

# Articles & Essays

## INTRODUCTION: RECONNECTING LABOR AND CIVIL RIGHTS ADVOCACY

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Labor and civil rights movements in the United States share the aspiration of empowering workers to attain economic and social justice in the workplace. From their inception, both movements have articulated goals that link individual dignity and group empowerment, economic access and fair treatment, legal entitlements and political mobilization.<sup>1</sup> They proceed on the premise that the workplace is a site where vital economic interests and possibilities for self-development come together. Put otherwise, both forms of advocacy strive for a regime that links these concerns to do justice to the workplace as a site for the expression of democratic citizenship.<sup>2</sup>

Current economic and political conditions underscore the need to connect advocacy for racial justice with advocacy for economic justice. Unions increasingly face the challenge of representing a diverse workforce under constantly changing economic conditions.<sup>3</sup> Civil rights organizations

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1. See William Forbath, *Civil Rights and Economic Citizenship: Notes on the Past and Future of the Civil Rights and Labor Movements*, 2 U. PA. J. LAB. & EMP. L. 697, 702, 704, 707 (2000).

2. I am indebted to Chuck Sabel and Lani Guinier for numerous discussions developing this theme outlining the importance of the workplace as a site for connecting productivity and normativity as part of the expression of democratic citizenship.

3. See Dorian T. Warren & Cathy Cohen, *Organizing at the Intersection of Labor and Civil Rights: A Case Study of New Haven*, 2 U. PA. J. LAB. & EMP. L. 629, 633 (2000) ("unions that have traditionally relied on white men . . . are now realizing that the new source of union workers will undoubtedly come from African American, Latino and Asian American workers who dominate the workforces of low wage industries."). See generally Marion Crain & Ken Matheny, "Labor's Divided Ranks": *Privilege and the United Front Ideology*, 84 CORNELL L. REV. 1542 (1999) (arguing that labor law is preoccupied with employer/employee conflict stemming from an essentialist vision of the race- and sex-privileged worker).

confront the necessity of linking issues of jobs, education, poverty, and access to racial and gender justice. Both groups cannot attain their goals without the cooperation of companies in building "sustainable communities" in an increasingly global economy.<sup>4</sup>

Notwithstanding the need for cooperation, the current legal and organizational structures frequently pit labor and civil rights groups against each other. The existing legal framework is inadequate to address the challenge of, and even an obstacle to, collaboration by labor and civil rights advocates. The labor law regime has become increasingly fragmented from other areas of workplace regulation, such as discrimination, health, and safety. Courts have interpreted labor and civil rights law as two mutually exclusive systems with distinct goals and processes of implementation.<sup>5</sup> The law defines issues of racial exclusion and worker participation as distinct problems that are regulated under distinct regulatory regimes. Labor regulation focuses on the enforcement of collective bargaining agreements or bargainable topics. The National Labor Relations Act defines the worker generically, and the conflict between management and labor is treated as the defining characteristic of workplace relationships. The collective bargaining process proceeds with fixed representatives who stand in for the generic worker, whose paramount concern is wages and primary identity is class status. This generic identity is disconnected from other multiple identities such as gender, race, family relationships, and skill sets that are increasingly salient to the question of labor participation.<sup>6</sup>

Those whose interests have not been adequately addressed through the labor law regime have turned to civil rights legislation prohibiting discrimination based on sex, race, age, religion, disability, and national origin.<sup>7</sup> These statutes focus exclusively on identity-based exclusion. Although economic participation by previously excluded groups constituted a basic goal of the Civil Rights statutes, civil rights advocacy has increasingly focused on biased treatment in the workplace. This emphasis focuses attention on individual actors who engage in discriminatory conduct or on management policies that reflect or perpetuate bias. The structural and economic dimensions of exclusion often elude

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4. See Elizabeth M. Iglesias, *Institutionalizing Economic Justice: A LatCrit Perspective on the Imperatives of Linking the Reconstruction of "Community" to the Transformation of Legal Structures That Institutionalize the Depoliticization and Fragmentation of Labor/Community Solidarity*, 2 U. PA. J. LAB. & EMP. L. 773 (2000) [hereinafter Iglesias, *Institutionalizing Economic Justice*]; Nelson Johnson, *Reflections on an Attempt to Build an "Authentic Community"*, 2 U. PA. J. LAB. & EMP. L. 675 (2000).

