BOOK REVIEWS

COLLECTIVE BARGAINING. By Neil W. Chamberlain.* New York: McGraw-Hill Book Co., Inc., 1951. Pp. vii, 534. $6.00.

Professor Chamberlain's treatise on collective bargaining is an excellent book, a most useful introduction to the subject for students of industrial relations, as well as for others who feel the need of some understanding of the structure of this phenomenon which has become so important a part of our economic, political and social order.

Acute insight has been combined with thorough knowledge of practice and theory to produce a work which is an exceptionally useful description of the collective bargaining process, and, at the same time, a thoughtful and stimulating analysis of the increasingly difficult problems which that process poses for our society.

Professor Chamberlain's presentation may be divided roughly into three parts. The first two chapters (47 pages) deal with the history of collective bargaining in this country. Chapters Three through Fourteen (287 pages) are descriptive of the process as it exists today. The remaining chapters (152 pages) consist of discussion of the political, social and economic implications of collective bargaining.

In the historical material, Professor Chamberlain has largely disregarded those aspects of bargaining history which are interesting primarily as history, and considered only those which are important to an understanding of present-day collective bargaining. The treatment is therefore in terms of significant trends. While it is necessarily only a brief sketch, it is, I believe, entirely adequate for a work of this kind. To a lawyer, for example, the early development of, and emphasis on, working rules rather than on collective agreement, will explain much of the difficulty which the courts have encountered in their handling of such agreements.

The description of the bargaining process begins with chapters on the conference and its procedures. The material is so wisely chosen and skillfully presented that it would be difficult to think of any means, short of actual participation, better designed to give students a feeling for the realities of collective negotiation as it is actually practiced. The gen-

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eral emphasis of these chapters, like that of the book as a whole, is on cooperation rather than conflict, and the bitterness which is frequently shown in negotiation is perhaps not sufficiently presented. This tendency to understate the aspects of conflict I shall discuss at a later point.

A chapter on grievance procedure contains, in addition to a useful description of the procedure itself, a brief historical survey and a thoughtful analysis set forth in terms of "the principles which underlie this important aspect of the collective bargaining process." While the continuity of bargaining is frequently referred to throughout the book, the emphasis in the grievance procedure chapter on the difference between grievances and negotiation may suggest to a lawyer the need for more discussion of this problem in the light of the difficulties which this approach has caused in such situations as that presented by the *Burley*[1] decision and in connection with interpretation of Section 9 (a) of the National Labor Relations Act.

Chapters Six and Seven restate Professor Chamberlain's well-known analysis of the bargaining process and the bargaining agreement. The marketing theory, the governmental theory, and the managerial theory are the various approaches to the bargaining process, and these are allied, respectively, with views of the collective agreement as contract, as industrial jurisprudence, and as administrative standards. While the inevitability of, or even the tendency toward, this alliance is not as clear to me as it appears to be to Professor Chamberlain, the problems raised by the analysis of the collective agreement present most distinctly the difficulties I find in Professor Chamberlain's position.

The administrative standards theory, which Professor Chamberlain favors, and the industrial jurisprudence theory do not, as he describes them, appear to differ greatly except in terminology; and his objection to the latter seems to be based on its use of terms of analogy to government instead of terms which are directly relevant to the management of industrial enterprises. Basically, then, such divergences of approach as exist are to be found in comparison of the contract theory with the managerial theory. However, it is possible that Professor Chamberlain's view of the industrial jurisprudence theory makes that theory somewhat easier to reconcile with his own position than would other acceptable views of the analogy between the collective bargaining relationship and political government. For example, Professor Chamberlain here as elsewhere overlooks the possibility that the employer-employee relationship may be taken as fundamental (*i.e.* as the constitution). Under such an approach the collective agreement would become the legislation, and the

