Boyle, even revenge on the Union, for having left them there to die, on \$30 a month.

From that moment on, I think I wanted to join the Union somehow, and even to help them take this terrible revenge. And I didn't realize that if we won, if we took over the Union, then I would be part of the Union and would have to defend it. And then I would be implicated in the evil, too. [pp. 13-14]

6. See, e.g., p. 4 ("I do not know what I am."); p. 7 ("Maybe I should do something else."); p. 129 ("At least I've never stood up there and said: 'I don't know if I want to be a labor lawyer.'").

7. Geoghegan laments that "[o]ld-fashioned labor law doesn't work anymore. So we need a new approach for the new kind of American boss, for men like Pickens . . . who appear in amber on computer screens, for just a few seconds It is hard for the old labor movement even to know where to put the pickets." P. 243.

8. Galloway, *supra* note 2, at C2. Geoghegan describes his upbringing as "suburban and middle-class." P. 9.

He became a UMW staff lawyer, and entered the Washington headquarters each day to pass under “the huge head of John L. Lewis . . . dark, glowering . . . scowling down on us like Stalin as we came in the door” (p. 16). Although he envisioned the dark and airless headquarters as a kind of mine (p. 16), through his early career Geoghegan remained ruefully aware of his status as an untested union man who had never been in a *real* mine and didn’t actually *know* any miners (p. 18). Instead he was a Washington lawyer competing with the rank and file for the battle-glory won in strikes (p. 23). Years later, the sense of guilty detachment remained: campaigning with the Steelworkers in the 1970s, he snuck out of his quarters in South Chicago — like “crawling through a tunnel back to freedom” — to go live near the bookstores of Hyde Park (p. 78). Addressing an Indiana union hall packed full of millwrights moved him to “think how often, at the end of these things, I feel like a fake” (p. 135).

For Geoghegan, the genuine article is the “rare” local union leader who “totally outclassed management” (p. 178). While *Which Side Are You On?* portrays no one — rank-and-filers, union bosses, North Side Chicago yuppies, management or their lawyers — as lacking a human face,⁹ Geoghegan reserves his veneration for the few self-made men or women¹⁰ who rose to prominence in the local union and served heroically through painful times. “[S]hrewd . . . street smart . . . but also [knowing] something of the world of *The New York Times*, of Washington D.C.” (p. 175), these ordinary people can lead a local against sophisticated, NLRA-flaunting management and torpid or corrupt international union bureaucracies out of step with the times.¹¹ And they do it with no asset greater than a tenuous hold on the hearts of their few hundred members.¹² Geoghegan believes “it may take more genius to run a . . . local union . . . than it does to run a Ford or a U.S. Steel” (p. 179). He claims that if his champions had somehow been plucked from their local posts and placed in charge of government or industry, the country would have been far better served “because they would have had to answer, not to stockholders or mutual funds, but to workers and their families” (p. 179).

The paragon is Frank Lumpkin, hero of the defining event of

9. Except perhaps nonunion Nissan auto workers in Tennessee — free riders pulling down wages and benefits competitive with what unions have won elsewhere in the industry — who “should be buried in the bottom circle of Hell.” P. 271. Still, Geoghegan reflexively confesses that he “can understand . . . why they voted down the Union.” P. 270.

10. The one woman is Alice Puerala of Steelworkers Local 65, “the first woman local president of a big U.S. Steel mill . . . she was tougher, dying of cancer, wearing a wig, than anyone else in the local . . .” P. 176.

11. At one point Geoghegan hyperbolically describes AFL-CIO President Lane Kirkland as “outside the American consensus in a way that even Abbie Hoffman never was.” P. 7.

12. “A local [Steelworkers] president, it seemed to me, had everybody after him, if he was doing his job: Inland, Pittsburgh, the Daley machine, Vrdolyak, the Labor Department in Washington, the assholes in his own local.” P. 175.