5. See Elizabeth M. Iglesias, *Structures of Subordination: Women of Color at the Intersection of Title VII and the NLRA. Not!*, 28 HARV. C.R.-C.L. L. REV. 395 (1993).

6. For an excellent analysis of the structural inadequacies of the current legal regime in addressing problems at the intersection of racial and economic justice, see *id.*

7. See Crain & Matheny, *supra* note 3.

examination or remediation within this analytical framework.<sup>8</sup> Even within the rules regulating discrimination, there are distinct principles that are enforced through separate approaches and processes for dealing with race, gender, age, and disability. Separate grievance mechanisms emerging out of different legal principles often exist for dealing with different kinds of conduct. These processes are distinct not only from each other, but are also even more detached from the everyday or shop floor activities of the firms than are the grievance procedures of collective bargaining.

When redefined as legal claims, problems of bias, exclusion, worker harassment, or exploitation often fail to take account of the level of interaction at which exclusion, bias, and nonparticipation actually operate. Legal victories may not actually address the underlying problems that spawned the legal dispute. Thus, the current legal framework for addressing issues of workplace access and participation fails to define problems in ways that capture the complex, interactive, and multi-dimensional aspects of workplace interactions. Effective problem solving often requires acknowledging the different interests and positions among workers, the blurry boundaries between workers and management, and the interdependence of a particular workplace and the larger community within which it operates.

This legalistic framework for defining workplace problems has profoundly shaped the structure of civil rights and labor advocacy in recent years. In both the labor and civil rights contexts, legal disputes often define the occasion and the content of advocacy efforts. Law's fragmentation of problems into distinct legal categories has thus unduly narrowed the scope of advocacy in ways that hamper effective problem solving.<sup>9</sup> National civil rights and labor organizations have come to dominate the policy and advocacy arena, and have played central roles in decision making involving problems that require contextually defined solutions.<sup>10</sup> Much of the work of civil rights organizations has been focused on reforming or prevailing within the existing legal framework, through impact litigation or legislative reform.<sup>11</sup> Labor advocacy has also been focused on prevailing in battles that have been defined by the existing legal framework. The relationship

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8. See Susan Sturm, *Race, Gender, and the Law in the Twenty-First Century Workplace: Some Preliminary Observations*, 1 U. PA. J. LAB. & EMP. L. 639, 672-73 (1998).

9. See Iglesias, *Institutionalizing Economic Justice*, *supra* note 4; Martha R. Mahoney, *Constructing Solidarity: Interest and White Workers*, 2 U. PA. J. LAB. & EMP. L. 747 (2000).

10. See, e.g., Warren & Cohen, *supra* note 3, at 635-37 (describing potential of labor/community coalitions as a challenge to the bureaucratic structure that has had a "stranglehold" on labor over the past fifty years).

11. See generally LANI GUINIER, *LIFT EVERY VOICE: TURNING A CIVIL RIGHTS SETBACK INTO A NEW VISION OF SOCIAL JUSTICE* (1998).

between national and local advocacy organizations has in many ways mirrored the formalistic, hierarchical approach to power embodied in current legal doctrine. Decisions are made at the top and implemented at the bottom. This relationship of national to local has been quite effective in addressing Washington-based advocacy strategies focused on legislative and judicial law reform. However, it can thwart the kind of experimentation and redefinition of relationships at both the local and global level that may be necessary to respond to the increasing complexity of workplace power.<sup>12</sup>

In addition, unions have an uneasy relationship with communities of color and women, both at the local and national level. Unions themselves have been the target of advocacy efforts addressing racial and gender bias in the workplace; some have actively resisted the efforts of nondominant groups to address discrimination in the workplace.<sup>13</sup> Their emphasis on winning particular labor struggles defined largely around collective bargaining agreements has often produced one-sided relationships with civil rights groups, who are called upon to support the union struggle without any reciprocity in addressing their concerns.<sup>14</sup> This history has complicated efforts to link civil rights and labor concerns.