1. Elgin, Joliet & Eastern Ry. v. Burley, 325 U.S. 711 (1945).

determinations of arbitrators would be judicial decisions interpreting and applying constitutional and statutory law. By looking upon the *agreement* as the constitution, Professor Chamberlain is led not only into ignoring the law which arises from the employer and employee relation itself, but into the contradiction of considering supplementary agreements, both those in conflict with and those in harmony with the basic agreement, as legislation, rather than as amendments to the constitution.[2] While the shift which Professor Chamberlain accomplishes thus destroys the effect of the original analogy, by eliminating any real place in the picture for legislation, it does create a place for "common law," which is analogized to the decisions of arbitrators. This common law is "judge-made," *i.e.,* arbitrator-made, and is based on "morality, stemming from the felt necessities of business operation juxtaposed to prevailing ethical standards and shared concepts of justice."[3] Of course, there is no reason why one looking upon the collective bargaining relationship as a form of industrial government should be compelled to accept the view that arbitrators have the same "common law" powers as judges possess under the Anglo-American legal system. If the relationship of employer and employee is taken as the constitutional basis of such a government, then the judges will be confined by the terms of the constitution (and ordinarily by the express terms of the legislation, *i.e.,* the agreement, as well) to interpretation and application of the legislation. In the area where "no written standards control," determination will be left to further legislation or to management, or to the union, or to the individual employee as provided by the constitution, rather than to the uncontrolled "common law" declared by the arbitrators.

However, as I have said, the real issue lies, for Professor Chamberlain, in the choice between the contract theory and the management theory, since the governmental theory, as he construes it, is discarded largely on the ground of inappropriate terminology. Though in doing so I am subjecting Professor Chamberlain's admirable argument to a grave injustice, I may be pardoned for reducing, for purposes of this brief review, to three main headings the points which he makes against the contract theory. They are:

(1) The contract theory leads to the courts and "naturally to strict interpretation and application" of the agreement as well as to judgment by "those to whom the experience of the enterprise is unintelligible."[4]

2. Pp. 148-9.
3. P. 150.
4. Pp. 147, 158.

(2) Collective agreements do not provide for all contingencies and therefore under the contract theory some situations are left without coverage.

(3) The contract theory does not permit departure from the provisions of the agreement where there are "special circumstances which indicate that a special solution is preferable" and that such a departure is "desirable for operational reasons."[5]

One may express considerable sympathy with Professor Chamberlain's strictures on the ineptitude of the courts in handling problems arising out of collective agreements, without necessarily taking the view that they should not be looked on as contracts. It is certainly not an inevitable result of the contract theory that "the same objective rules which apply to the construction of all commercial contracts are invoked, since the union-management relation is conceived as a commercial relationship."[6] The courts can be educated. The number of judges with important industrial relations experience is steadily increasing. The rules of ordinary commercial transactions have frequently been declared to be inapplicable to collective agreements.

Professor Chamberlain's idea that the contract theory leaves a vacuum is based again on his choosing to disregard a very fundamental part of that theory, apparently because he likes the neglected part even less than the rest. For example he says:

> It is sometimes said that the grievance process is a means of meeting individual needs and resolving the tensions of individual employees. This transcends the collective agreement since it must take into account the entire range of human emotions and sentiments which are evoked in the industrial community no less than in any other community. Since it can be presumed that no agreement will be foresighted and comprehensive enough to provide for all contingencies provoking grievances, the adjustment procedure must fill the breach by seeking solutions to these personal problems. That no provision is made for the terms of settlement in the agreement is irrelevant. Such problems remain and cannot be exorcised by pronouncing them out of contract bounds.
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> The soundness of this line of thought should not, however, blind us to the question it raises but does not answer. Granted that individual grievances may have an important effect upon harmony in a shop and that all situations likely to provoke grievances cannot be anticipated in the agreement, it is also true that the provisions of the agreement do not always *successfully* solve the grievances which they *do* embrace. And if the sense