Geoghegan's legal career: a seven-year suit against International Harvester for wages and benefits lost in the 1980 closing of the Wisconsin Steel mill in South Chicago (pp. 91-121). Actually, as Geoghegan makes clear, Lumpkin was never a *union* leader proper. The small, unaffiliated union on the scene crashed with the mill; the union president, who had signed away the pension and "deindustrialization" benefits, fled in disgrace (pp. 95-96). Because "there was no one else" (p. 97), Lumpkin came forward to file the suit, organize the pickets, distribute the government cheese, and help fight the evictions (pp. 97-100). And he was entirely self-made — "about sixty-five, a black man from rural Georgia . . . never held union office" (p. 96). Lumpkin devoted himself to leading the former workers (by now bound together only as class-action plaintiffs), and even after the settlement with Harvester in 1988 Lumpkin was "trying, against all odds, to get a steel mill going in South Chicago" (p. 121).

Lumpkin's mix of altruism and stubborn resolve stirs Geoghegan: "It was like nothing I had ever seen. I used to think I had died and gone to rank-and-file heaven" (p. 97). For Geoghegan the allure inheres not in any success so much as in the doomed, lonely battle.¹³ This individualistic heroism, however, can conflict with the essence of unionism: collective action. Fittingly — although *Which Side Are You On?* makes no mention of this — the independent union at Wisconsin Steel was a maverick; in prior years it had repulsed organizing efforts by the United Steelworkers of America, which shed few tears over its demise.¹⁴ The tension between rhetoric or action for the collective good and the deeply contrary American passion for maverick individualism (Geoghegan calls it "raw, Reaganite self-interest" (p. 267)) pervades the Wisconsin Steel chapter and the entire book. Geoghegan notes that the union halls are filled with "a deafening Niagara-type silence, on the subject of individualism" (p. 5). The issue discomfits the American rank and file; speaking either for or against individualism remains awkward. Unionism's tortured history in America has much to do with its constant fight "against the deeply-rooted belief that history is shaped by self-propelled individuals and not by governments or social groups or classes."¹⁵ This belief is no-

13. Elsewhere, Geoghegan has said of his labor law practice: "What sustains you are the acts of courage you see." Galloway, *supra* note 2, at C2.

14. "I have sympathy, but not that much. They were in a company union, with no major union affiliation. Our people tried to organize them and they said, 'The hell with you. We get everything you do.' Now that's come back to roost." Linnet Myers, *Good Times Ceased Rolling With the Steel*, CHI. TRIB., Mar. 28, 1985, at C1 (quoting Michael Ally, grievance chairman for United Steelworkers of America Local 65).

15. Anatole Kaletsky, *The Flight to the Sunbelt*, FIN. TIMES, June 14, 1982, at XI; see Derek C. Bok, *Reflections on the Distinctive Character of American Labor Laws*, 84 HARV. L. REV. 1394, 1400-04 (1971). Professor Bok describes "[t]he lack of cohesion among working people in America," who "grew up in a society which stressed the ideals of classlessness, individual initiative, and opportunity." *Id.* at 1402, 1403.

where more deeply rooted than in the mind of Geoghegan himself as he tells the story of John L. Lewis (pp. 45-50, 56-58) or as he argues that some valorous union local presidents, too, might have changed the world (pp. 178-79).

Corollary to Geoghegan's preoccupation with individuals is his repeated tendency to inflate a single missed opportunity into the but-for cause of the current malaise. If only the CIO had ignored warnings from southern Democrats and tried to organize the South in 1946, "American history would have been different" (p. 51). Absent a single Taft-Hartley provision barring union control of pension funds,¹⁶ "[t]he New Deal would have lasted a thousand years. And the AFL-CIO would be like Japan" (p. 246). The trick works prospectively as well: "All we need is a law, just a little law, like a civil rights law" to revive the age of unionism (p. 273). Labor history has evolved from an intricate matrix of factors, but, like any successful popular analyst, Geoghegan knows that a single tragic flaw makes for a better story.