Thus, those concerned about linking economic and social justice face a crucial and difficult challenge: how can labor and civil rights activists transcend the existing legal and organizational constraints to address their shared concerns? This is the question addressed by a remarkable group of academics and practitioners at the *Journal of Labor and Employment Law* Symposium entitled "Activism and the Law: The Intersections of the Labor and Civil Rights Movements." This Symposium explored ways in which labor and civil rights movements can and should be connected, and the role of law in this process. Its format reflected a view of how to generate new conceptual approaches to the problem of workplace participation. The program examined two case studies of creative and successful partnerships between labor and community activists and lawyers in New Haven, Connecticut and Greensboro, North Carolina. Workplace scholars and practitioners then used these case studies to explore possibilities for reconceiving the relationship between civil rights and labor.

This case study approach employed pragmatism as a method of inquiry, theory building, and strategic planning. A central theme of pragmatism

is the reciprocal determination of means and ends. Pragmatists

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12. See, e.g., Julius G. Getman, *The Fine Line Between Success and Failure in Strikes and Organizing*, 2 U. PA. J. LAB. & EMP. L. 719 (2000).

13. See Crain & Matheny, *supra* note 3; Iglesias, *Institutionalizing Economic Justice*, *supra* note 4, at 798-803.

14. See Warren & Cohen, *supra* note 3, at 636.

argue that in science, no less than in industry and the collective choices of politics, the objectives presumed in the guiding understandings of theories, strategies, or ideals of justice are transformed in the light of the experience of their pursuit, and these transformations in turn redefine what counts as a means to a guiding end.<sup>15</sup>

This Symposium proceeded on the assumption that the innovative experiments in New Haven and Greensboro developed out of the recognition of the failures of the traditional civil rights and labor relationship. Union activists acknowledged that the exclusive focus on labor and wage issues did not take adequate account of community concerns or the impact of race and gender on workplace participation. Community and civil rights leaders recognized the polarizing effect of an exclusive focus on race as the lens for challenging unfairness in the workplace, and the need to build coalitions based on shared needs and interests. New forms of advocacy emerged through a process of trial and error among reflective practitioners, which produced ongoing relationships between labor and community activists. These relationships prompted a rethinking of strategies and goals that moved beyond and indeed challenged the fragmented, crisis driven model of advocacy. The practitioners in these contexts were themselves retheorizing their roles and relationships. The Symposium engaged those who were writing about a particular advocacy initiative with those who participated in the events under consideration. The case studies were presented both from the perspective of the observer and the participants, and there was a dialogue between the researcher and practitioner. This dialogue brought together innovators from different contexts and fields who were engaged in parallel efforts to reconceive the role and nature of advocacy. Patterns among these different labor/community initiatives emerged through this process of reflection and comparison across contexts.

The format of the Symposium encouraged an experimentalist approach to rethinking goals and relationships for labor and civil rights. Participants in the Symposium shared work in an early stage, when ideas were still forming and could be shaped by interaction with one another. The relationship between theory and practice was built into the structure of the panels, with academics and practitioners focused on the adequacy of their analyses to address a common problem. This format encouraged brainstorming, openness to rethinking, a willingness to take risks and make mistakes, and a fluidity among disciplines and perspectives that is quite remarkable among a group so diverse in organizational affiliation,

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15. Michael C. Dorf & Charles F. Sabel, *A Constitution of Democratic Experimentalism*, 98 COLUM. L. REV. 284-85 (1998).

discipline, and status. This process reflected the dynamics of the problem under consideration: how to encourage sustained collaboration among multiple actors who must continually collaborate across differences, and to systematize the capacity to respond to surprise, uncertainty, and conflict.