5. P. 155.
6. P. 156.

> of injustice of aggrieved workers runs deeply to the very center of their being, the same reasoning which suggests the advisability of seeking solutions to personnel problems even if not covered by the agreement also suggests the possible desirability of seeking better solutions than those which may be permitted by applicable clauses of the agreement. Arbitrators have thus frequently been asked to disregard the 'technicality' of a contract and meet the 'human' problem involved in a grievance which has been laid before them.[7]

Now whether one likes it or not, the contract theory certainly does not involve any "presumption that the agreement embodies *all* the obligations of the union-management relationship." Under the contract theory, the agreement is construed as setting forth *all the restrictions* which the parties agree are to be imposed on the freedom of action which employer, union, and employees would otherwise have.[8] In the absence of agreement to the contrary, the management may, except as limited by statute, discharge an employee for any reason they consider sufficient; the union may call a strike if they believe it to be desirable; and the individual employee may refuse to join the union. The human problems to which Professor Chamberlain refers will be administered even if there is no agreement at all. Under the contract theory they will be administered in the same way if there is no provision in the agreement restricting the parties' freedom of action in that situation.

> Professor Chamberlain believes that the collective agreement: is not to be looked upon as a binding legal document but as a means of managerial guidance. As such it should be subject (1) to all the flexibility required for the accomplishment of its intended objective and (2) to all the limitations required for the accomplishment of its intended objective. But it is the operating requirements of production in conformity with the mutual interests involved in production that is decisive. It is the administration of the agreement that provides its significance and reveals its nature.
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> With respect to specific situations embraced by its terms, the deviations from the provisions of the agreement which are permissible are those which it is agreed are necessary to accomplish the objectives for which the provisions were themselves drafted, or those which can be defended on other grounds

7. Pp. 143-4.

8. The statement, p. 157, that under the contract theory "the employer retains undiluted discretion and control over all other matters [than those covered by the agreement]" is almost the only reference to this important aspect of the contract theory. It is, of course, insufficient, since under that theory the union and the individual employees also retain "undiluted discretion and control" over the matters which they would control in the absence of the agreement.

> without threat to the standards set forth in the agreement. For guides to administrative action, to be effective, must be reasonably continuous. They must permit tests for reasonable consistency of application. If deviations are so frequent or so important as to threaten a standard which it is desired to retain or establish some doubt as to what the standard in fact is, they vitiate the function of the agreement. But departures desirable for operational reasons can be countenanced as long as they do not create such a danger. In the terms we have previously used, application of the common rule is determined by operational requirements. The presumption in favor of the common rule may be rebutted by special circumstances which indicate that a special solution is preferable.[9]

To the lawyer this material presents one bristling question: Who is to determine what "should be," what "flexibility" and what "limitations" are "required," what are "operational requirements," what is "permissible," what "can be defended," whether the guides are "reasonably continuous," whether there has been "reasonable consistency," whether "deviations are so frequent or so important as to threaten a standard which it is desired to retain", whether a departure is "desirable for operational reasons," whether a departure will "create" "a danger," what "operational requirements" will determine what "application of the common rule", and what "special circumstances" will "indicate" that what "special solution is preferable"?

From the paragraph which follows the material quoted above, it appears that Professor Chamberlain's answer is—Harry Shulman. And Professor Shulman's answer is an arbitrator of "integrity and wisdom" whom the parties are free to fire any time they are dissatisfied with him.[10]

Professor Chamberlain does not deal with the situation where the parties do not wish to leave it to an arbitrator to determine whether "operational requirements" require a departure from the collective agreement. And yet the overwhelming majority of collective agreements expressly limit the powers of arbitrators in this respect.[11] It is hardly conceivable that Professor Chamberlain would urge that an arbitrator disregard, over protest, such an express limitation on his powers, however much the arbitrator might be convinced that his view of operational requirements was superior to that of the protesting management or union. A lawyer would think of this inhibition on the arbitrator's

9. P. 155.

10. Pp. 155-6.

11. The statement on p. 147 referring to such a limitation in "numerous agreements" is surely an astonishing understatement.

action as arising from "contract" and he would persist in this idea, even if no court had jurisdiction to determine the controversy.