More harmfully, Geoghegan's storytelling instincts lead him into some exaggerations and contradictions. Where it serves his rhetorical purpose, he presents the costs of unionization as large enough to motivate employers to violate federal labor law (pp. 254-55). Elsewhere, he presents the costs as negligible — merely a smokescreen used by companies who demand givebacks only to "[d]iscipline the union" (p. 91). His appraisal of the "free world" of Canadian labor relations is questionable;¹⁷ his pronouncements about economic planning in America are confused.¹⁸ His penchant for exaggeration is most disturbing as he reasons his way from his own freshly minted statistics to the Cassandra-like pronouncement: "if you put on a union button at work, in

16. See Labor Management Relations (Taft-Hartley) Act § 302(c)(5) (codified as amended at 29 U.S.C. § 186(c)(5) (1988)); see also Jayne W. Barnard, *Institutional Investors and the New Corporate Governance*, 69 N.C. L. REV. 1135, 1141 (1991) ("[T]he management-appointed trustees who oversee Taft-Hartley union [pension] funds . . . are likely to identify more with management's . . . concerns.").

17. See p. 257 ("'O Canada, I whisper. Across that border is the free world."). From a report that Canadian unionization percentage has "risen from 25 to 32 percent" — still well under a majority — Geoghegan deduces that "Canadians join unions like crazy." P. 268. But even Professor Paul Weiler, who has put forth the Canadian model as one worthy of aspiration, see Paul Weiler, *Promises to Keep: Securing Workers' Rights to Self-Organization Under the NLRA*, 96 HARV. L. REV. 1769, 1811-16 (1983) (proposing "instant elections" for union representation on the Canadian model), and whom Geoghegan cites approvingly, see p. 253, admits that "the prospects for collective bargaining in the Canadian private sector are not particularly rosy, despite the more favorable legal framework." WEILER, *supra* note 4, at 280 n.72. One recent article calls Canada a "faulty model" and aims to demonstrate that "Canadian private sector penetration of the labor market density has dropped and dropped significantly from 1975 to 1985." Leo Troy, *Is the U.S. Unique in the Decline of Private Sector Unionism?*, 11 J. LAB. RES. 111, 140, 139 (1990).

18. Compare p. 222 ("Planning could have saved the basic industry of the United States. I have no doubt of it.") with p. 223 ("Now I wonder if planning in this country could ever have worked. The whole culture is against it."). It is at least possible that the author and his editors purposefully retained this blatant contradiction, paragraphs apart, to highlight Geoghegan's ambivalence.

1990, it can be shown to a reasonable certainty that you will be fired."¹⁹

Geoghegan never purports to scholarship, however. His book probably should be held to a different standard; when he overindulges his rhetorical talent, he likely errs on the preferred side. Still, taken on its own terms, the case "for labor" made by *Which Side Are You On?* remains ultimately unconvincing.

The book's nutshell summary of American labor history goes like this: The Norris-LaGuardia Act of 1932, stripping federal courts of their power to enjoin strikes, left a vacuum of judicial power that the workers filled by "run[ning] wild" (p. 44). The passage of the Wagner Act in 1935 was largely symbolic: "[w]hen the autoworkers and steelworkers rose up in the late 1930s, they didn't file petitions with the Board . . . They just ran all over the plants" (pp. 44-45). Organized labor broke apart in the 1930s; the AFL split, and its dissident vice-president, John L. Lewis, set up the CIO to organize the unorganized (p. 46). Then in 1936, at the height of President Roosevelt's power, Lewis and organized labor "embraced the state, and . . . really threw in with the New Deal" (p. 57). But in 1940, in what "seem[ed] like an act of madness" (p. 57), Lewis endorsed Republican Wendell Willkie and was forced to resign as CIO President (p. 57). The CIO and the Democrats managed without him until the war was over, but 1946 was a year of many CIO strikes, red meat shortages, and voters "sick of the Democrats" (p. 51). A Republican Congress arrived in 1947 and the Taft-Hartley Act followed (p. 51). Still, labor "seemed fat and happy" (p. 55), and as Lewis "seemed to burn out" and "became more petulant than ever" (p. 55), labor turned itself over to men like "George Meany, a plumber from Brooklyn . . . who used to brag he had never been in a strike" (p. 55). The Steelworkers Trilogy²⁰ in 1960 launched the era of arbitrations, which turned organized labor "into a bar association" (p. 164) and "helped create this new man of labor, who is

19. P. 253. After citing statistics purporting to show that "about one in twenty union supporters would be fired in a typical organizing drive," p. 253 (discussing Weiler, *supra* note 17, at 1781), Geoghegan claims that, because Weiler's statistics are a decade old, the "true ratio" is "maybe . . . one in fifteen, or even one in ten." P. 253. His next sentence makes another wild leap ("It is really whatever ratio the employer wants"), and soon after that he delivers his punchline about "certain" termination. P. 253.