The case study format also exemplifies an approach to reconceiving civil rights and labor advocacy that could be described as normative pragmatism.<sup>16</sup> New ways of conceptualizing activists' goals and strategies emerged from an examination of the successes and failures of promising social change initiatives. The case studies were selected because they offered examples of civil rights and labor activists who were willing to experiment, to define problems rather than legal claims or labor disputes, to undertake the task of building and sustaining relationships between labor and civil rights concerns, and to actively engage with the meaning of and methods of pursuing community.

Dorian T. Warren and Cathy Cohen document the emergence in New Haven of a sustained, collaborative relationship between unions, civil rights organizations, and other community groups that played a key role in the union's successful struggle with the Omni Hotel management about the Omni at Yale. This still fragile collaboration emerged out of the union's acknowledgment of its previous failure to maintain the community relationships that had been essential to earlier union victories. The union thus embarked on a new strategy that focused on organizing in workers' neighborhoods, forging a reciprocal relationship between union and community groups, and redefining the problem from a labor dispute to an issue of community justice. Local clergy in New Haven worked with local union activists to redefine a labor-management dispute as a moral issue of concern to the whole community. The union helped develop an infrastructure to coordinate activities among local unions and community groups, and to institutionalize a working relationship to pursue community development through a community and labor coalition.

The inspired leadership of a union organizer and the participation of local clergy active in civil rights issues played a significant role in the success of this labor struggle. Many problems were defined in relation to the long term issues of community building, rather than solely in response to particular crises or instances of abuse. Yet, the coalition remained fragile in part because of the difficulty of achieving sustained union support on issues unrelated to jobs or wages.

The labor/civil rights struggle in Greensboro, North Carolina challenged the working conditions, low wages, racial discrimination, and sexual harassment experienced by workers at the Kmart Distribution Center in Greensboro. This struggle was initially defined as a labor-management

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16. *See id.*

dispute, but the success of the union in achieving representation changed little in the working conditions. As Reverend Nelson Johnson eloquently documents, this struggle was eventually redefined as a struggle that transcended labor/management boundaries as well as traditional civil rights boundaries such that people who were not substantially involved in either movement became involved in Greensboro.<sup>17</sup> This occurred through the collaboration, commitment, and courage of Kmart workers, a labor union that devoted staff and resources to an extended local collaboration, and an organized group of local religious leaders who defined activism as a legitimate and important part of their mission. The ministers' moral authority helped to redefine both the labor struggle and employment discrimination claims as part of a broader vision of building sustainable communities that would meet the needs of all of its citizens. Through a combination of protest activities, strategic litigation, community building efforts, and negotiation with the business community, labor and civil rights activists achieved a contract that substantially corrected disparities in wages and benefits and began to address the issue of racial discrimination. It also forged a coalition among workers, the union, and civil rights activists that offered new possibilities for advocacy and problem solving for all of these groups.

The national office of UNITE provided crucial expertise, resources, and experience needed to strategize and plan the local initiative. But the dynamic collaboration that emerged among workers, religious leaders, and eventually even business leaders developed out of the redefinition of the problem as one of building sustainable communities. The responsibility for defining the role of the union and the advocates rested with the direct participants in the problem solving/advocacy process. National advocacy did occur, for example, through the involvement of the national office of the union in strategizing, and in involving congregations around the country in a possible consumer boycott of Kmart. But the national role emerged out of the effort to address the problem and to learn from the successes and failures of the local effort.<sup>18</sup> It was not defined, at least in the short run, by preexisting, hierarchical power relationships between the local and national advocates. A dynamic reconception of the problem as an issue of building sustainable communities encouraged the development of reciprocal relationships between civil rights and labor activists, local and national actors, lawyers and organizers; it enabled the simultaneous engagement of multiple concerns and agendas.

