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Symposium: Directions in Labor Law: Concern for the Dignity of the Worker - Introduction

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INTRODUCTION

DAVID S. BOGEN*

The articles in this issue of the Maryland Law Review are the product of collaboration between the Law Review, the University of Maryland School of Law, and the Industrial Relations and Labor Studies Center of the University of Maryland at College Park. The Industrial Relations and Labor Studies Center coordinates the efforts of faculty interested in industrial relations from a wide variety of disciplines—economics, psychology, sociology, history, business administration, and law. The Center is a focal point for multi-disciplinary research and operates programs on industrial relations for both the University and the broader industrial relations community. The articles of Professor Finken and Professor Summers were originally delivered as talks in the spring of 1983 at the University of Maryland in College Park under the sponsorship of the Industrial Relations and Labor Studies Center. Professor Getman's article was the basis for the Pearl and Lawrence I. Gerber Memorial Lecture delivered in the fall of 1983 at the University of Maryland School of Law.

Professor Getman's article points out the inadequacy of the Court's handling of labor speech issues. The *NAACP v. Claiborne Hardware Co.*[1] case brings these concerns into sharp focus. Although I believe that a narrow reading of *Claiborne Hardware* is possible and that viable constitutional distinctions can be made, Professor Getman is surely correct in arguing that the Court has not yet met that challenge. Further, invoking the union election campaign study which he co-authored, Professor Getman challenges the assumptions that provide the basis for the restrictions on both employer and union speech. Speech is often suppressed by those who fear the consequences of allowing the audience to

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1. NAACP v. Claiborne Hardware Co., 458 U.S. 886 (1982).

consider the speaker's statements. Professor Getman asserts his faith in that audience, contending that workers and their concerns are as worthy of respect as any of the other groups that have received greater protection for their speech.

Professor Finken argues that in another area of labor relations, certain critics of the Court fail to give the workers the respect that they deserve. His withering analysis of the historical underpinnings beneath the articles of Karl Klare and Katherine Stone strip them to assertions of alternate visions of what labor relations could be. Unlike Professor Finken, I find their work intriguing. Indeed, part of the value which I ascribe to the Critical Legal Studies movement in labor law lies in its very examination of basic premises; it has provoked such an examination in Professor Finken's piece. That examination, however, suggests that the visions of these critical legal theorists are unworkable mistakes, fatally flawed by a disregard for the facts of industrial life as well as those of history. Professor Finken argues that studies of industrial practice demonstrate that Klare's and Stone's assumptions about the impact of present collective bargaining structure are not borne out by experience. The "co-option" which these critics decry may also be viewed as reflecting the needs of the workers far more than the alternatives that the critics would impose upon them. Professor Finken by no means suggests that all of the Court's decisions were correct, but in his analysis of these two critics, he reminds us of the value of careful history and attention to experience.

Professor Summers reminds us of another reality—the politics of internal union elections. He notes that the Court's appreciation for the difficulties of protecting union democracy that informed many of its decisions under the Landrum-Griffin Act have been discarded in other decisions of the Court. The concern for the individual worker, which has been a hallmark of Professor Summers' work, is apparent here in his suggestions for preserving the effectiveness of opposing views. A proper regard for the dynamics of democracy in the operation of the union will not bring utopia, but it could improve the responsiveness of the unions to their members.

The topics in this symposium are quite diverse—cutting across many areas of labor relations. The authors' approaches to the topics are equally varied, drawing on constitutional law, history, and sociology. There are, however, some common themes which give unity to this issue. Each author challenges basic assumptions and demands that, in testing each assumption, attention be paid to the facts. They share a regard for the dignity of the worker. None of these authors is wedded to the status quo, but each finds the traditional virtues of respect for the individual,

for history, and for the facts of industrial life to be the essential basis for any progress in the law.