Even Geoghegan's first step here is a shaky one. Professor Weiler's one-in-twenty figure, "a ratio that has been so often repeated as virtually to have become part of labor relations folklore," Robert J. LaLonde & Bernard D. Meltzer, *Hard Times for Unions: Another Look at the Significance of Employer Illegalities*, 58 U. CHI. L. REV. 953, 966 (1991) (footnote omitted), has recently been subjected to a detailed attack. *Id.* at 965-69, 990-98. *But cf.* Paul C. Weiler, *Hard Times for Unions: Challenging Times for Scholars*, 58 U. CHI. L. REV. 1015, 1025 (1991) (responding that, even accepting LaLonde and Meltzer's lower estimate of unlawful discharges related to organizing campaigns, "I am perfectly prepared to rest my case for major surgery on the NLRA").

20. *United Steelworkers v. American Mfg. Co.*, 363 U.S. 564 (1960); *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960); *United Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960).

more or less a paralegal” (p. 164). Taft-Hartley had given employers “license to break the Wagner Act, [though] it took employers twenty years to realize, at last, how far they could go” (p. 53). “Union busting” began in the late 1960s (p. 52), “like a civil rights movement in reverse” (p. 253). In 1978, unions “knocked themselves out” fighting for reform legislation that was “massacred” (p. 278). President Reagan crushed the air traffic controllers union in 1981, and his policies “created a pool of scabs as big as Lake Michigan” (p. 232). The rout was on, aided by a “worse than useless” NLRB that “now seems to exist primarily to slow down the union . . . ball things up, so the employer has even more time to fire people” (pp. 256-57). Today, labor fails because “everything we did [in the 30s] is now illegal” (p. 52).

This view of the Taft-Hartley Act as a “slow-working poison” (p. 56) seems hard to abide, particularly because of its implicit suggestion that unions would enjoy vibrant health today if not for the Act.²¹ Geoghegan approvingly mentions scholarship claiming that “the stronger labor became as an ‘organization’ in the 1950s, the weaker it became politically”; it had greater potency back in the 1940s, when it was a decentralized sprawl and smaller at all levels.²² But this raises more questions than it answers. If labor was so lean and strong in the 1940s, why was it powerless to stop Taft-Hartley or at least ameliorate its effects? And if labor was incapable of stopping or ameliorating Taft-Hartley when labor was supposedly diffuse and at its strongest politically, then why is Taft-Hartley to blame for labor’s bureaucratic evolution and for a decline in labor’s strength that did not become manifest until the late 1960s?

Moreover, by the numbers, it is hard to see how Taft-Hartley crippled the unions. After 1947 labor got bigger, richer, more sophisticated, and better organized — it gained the sort of power coveted by any rational enterprise desiring to contend with other enterprises as an equal. Geoghegan argues that growth brought a lower level of input from the average local union officer,²³ and, accordingly, what unions really lost was their power of unpredictability (pp. 53-54). Whether unpredictability is tactically (as opposed to romantically) useful in a dying manufacturing sector is highly debatable. The Steelworkers

21. Geoghegan takes a step toward conceding this elsewhere in the book. See p. 198 (“I guess it is madness, delusion on my part, to think that simply changing the law would make so much difference.”).

22. P. 54 (discussing J. DAVID GREENSTONE, *LABOR IN AMERICAN POLITICS* (1969)).

23. P. 68. Although Geoghegan notes that “the Steelworkers bureaucracy was unique” (p. 68), he finds the same problem throughout big labor: “power seemed to leak out of it, at every crack.” P. 54.