In my opinion, the defect of Professor Chamberlain's analysis in this respect lies in his failure to pose a real issue between comparable theories. What he is really criticizing under the guise of contract theory is inflexibility of approach, strictness of interpretation and unintelligent resolution. What he is praising as managerial theory is flexibility, liberality and intelligence. His treatment is really exhortatory rather than analytical. He is not describing the actual collective bargaining relationship so much as he is urging its improvement.

This failure to distinguish between what is and what should be is further compounded by a failure to explain clearly to whom the exhortation is addressed. If we construe the managerial theory to be admonition not to insist on strict application of the agreement, to feel free to depart from it where departure is desirable, we must, I believe, confine the advice to the parties taken together (*i.e.*, by agreement) or to an arbitrator to whom the parties have agreed to give the necessary power. It seems unlikely, to say the least, that Professor Chamberlain is either (1) urging that management or union determine for itself and without the consent of the other when operational requirements would justify, for example, a reduction or an increase in pay, or (2) that an arbitrator should make such a determination without the consent, either express or implied, of the parties, or (3) that a court should assume jurisdiction to make such a decision. But the contract theory clearly permits an agreed-upon departure, whether the agreement provides expressly for the terms of such departure or grants authority to an arbitrator to determine the necessity for departure and to decide the terms.

So analyzed, the managerial theory appears to be, not an explanation of the collective bargaining agreement, but simply an admonition to management and union to be less inflexible about agreeing upon modifications and exceptions, and particularly to give more power to arbitrators.

Aside from the criticism, largely justified, of the way courts handle problems arising out of collective agreements, the references to the role of the courts do not present an entirely satisfactory explanation of where they fit into the managerial theory. Professor Chamberlain says that under that theory "the general availability of the courts for enforcement of the terms (of a collective agreement) is regarded as a detriment rather than an advantage . . . for its invasion of the sovereignty of the enterprise . . ."[12] The

12. P. 158. There is here, as elsewhere, a curious trace of suggestion that courts "interfere" of their own motion. On p. 148, for example, Professor Chamberlain says,

quotation is not free from ambiguity. For example, it is not clear whether "general availability" refers to present limitations or is intended to suggest that courts *should* be available in some circumstances, but less generally than at present. At any rate, it must mean that court enforcement is to some extent looked upon with disapproval by those who support the managerial theory. But Professor Chamberlain gives the law too little credit for flexibility. Under the contract theory, the parties could, I am sure, devise an agreement under which neither side could resort to the courts for enforcement and they could likewise limit the "interference" of the courts (*i.e.,* their own future resort to the courts) to whatever aspects the managerial theorists thought to be desirable. Though there may be some doubt of the validity of the proposition under New York law, I believe that the parties could effectively agree to oust the courts from all power of review over an arbitrator's award, by, for example, a properly drafted clause giving the arbitrator power to determine the issue of arbitrability. There is reason to believe that if review of arbitrability was precluded, enforcement of arbitration awards by the courts would likewise be precluded (*i.e.,* the courts might hold that such broad determinations by arbitrators were not "awards" within the meaning of the applicable law).

