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**Review of *Taking Back the Workers' Law: How to Fight the Assault on Labor Rights* by Ellen Dannin (Cornell University Press, 2006)**

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Anyone who has ever done union work in the academy will recognize the following scenario from Ellen Dannin's *Taking Back the Worker's Law: How to Fight the Assault on Labor Rights*. Discussing the ways common-law assumptions cloud judges' thinking about the property quality of a job, Dannin writes,

Of course, most employers involved in [National Labor Relations Act] cases are more likely to be corporations than sole proprietorships. Ownership of corporations is generally not personal. The true owners are the shareholders. They will have no idea how the property is treated and no ability to manage it. Furthermore, company actions will be decided by directors, managers, and officers whose tenure with the company is likely to be short as they further their careers by moving from one position to another. They are unlikely to suffer any losses from damaging the property, and their pay and benefits may bear no relationship to the way they have treated the corporation. This means that assumptions that grow out of concepts of personal property and the relationship of ownership and property rights should not automatically apply to all employers. (26)

Precisely. If, say, we replace "corporations" with "colleges or universities," "shareholders" with "trustees and/or citizens," and "directors, managers, and officers" with "administrators," we can recognize how the value of academic jobs could well be consistently damaged even as common-law reasoning would assume a self-interested employer/proprietor would be foolish to wreck her or his own property. Dannin makes the point to clarify why so many judges are less than optimally positioned to appreciate labor disputes. And again, anyone with organizing experience in the academic arena will agree that few interested parties are well-positioned.

Thus the aim of Dannin's fine book. (Full disclosure: I once served on a conference panel with the author, and an essay of mine appears in a journal she guest-edited.) A central premise of her account is that the language of the 1935 National Labor Relations Act (NLRA) retains much of the power we need to secure workplace justice, but that because judges have consistently misread this language, "it is judges themselves who

must be called to account” (11). Advocating a dual track of “litigation and activist strategy”—and while arguing against those who have lost hope in the NLRA and the Board which administers it—Dannin proposes that “[a]s long as unions still have these tools and rights, they need to take a course that is realistic and strategic” (3, 15). As opposed, that is, to one that would abjure labor’s historic achievements for an approach conducted largely outside the Act.

Indeed, Dannin is an incrementalist. Comparing labor activism to the civil rights movement, she points out that had a suit like *Brown v. Board of Education* been pushed in 1930, it would have lost. “[T]he NLRA,” she argues, “is already the law, and we need to work to improve what exists” (50). Among the many pleasures this book affords is the opportunity to actually read parts of the Act, the inspiring language of which Dannin liberally quotes. And as she points out, “for nearly seventy years, most of the NLRA’s values have remained unexplored and virtually unused” (60). In addition, we too often overvalue the limiting interpretations of the Act. Thus, in analyzing the *Yeshiva case Workplace* readers know all too well, Dannin encourages us to understand that “a court or Board decision should not be taken as the final statement of rights. The way people react to case decisions is as much a part of statutory interpretation as the decision itself” (131).

To see *why* so many remain discouraged, one need only peruse Dannin’s fourth chapter, “Litigating the NLRA Values—What Are the Challenges?”, which meticulously traces a series of Supreme Court decisions that—from the legal standpoint, anyway—have effectively neutered the American labor movement. But since, as she declares at the outset, “[t]his is not a story of mourning” (3), Dannin also offers means by which the Act’s intended force might be reclaimed. Clear-eyed but adamantly optimistic, Dannin has given us an informed set of tools by which we might more clearly witness “our moral and social reality” (166).

I thoroughly enjoyed this book, and I hope its message reaches those more possessed than I of legal acumen and energy. Dannin’s thematic invocation of the civil rights movement reminds me of a passage from one of that effort’s foundational texts, Thoreau’s “Resistance to Civil Government.” Explaining why he feels little obligation to work for change within the law, he suggests,

When the majority shall at length vote for the abolition of slavery, it will be because they are indifferent to slavery, or because there is but little slavery left to be abolished by their vote. They will then be the only slaves. Only his vote can hasten the abolition of slavery who asserts his own freedom by his vote.

As we recall, Thoreau’s bold stand cost him a mere one night in jail. Many of those he inspired paid higher prices, and those in our arena today who choose thus to assert their freedom risk real professional loss. I hope Dannin is right. I worry, though, that we may be so far removed from the Progressive Era and the New Deal that the NLRA is more relic than repository of hope. One is nagged by the question: How could an Act so empowering prove so disabling in its applications? I know, I know—we need to educate, we need to litigate. Dannin tells the story of how surprised she was when a radio

producer, in assembling a segment on a local strike, chose as her lone guest commentator “the struck company’s human resources director.” Dannin had been considered for the spot, but assumes the producer was turned off by her straightforward explanations of labor law. “Apparently,” she concludes, “we have reached the point where any business representative is regarded as a neutral source about workplace issues, and anyone else is partisan and unreliable” (38).

It’s apparent to many of us, yes. Just as it was apparent to Thoreau that, “[a]s for adopting the ways by which the State has provided for remedying the evil, [he knows] not of such ways. They take too much time, and a man’s life will be gone.” Amen to that. Here’s hoping Dannin inspires a legion of patient, potent litigators. Here’s hoping Thoreau inspires a complementary legion of civil, disobedient resisters.