[T]he Steelworkers bureaucracy was . . . the pride of American labor. There were 600 or so “staff representatives” who, like the proconsuls, would go out to the provinces and govern. This was called “servicing the locals.” It meant that the staff reps did all the arbitrations, the bargaining, the organizing for the locals, and the elected officers did nothing.

P. 68.

went for an entire generation without a strike (p. 86), but what did they cede other than the power to fight "the good war" and plunge their rank and file into agony? Real power is political and economic power, and when the unions had their largest share of it, they did not exploit the advantage.²⁴

This failure gnaws at Geoghegan. "[I]f it was such a golden time back then, why didn't it last?" (p. 57). The answer Geoghegan provides, paraphrasing a friend, is that in 1936 labor made the fatal mistake of embracing the state, and "when the state turned on labor, . . . labor . . . 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" (p. 57). But the *statist* tradition only dates from 1936 — in the early 1930s labor "ran wild," (p. 44) and before that, from 1890 to 1920, the movement was dominated by Samuel Gompers and the "Voluntarists," who preached "an *anti-statist* philosophy that says the 'best thing the State can do for Labor is to leave Labor alone.'" ²⁵

Geoghegan is adamant: "I want to go *back* to the New Deal" (p. 56). Yet much of the book eloquently denounces what Geoghegan seeks to resurrect. He paraphrases Ed Sadlowski, who ran for the Steelworkers presidency in the 1970s: "We should live in a country where people don't have to work in coke ovens" (p. 79); "[s]o what if the Mineworkers dropped from 400,000 men down to 100,000 or 60,000? That should be the *goal* of American labor . . ." (p. 80). Similarly, Geoghegan occasionally takes the long view of what he advocates and who will be served by it ("It was a big shock to me how men in the mills got physically used up." (p. 106)). He wants to "fight to bring back the mills, with all the high-wage jobs, and then start fighting with our very next breath to knock them down" (p. 81). This brand of realism may have cost Sadlowski the 1976 election (pp. 79-82), and it would again now, as labor grows less secure in itself with each passing year. Today, when the plants close and the membership

24. "[T]he insulation of union leaders from their members, discriminatory denial of membership and unfair discipline, and non-democratic selection of officers — [these] have come back to haunt organized labor, to cripple its organizing efforts, limit its economic power, and destroy its public support." Julius G. Getman, *In Honor of Clyde W. Summers*, 138 U. PA. L. REV. 621, 621 (1992); see Marion Crain, *Feminizing Unions: Challenging the Gendered Structure of Wage Labor*, 89 MICH. L. REV. 1155, 1159-71 (1991) (describing organized labor's historical exclusion of women). Professor Karl Klare contends that

in significant part the weaknesses of the modern American labor movement stem from the narrowness of its politics, from its failure (at least since World War II) to link up the struggle to improve working conditions with a broader, over-arching vision of how to construct a better society. One of the most important manifestations of labor's abdication on the political level is the unions' failure to make the elimination of racism a central goal and an unwavering commitment.

Karl E. Klare, *The Quest for Industrial Democracy and the Struggle Against Racism: Perspectives from Labor Law and Civil Rights Law*, 61 OR. L. REV. 157, 162 (1982).

25. WILLIAM E. FORBATH, *LAW AND THE SHAPING OF THE AMERICAN LABOR MOVEMENT* 2 n.3 (1991) (emphasis added) (quoting Samuel Gompers, *Judicial Vindication of Labor's Claims*, 7 AM. FEDERATIONIST 283, 284 (1901) (citations omitted)).

shrinks, it feeds an “inferiority complex” that “just didn’t exist” in the 30s.²⁶ For Geoghegan:

The hard part about being in labor is to keep telling yourself, “It’s not my fault.” Labor just does not have that much power. But labor often loses the PR battle, and often I, a labor lawyer, even lose it within myself. I too believe we are guilty, and it somehow is all our fault. Labor is too *dumb*, in more than one sense of the word, to get its story across, even to itself. [p. 91]