Although the trend of present-day thinking is in the opposite direction, there is much to be said for the position that arbitration awards under collective agreements should not be enforceable in the courts. There are, in addition to the grounds advanced by Professor Chamberlain, other and very different reasons which seem to me to support the position. To continue to give full effect to arbitration agreements as defenses to actions for violation of collective agreements but to refuse enforcement of awards would, I believe, encourage the realization of those values which the managerial theorists urge upon us—and they are very real values. It would encourage liberality of approach, flexibility of treatment, intelligent resolution of disputes. It would prevent such mishandling of labor problems by the courts as has been demonstrated in a whole series of arbitration cases recently decided in the courts of New York. Where parties have genuinely agreed to a system within the enterprise for the solution of all problems of the enterprise, it would

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"That the collective agreement is in fact treated as a contract by legal authorities does not preclude a different diagnosis by students of industrial relations; nor does it prevent the parties to an agreement from determining jointly to look upon it as something other than a contract, provided *they can forestall a court test.*" (Italics added). The significance of the fact that one of the parties to the agreement must resort to the courts in order to bring the courts into the picture at all is never adequately examined.

protect one party from an invasion of sovereignty by the courts at the instance of a reneging party.

But court enforcement of arbitration awards has another undesirable effect. Many, perhaps most, parties to collective agreements are still contract theorists rather than managerial theorists. They do not wish to submit the determination of operational requirements to arbitrators. Some have become suspicious of arbitration and arbitrators. They do not want departures from contract at the instance of arbitrators. They want a forum where the judges do not depend for their living on ability to please, where the mediation, private investigation, *ex parte* conferences, and "socializing" praised by Professor Shulman would be as improper as they are in the Supreme Court of the United States. Court enforcement of an arbitration award to which the parties have *not* agreed is as unfair to these contract theorists, as is court interference to those managerial theorists who *have* agreed.

Perhaps the solution is the institution of a system which would acknowledge the existence of both groups. Such a system would encourage the managerial theory by withdrawing all means of resort to the courts in cases where the parties had agreed upon arbitration. For the contract theorists, resort to the courts would be the only remedy. To meet the problems of delay, strict interpretation, inappropriate rules (*e.g.*, rules designed for commercial contracts) and the like, specialized labor courts could be established on the model of those which now operate in the Scandinavian countries. Such a dual system would, I believe, carry the managerial theorists' position to its logical conclusion. For those who are agreed on an arbitration procedure of the type that Professor Chamberlain suggests, and there are many who are, not only is it entirely proper that they should have it, but it is, as Professor Chamberlain argues, the very best that there is in labor relations (at least when Harry Shulman is the arbitrator). But such agreement must be complete. There must be no opportunity for court action when one or the other tires of his bargain. In the meantime others, whose labor relations have not yet reached such a fully developed stage or who are not confident that they can find another Shulman, should have other methods available.

Chapters Eight and Nine present an excellent description and analysis of the problems arising in connection with the question of inclusiveness of the bargaining unit. While the material is not new and Professor Chamberlain makes no particularly original contribution to the thinking in this field, his clarity of exposition is a practical equivalent. There is probably no other single place where a student could find so

clearly developed, for example, the arguments for and against industry-wide bargaining.

The first part of Chapter Ten presents an economic analysis of the concept of bargaining power. Professor Chamberlain, who is, incidentally, a much better lawyer than most economists, occasionally displays the impatience with legal analysis which is so typical of most non-legal social scientists. A lawyer may be indulging a similar, frequently unfortunate, bias in finding a parallel to legal analysis at its most trivial in the type of economic analysis to which this chapter is devoted. The following passage may be cited as an example:

> Several points are to be noted about this definition of bargaining power. (1) It takes into account the total situation—not only the striking or resistance capacities of the parties but the economic, political, and social circumstances insofar as these bear upon the cost of agreement or disagreement. In fact, there appears to be no meaningful way in which a union's striking power, for example, can be separated from surrounding economic and political forces. (2) On this definition bargaining power may be a shifting matter. Even within brief periods of time it is possible for considerable change to occur in the relative positions. In our time such swift changes are likely to be associated with political pressures. (3) The concept of bargaining power, which is here oriented toward a group decision-making process, is not exclusively tied to two-party negotiations. While in this analysis we shall primarily be interested in the union-management relationship, the concept is equally applicable to situations involving joint decisions of more than two parties. (4) If agreement is reached, it must be on terms which for all the parties concerned represent a cost of agreement equal to or less than a cost of disagreement. (5) If disagreement persists, it must be because of terms which for both (that is, at least two) of the parties concerned represent a cost of disagreement equal to or less than a cost of agreement. (6) Bargaining power for any party may be increased by anything which lowers the relative cost of agreement to the other party or raises the relative cost of disagreement.[13]

Perhaps such material is useful to an economist. To a lawyer it seems to be an astonishingly long way of saying that there are a lot of different things involved in the bargaining process.