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17. See Johnson, *supra* note 4, at 675.

18. See Penda D. Hair, *Prayer and Protest: Bringing a Community Vision of Justice to a Labor Dispute*, 2 U. PA. J. LAB. & EMP. L. 657, 670-71 (2000); Benjamin Hensler, *Building a Coalition for Workers' Rights at Kmart*, 2 U. PA. J. LAB. & EMP. L. 687, 689-90 (2000); Johnson, *supra* note 4.

These two case studies offer pictures of possibilities, and give an opportunity to work with, build upon, and challenge those possibilities. They also offer a common text for the examination of patterns, themes, and problems. These examples are not offered to provide the blueprint or model for change in every community, or to suggest that they have solved the problem of advocacy. Nor are they presented as novel in their effort to link labor and civil rights concerns. The accompanying essays of Thomas Sugrue<sup>19</sup> and Julius Getman<sup>20</sup> consider the case studies in the context of other contemporary examples of labor/civil rights collaborations that offer dynamic possibilities for reconnecting labor and civil rights advocacy. William Forbath's essay places these case studies in historical context, and shows the recurring promise and obstacles to forging sustained connections between civil rights and labor issues and advocacy.<sup>21</sup> These examples reveal recurring patterns and goals that suggest new, albeit contingent, ways of conceptualizing problems and strategies for addressing them.

Several themes recur in the case studies and the articles in this issue inspired by them. First, the case studies highlight the importance of properly defining the vision or goal in determining the possibilities for successful collaboration among labor and civil rights advocates. In each of the examples explored in this Symposium, the problem that mobilized the struggle was defined in ways that reflected the common goals of labor and civil rights, without homogenizing the interests of either group. Racial justice continued to matter, and to be a necessary component of the struggle, but it was not the only or the defining characteristic of the affirmative vision propelling the collaboration. Similarly, the economic status of workers, and the struggle for recognition as a party to defining the terms of that status, continued to propel the advocacy effort, but did not define the agenda, the participants, or the long term vision underlying the collaboration. The legal categories did not define the scope of the advocacy effort. They were instead considered in relation to the underlying problem.

Second, the case studies highlight the importance of developing a more democratic and inclusive vision of law and lawyering.<sup>22</sup> Law and legal roles emerge out of the demands and possibilities of the setting and problem at hand. Lawyers do not function in a vacuum or as experts who solve the problem for others. Instead, they are part of a partnership in problem solving, with their legal and analytical skills and capacity for integrating diverse forms of knowledge justifying their seat at the table.

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19. See Thomas J. Sugrue, *The Power of Unlikely Coalitions*, 2 U. PA. J. LAB. & EMP. L. 737 (2000).

20. See Getman, *supra* note 12.

21. See Forbath, *supra* note 1.

22. See Sturm, *supra* note 8, at 686.

Instead of reasoning back from the formal legal process and rule to define the problem at hand, the lawyer as problem solver begins with the context, problem, and organizational setting. She harnesses the law as aspiration, by attempting to realize in practice the vision embodied in legal norms, and harnessing the legitimacy of law to that enterprise. She also addresses law as a constraint or obstacle to be overcome. The lawyers' understanding of the problem as a whole, and formation of ongoing, reciprocal relationships with other participants in the struggle equip the lawyer to function effectively in more traditional legal arenas and roles. For example, the lawyers in Greensboro were involved in nontraditional roles of advocacy and community building. They supported the work of the religious leaders in part in their capacity as members of the community under construction. The knowledge and trust developed in this nontraditional role then enabled the lawyers to construct an extremely effective legal strategy that removed the barriers posed by law and offered an occasion for community building in a public, legal arena.<sup>23</sup>

Third, the meaning and functional significance of race developed in the context of problem solving, rather than as a fixed category with universal meaning and significance. When Kmart sued only the African-American advocates and workers as part of its counter-attack, their white counterparts objected because race was being interjected to polarize workers with common economic and social justice concerns. But race was playing a significant role in the form of exclusion and oppression experienced by workers in the distribution center, and thus was addressed as an issue of racial bias.<sup>24</sup> In addition, the form of community and advocacy developed in communities of color offered lessons for other efforts to build community and effective struggle.