The book confirms a truth about organized labor: it is more comfortable as the insurrectionary, more comfortable battling—even battling itself—than compromising. Geoghegan describes union members fighting each other “when you’d think in the Reagan era they’d be clutching each other like orphans in a storm” (p. 155). Labor has been tragically slow in abandoning its traditional, “primitive” (p. 243) ways for contemporary “corporate campaigns” that substitute lawsuits and proxy battles for pickets — “fight[ing] the strike like a shareholder” (p. 242). Its mindset, Geoghegan admits, still tends toward “stuffing cash in mattresses because we do not trust the banks” (p. 244), and toward believing that

it was better, more “American,” to be an outsider. Better to be outside the stockholders’ meeting, with a picket sign, with a cigarette dangling from your lips, like Bogart, like James Dean: better that than to go inside and get conned. They would take your wallet. You would be a chump. [pp. 244-45]

Opportunities to picket have diminished, and the strike itself has nearly disappeared. The annual tally of strikes is now “about the same as the number of prison riots” (p. 231). Despite this, a strike defines unionism. It galvanizes labor’s self-image, and for labor evangelists like Geoghegan the rare contemporary strike, suicidal as it may be, remains one of the two great sources of sustenance and inspiration.²⁷

26. P. 48 (quoting “a friend of mine, a labor reporter”).

27. Geoghegan’s account of the 1985 strike at the Danley Machine Tool plant in Cicero, Illinois (it first appeared in Thomas Geoghegan, *Glory Days*, NEW REPUBLIC, May 29, 1989, at 18), typifies his perspective and his evocative powers, and merits quotation at length:

The strike at Danley was the old-fashioned kind; it was the good war, the old cause, lasting nine months, like trench war in France. It was a strike of suburbanites, and maybe only suburbanites now are capable of such a strike. They drive Ford Tauruses to the picket lines, as if they were normal middle-class people. But a strike that lasts nine months changes people utterly. A strike like this is a long sea voyage. Men get sea legs and become catlike and grow beards. Under the beards, they may still be suburban, but now they are starving, picking up bricks . . . This is what happened at Danley.

* * *

Laramie Avenue in Cicero, where the Danley plant is, would be a good place for a prison riot. There are miles of machinery plants, wire fencing, and grim Gestapo-like signs that say things like “Solvent Building in Rear.” The suburbanites who drive in and out of here every day seem to be on a kind of work release, in reverse.

The Danley strike, like many others, was a waiting game and a numbers game. Every day the two sides, Danley and the Local, counted up the “crossovers” and the strikers, like two armies facing each other across a field and counting up their dead. . . .

But Danley could not operate until it has a hundred or so more crossovers, or new hires, who were not just “skilled” but “highly skilled.” These were people who could not be easily

The other source is the individual, the leader on the local or world level who can bend a piece of history to his will, like John L. Lewis:

Maybe this is the secret if American labor is to come back in the 1990s: A dissident like Lewis will have to emerge. Attack not only corporate America but the AFL-CIO. Denounce Big Labor and start a new labor federation [p. 46]

In effect, Geoghegan suggests that labor can get off its back only if a fiery individual leads a strike against modern unionism itself. As it recurrently declares its trust in the alchemical powers of maverick individualists to effect social good, Geoghegan's perspective begins to resemble early Reaganism turned on its head.²⁸ What Geoghegan and the former President seem to share (beyond rhyming surnames) is a worldview evidently forged, at least in part, through close attention to fictional stories²⁹ and to as many real-life examples of the favored style of enterprising individualism as they can find. They arrived in radically dissimilar worlds as young adults: Geoghegan observed enterprising miners' wives and self-made union local presidents of the 1970s; part of Reagan's inspiration reportedly came from self-made Hollywood millionaires of the 1930s and 1940s.³⁰ Yet each beheld a fiercely independent spirit of enterprise, to which they often return for vivid images that might spark in others a similar romantic attachment

hired off the street. But it was not such a large number. Danley had to wait for the number of crossovers to add up, until the balance would tip and Danley could start up, like a crippled battleship, and sail away from the strike.

Pp. 236-37.