In his description of the factors which enter into the bargaining process, Professor Chamberlain, like so many other writers in the field, gives too little emphasis to individual emotional factors. Interparty and intraparty hostilities and affections play an enormous role in all collective

13. P. 222.

bargaining. While they are factors which are difficult to illustrate by graphs, almost the same difficulties seem to attach to those factors which Professor Chamberlain does emphasize, as the quotation set out above adequately demonstrates. Some helpful work has been done by the industrial psychologists, though it has not, as far as I am aware, been directed toward examination of the interpersonal factors in the bargaining process itself. Professor Chamberlain makes many valuable comments in Chapters Eleven and Twelve on what may be called group psychology.[14] Noticeably absent is similar stress on individual psychology. For example, although there is an interesting reference to management acquiescence in the position of "other manufacturers"[15] (unfortunately without analysis of what it means to one manufacturer to have others "angry"), there is little or no discussion of the effect on bargaining of emotional stresses within the management group itself. Similarly, while there is an interesting discussion of interunion rivalry and intraunion group rivalry, there is little mention of the effect of interpersonal relationships.

Professor Chamberlain's treatment of the ambiguous role of management (as representing in a sense ownership, employers and consumers) is thoughtful and challenging. A study of managers, along the lines of such recent studies of union leaders as that of Eli Ginzberg,[16] might have very interesting results. It is perfectly apparent, for example, that the prevalence of individual ownership in France has contributed enormously to the differentiation in development of labor relations in that country as compared with the United States. Managerial attitudes are certainly, as Professor Chamberlain suggests, very different from ownership attitudes. The nature and effects of that difference, as these factors bear on collective bargaining, require additional study and analysis.

I have already mentioned, in passing, Professor Chamberlain's emphasis on cooperation in industrial relations and his understatement of the aspects which involve conflict. If any single thesis can be said to unite this book in its description of the many different factors which go into collective bargaining, it is this thesis of cooperation. Cooperation is, of course, the core of the managerial theory. The stress is on cooperation throughout the description of the process of collective bargaining. In the later chapters of the book, cooperation is the principal theme, and Chapters Eighteen and Nineteen are really a plea for the

14. The chapters are entitled, respectively, "The Politics of Collective Bargaining: The Union," and "The Politics of Collective Bargaining: The Management."

15. P. 270.

16. THE LABOR LEADER, AN EXPLORATORY STUDY (1948).

kind of Union-Management Cooperation which has become institutionalized in the literature of industrial relations.

Professor Chamberlain's book is thus, in a sense, eloquent and effective advocacy of a valuable and important thesis. It is, of course, much more than this, since it is also an excellent description and analysis of the collective bargaining relationship. But it must be said that the descriptive and analytical material does suffer to some extent as a result of the author's preoccupation with the thesis of cooperation. In Chapter Thirteen *(The Law of Collective Bargaining)* this preoccupation has led to a lengthy attempt to justify the anti-labor attitude of the courts in the period prior to 1932. The argument is repetitously labored and must have been included in this kind of book only as a consequence of the author's eagerness to eliminate from the field of industrial relations any hint of class conflict, to say nothing of class struggle. Essentially the argument comes down to this:

(1) The general view of the public welfare stressed individuals as against combinations.

(2) The judges were "honest" in their attempt to support what was generally viewed as conducive to the public welfare.