Fourth, the effort to building a national labor/civil rights movement will not work by simply replicating the form of civil rights mobilization that succeeded in the 1930s and 1960s. The workplace struggles described in the case studies have distinctly local dimensions, coexisting with regional, national and even global aspects to them.<sup>25</sup> Building a sustainable community required defining the stakeholders comprising the community and then engaging them in advocacy and struggle at that level. In Greensboro and New Haven, the national dimension developed out of the exigencies of the local struggle. For example, the national network of black churches, to which the Greensboro ministers belonged, offered the possibility for a more national advocacy strategy. The involvement of the national office of UNITE offered the benefits of experience in other contexts. The challenge for advocacy organizations remains to find ways

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23. See Hair, *supra* note 18; Hensler, *supra* note 18; Johnson, *supra* note 4.

24. See Hensler, *supra* note 18.

25. See Iglesias, *Institutionalizing Economic Justice*, *supra* note 4.

of connecting local efforts to each other, and to engage with the more structural and global dimensions that shape the possibilities of building sustainable communities. The internet certainly opens up a set of possibilities for connecting and learning from local community efforts.

This suggests a fifth lesson from the Symposium. These case studies suggest the possibility and necessity of rethinking the relationship between local and national advocates. In Greensboro, for example, the strategy was not conceived at the top and implemented at the local level. Instead, the national office supported the capacity to define and address the problem at the community level. However, the duration and extent of national involvement continued to be defined in relation to a particular crisis or event. When the labor struggle was successfully resolved, the organizers were often transferred to another labor conflict, without necessarily institutionalizing the incipient relationship between labor and civil rights. This pattern increased the likelihood that the next struggle in Greensboro or New Haven will require rebuilding a new labor/civil rights collaboration. Julius Getman's article illustrates the pitfalls of dominance by a national labor bureaucracy, at the expense of local struggles. At the same time, national organizations are situated to develop the architecture necessary to support, connect, and learn from local struggles. They also have the resources to engage in national policy making and law reform. The Greensboro and New Haven struggles offer a vivid illustration of the interdependence of local and national advocacy, and the importance of continually redefining roles in relation to the problem at hand.

Finally, the case studies illustrate the continuing and unresolved challenge of sustaining and institutionalizing community-based advocacy. The success of local endeavors is too often one-shot or short-lived. It rests heavily on the commitment, courage, and creativity of local leaders.<sup>26</sup> Unless the capacity to problem solve is institutionalized, these collaborations end when the leaders move on. When the crisis is over, the collaborations are more difficult to sustain, and the community building that emerged during the crisis can dissipate. Local efforts can flounder in the absence of resources and infrastructure to support them in between public crises. In both Greensboro and New Haven, the long term impact of the successful labor/civil rights collaboration remains to be seen. It will depend in no small part on the capacity to institutionalize these collaborations, without recreating patterns of bureaucracy and hierarchy that undermined the effectiveness of the national civil rights and labor movements. Systematic attention to developing and rotating leadership among a broad and diverse group seems crucial to sustaining long term collaborations among labor and civil rights activists, and to building

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26. See Hensler, *supra* note 18; Johnson, *supra* note 4; Warren & Cohen, *supra* note 3.

sustainable communities.

This need to build the connective tissue to sustain and build on local lessons could be addressed by foundations, universities, and other institutions situated to pool information and bring diverse groups together. This Symposium is a small but significant example of the possibilities that emerge from creating occasions to bring a diverse group of academics and practitioners together for reflection about emerging forms of effective advocacy and community building. Hopefully, the examples presented here will inspire and inform others who are involved in efforts to reconnect labor and civil rights advocacy.