28. The phrase *early Reaganism* refers to the political and cultural ideology Ronald Reagan advanced in the early 1980s, relying in great part on GEORGE GILDER, *WEALTH AND POVERTY* (1981) for "the theory that low taxes and freedom from regulation will stimulate entrepreneurs and workers to lift an economy up by its own bootstraps, whatever difficulties it may originally have faced." Kaletsky, *supra* note 15, at XI. Reaganism "believes devoutly in the capitalism of risk-taking adventurers" and holds an "image of altruistic entrepreneurs taking brave risks for a timid society." Benjamin R. Barber, *A Tale of 2 Capitalisms*, N.Y. TIMES, Oct. 4, 1981, § 4, at 19. Reagan declared his years in office "the age of the entrepreneur, the age of the individual." Bernard Weinraub, *President Urging an Economic Shift*, N.Y. TIMES, Mar. 29, 1985, at A1 (quoting a Reagan speech). Politically, Reaganism "embraced the precepts of many mutually antagonistic factions of American conservatism," while

[e]motionally, Reaganism was a blend of nostalgia; religious simplicity; patriotic myth; old-fashioned stoic heroism; self-assertion balanced by admiration of self-sacrifice; rugged individualism tempered by respect for unforced community-mindedness; deference to traditional authorities, including one's elders; reverence for the family as the mainspring of society and the moral superior of every other way of living; a belief that truth dwells in faith and inner conviction rather than facts (especially when they contradict one's intuitive certitude)

WILLIAM A. HENRY III, *VISIONS OF AMERICA* 5 (1985).

29. Although Geoghegan's tastes lead him to prefer books to film. Pp. 78, 136, 286. See GARRY WILLS, *REAGAN'S AMERICA: INNOCENTS AT HOME* 145-46 (1987) (describing moviegoing of the young Ronald Reagan). Geoghegan refers to works by Melville, Faulkner, Nabokov, Hugo, Goethe, Kafka, Chekhov, Turgenev, Brecht, and Sophocles, among others.

30. See WILLS, *supra* note 29, at 147 ("the business methods of the early 'magnates' . . . were the standard dog-eat-dog stuff of American capitalism"); see also Barber, *supra* note 28 (Reagan "prefer[s] politics to economics and individualism to corporatism . . . his friends are drawn from Hollywood's self-made millionaires.").

and a commitment to the larger social agenda.³¹

Reaganite readers might feel the urge to nod at Geoghegan's praise of up-from-nothing leadership through initiative and hard work at long odds. But ultimately, they will wonder why small business owners are mentioned virtually nowhere in the book. "Management" in Geoghegan's book is most often the Fortune 500. Those initially unsympathetic to Geoghegan's vision may well question his failure to account for ordinary people who dare to own something — even Geoghegan might admit that those people hold a more genuine entitlement to prosperity than do the "bloated Colonel Blimps" who hauled in six-figure salaries atop the Teamsters union in the 1980s (pp. 148-49). Small business owners understandably resist the revival of any unionism, reformist or not. By ignoring them, Geoghegan's view opens itself to the charge often made against pure Reaganism — that it has sacrificed intellectual cogency and a properly broad focus to achieve moral clarity.³²

Of course, by any view, the comparison only goes so far. Geoghegan's outlook is not unrelievedly sentimental; it is often hard-headed and ambivalent, and it is always emotionally forthright. Geoghegan provides splendidly distinctive takes on workers ("People in South Chicago thought the mills would last forever. They thought of them as public utilities" (p. 84)); "[s]ome of them thought [the job in the mill] was America's way of saying 'Thanks'" (p. 86)); on corrupt union officials ("They do it, in the end, to save their lives. Because the loss of union office is unthinkable. It is down, straight down, into the rank and file, and there is nothing to break the fall" (p. 196)); on management ("It has always been a mystery to me why in the 1980s the industry sector of the Republican party let the financial sector roll all over it" (p. 207)); on how the working class at large viewed labor's collapse ("They were glad to see their neighbors lose their former imperial glory: my God, some of them were buying *second* homes. Since no one else had a chance to be in labor, why should

31. In his 1984 State of the Union address, Reagan declared that

[t]he spirit of enterprise is sparked by the sunrise industries of high-tech and by small business people with big ideas — people like Barbara Proctor, who rose from a ghetto to build a multimillion dollar advertising agency in Chicago; Carlos Perez, a Cuban refugee, who turned \$27 and a dream into a successful importing business in Coral Gables, Florida.