Actually, whatever may have been the general view, the courts during the period of the greatest hostility to combinations of workers, were fostering and encouraging combinations of capital. Professor Chamberlain appears to argue that combinations of employers *as employers* were "viewed with suspicion."[17] Not only is there little or no authority to support such a position (Professor Chamberlain himself points out that the decision in the case he cites actually supports the contrary view, although the judge paid lip service to the "suspicion"), but it is practically and legally irrelevant. Combinations of capital served the same purposes *vis-a-vis* employees as combinations of employers would have. The judges applied different standards to combinations of capital and to combinations of workmen.

Professor Chamberlain thinks that the "criticism of the courts unhappily begs the issue." It is rather the term "honesty," when applied to judicial decision, which begs the issue. The issue is not whether the judges who consistently sought to curb the rise of labor unions accepted bribes. It is not even whether they were hypocritical in that they decided cases in favor of employers, although they felt that they should decide them in favor of unions. These are situations in which the term "honesty" would have some relevance. The issue is whether the judges decided cases in accordance with a class bias, and in doing so lent the

17. Pp. 286-7.

support of law and government to one class in the community as against the other. This they clearly did.

Professor Chamberlain seeks to justify the judges by the argument that law *is*, at least in part, the general community view of what would contribute to the public welfare, and the judges thought that their decisions would make such a contribution. But law is a great deal more than the general community view of the public welfare at any particular time. It includes, for example, the whole constitutional system of checks and balances and the doctrine of legislative supremacy. It may even include a rule that judges should be careful not to confuse the welfare of the class to which they belong with the public welfare. Moreover the evidence that the view of the courts was the "general" view is very questionable. The legislatures may be thought of as representing such a general attitude, more than the judges, and yet there was little or no repressive labor legislation during this period. On the other hand a number of statutes adopted during this period with the express purpose of protecting labor activities against attack by the courts were nullified by the judges.[18]

That judges' class bias was "subconscious" or that they "honestly" believed that by promoting the welfare of their class, they would contribute to the public welfare are, to say the least, weak refutations of the charge that class feeling dictated the anti-labor decisions of the period. If one were to use the term "honest" at all in this connection, it seems that it should be reserved for the judge who, like Holmes, was perfectly conscious of class feeling and who considered it to be his judicial duty to disregard such feeling in the decision of cases; who recognized that, under our system of government, he was not entrusted with the determination of whether the welfare of his class was synonymous with the welfare of the nation; who consciously resisted the temptation to usurp the power of the legislature to devise law for new situations and to declare the "general view."

One may surely take the position that cooperation in labor relations is desirable and conflict undesirable without having to gloss over the existence, at least in the past, of a very real and vigorous class conflict in which the government, through its judges, was enlisted by one class against the other.

Chapter Fourteen is an excellent discussion of the scope of collective bargaining, as might have been expected in view of Professor

18. Not only does Professor Chamberlain completely overlook this latter point, but he cites, p. 293, the "relative absence of [repressive] legislation" as supporting his thesis rather than the opposite.

Chamberlain's previous distinguished work in this field. There is unfortunately little attempt to forecast the trend of immediate future developments in this area. For example, it would be interesting to have Professor Chamberlain's views on the enormous implications for the whole collective bargaining process of the demand for the guaranteed annual wage, which appears now to be the next step.

Chapters Fifteen and Sixteen contain interesting discussion of wage theory and the economics of collective bargaining, although some lawyers might consider them a rather long way of saying that the economists, after many years of subscribing to the marginal productivity theory of wages, are now either hopelessly disagreed among themselves, or are willing to admit that they have nothing helpful to offer. Another quotation is included here because it makes an economist explaining *his* laws sound so much like a lawyer explaining *his:*