Transcript of Message by President on State of the Union, N.Y. TIMES, Jan. 26, 1984, at B8. The speech also lauded a Catholic priest and his shelter program for abused children, a paralyzed physician "helping pioneer the field of computer-controlled walking," and an army medic who "ran across 25 yards of open terrain through enemy fire to rescue wounded soldiers" in the 1983 invasion of Grenada. *Id.* Even in private settings, Reagan "insist[ed] on reducing complicated technical problems to the sorts of colorful stories about individuals that he used in his speeches." HENRY, *supra* note 28, at 41. "[Reagan] shamelessly appropriates heroes, but there is no reason to doubt that he relishes the heroic tales he tells so often." ELIZABETH DREW, CAMPAIGN JOURNAL: THE POLITICAL EVENTS OF 1983-1984, at 307 (1985).

32. See, e.g., Lewis H. Lapham, *The Precarious Eden*, HARPER'S, Mar. 1981, at 14; Emma Rothschild, *Reagan and the Real America*, N.Y. REV. BOOKS, Feb. 5, 1981, at 12; see generally HENRY, *supra* note 28; WILLS, *supra* note 29.

they?" (p. 87)); on the contemporary social landscape ("I have no sense of where, in [Chicago], labor really *is*. The old union neighborhoods are gone"³³); and on his own generation ("Nobody wants to go into the old family business, because it is too hard, too much trouble, and no one really believes in it. We want to go into real estate and cappuccino." (p. 207)).

And into law, he might have added. The cultural and economic phenomena he describes have driven many of Geoghegan's contemporaries through law school and into jobs much like his. They, like he, may still think the larger thoughts as they prowling the bookstores at night, but they spend their days in the linguistically stilted world of the drug-testing grievance or its equivalent. Apart from any enhanced credibility, it is significant that *Which Side Are You On?* arrives not from an academic or a professional journalist³⁴ but from a person who writes as a full-time, paper-drowned, practicing attorney. Geoghegan has fought the drain on expressive imagination that arduous lawyering can bring. To his contemporaries, that effort may be this book's greatest contribution:

Lately, I've been writing the book. I've been writing it on weekends and in the mornings before I go to work, and now that I've reached the end of it, I hate to let it go. Because in writing it, I come closer to solidarity with . . . well, not the workers, but other people . . . than I do in the day-to-day living of my life. [p. 287]

Not all law practices transport lawyers to vistas as jarring as South Chicago or into close association with heroic types like Frank Lumpkin. Even if they did, not all lawyers could write about it like Geoghegan can. However, all lawyers can engage in rendering their world in one more personal form or another; they can force themselves to consider it outside the linguistic straitjacket that the profession so often creates. *Which Side Are You On?* is a triumph of the imagination within the mind of the practicing lawyer. Writing about what he has done and seen, *renaming* it in more personally evocative terms,

33. P. 6.

I seem to move further and further north. . . . [w]hile . . . my clients seem to move further and further south. . . . [a]s if in the city there were a Big Bang in the early eighties when the mills closed, and ever since then, the two sides of the city, North and South, like two galaxies, have been hurtling away from each other, faster and faster.

P. 121.

34. Geoghegan has published several other journalistic pieces, however, most notably a half-dozen articles in *The New Republic* since 1985. See, e.g., Thomas Geoghegan, *Warren Court Children: The Angst of an Aging Activist*, NEW REPUBLIC, May 19, 1986, at 17; Thomas Geoghegan, *Chicago, Pride of the Rustbelt*, NEW REPUBLIC, Mar. 25, 1985, at 18; Thomas Geoghegan, *Confessions of a "Practicing" Catholic*, NEW REPUBLIC, Sept. 30, 1985, at 18.

has clearly enriched Geoghegan's life if not his practice — replenishing a lost element he names, characteristically, *solidarity*.

— *John Edward Connelly*