> Next we turned to the question of the impact of union wage policies upon levels of national income. We found that while significant relationships exist between wages and employment, and wages and productivity, and wages and output, they cannot be stated in the form of broad predictive generalizations. The effect of a given wage action is subject to the conditions under which the action was taken. (Thus Prof. Lloyd G. Reynolds remarks that almost anything might happen, depending on how one assumes that businessmen, workers, and others would react to the change. Reynolds' *Labor Economics and Labor Relations,* Prentice-Hall, Inc., 1949, p. 429.) Prediction is peculiarly difficult in the social sciences, which deal with purposive human action. Knowledge of a probable result of a particular policy may set in motion actions designed to prevent that outcome, that is to say, such knowledge may lead the moving parties to alter the conditions under which the action is taken. It seems clear, however, that wage increases cannot *always* be considered beneficial just as they cannot always be considered harmful.[19]

One aspect of the book that makes it especially useful is the great care taken to indicate the points at which there is disagreement, particularly on issues of economic analysis.

Professor Chamberlain's answer to the general economic problem, that of improving the income level, is in terms, of course, of increasing over-all production. Again his emphasis is on securing worker cooperation. The means of accomplishing this desirable objective are not as clearly analyzed as is the desirability itself. While more may be done, as

19. P. 410.

Professor Chamberlain suggests, along the lines of "non-pecuniary incentives," the whole answer certainly cannot be found there. As an incentive, the general social desirability of increased production is too much like the donkey's carrot, to which Professor Chamberlain refers. It is too elusive when we are considering the individual worker. After all, he is no donkey. And today his general economic views are not always conducive to bigger production. Many workers believe that working hard and producing more leads to "over-production" and to working yourself right out of a job. As against the possible carrot of generally increased consumption through generally increased production, which a worker may look upon as at least not an automatic result and at best one over which he individually exercises no control, he is more likely to choose employment-spreading devices, such as make-work rules, or personal leisure, such as increased vacations and holidays (which incidentally also supports his economic views by creating more job opportunities.)

Solution must, it seems, lie in much greater assurance against lay-off and unemployment, and such developments can hardly be classified as "non-pecuniary."

The discussion in Chapter Seventeen of the economic aspects of monopoly is stimulating and useful, although the tentative answer there set forth to the monopoly problem, to which answer Professor Chamberlain leans, is not likely to satisfy many. In effect, that answer is that monopolies are really not possible in our system over any great period of time.

Treatment of union monopoly power is notable for clearly exposing the fact that such power is effective only in combination with monopolistic control of the market by the employer as opposed to the loose talk of Congressmen and others referring to "the union's monopoly of labor." Again, however, the proposed solutions will not satisfy most critics of present trends. For example, Professor Chamberlain says:

> In short summary, then, it would appear that the monopoly power of unions is considerably overstated. With respect to the possibility of strong groups exploiting the weak (the question of appropriate relative wage rates), the power to exploit does exist and is likely to be used, but there are effective limits to its use from price, product and technological competition. These restraints are the more effective where business firms are actively competitive among themselves. With respect to the effect of monopoly wage practices upon productivity, employment and output, it is true that union-supported wage rates in particular firms or industries can lead to unemployment, and

in these cases we must rely upon the previously enumerated competitive restraints to bring the consequences of such action home to the parties responsible for it. The fear that full-employment programs will divert the attention of unions from improved productivity as a basis for wage increases to simple price-boosting practices we found to be a problem not introduced by the unions but one involving the economic behavior of all components of our society, and one whose solution obviously depends on the kind of full-employment policies undertaken.[20]

But he adds:

We have thus found that both competition and private control (monopoly) are necessary and tolerable in our social economy. The question inevitably, then, is: How much competition and how much private control (monopoly)? What shall be the blend or mix of these two? This is a question which, it is submitted here, cannot be answered once and for all time. The answer will change with society, over the years. It will probably involve more of an *ad hoc* approach than has the price economics of the past, which has sometimes been presumed to be timeless in its teachings. We may begin, for example, as simply as by drawing up lists of control or monopolistic practices which appear at the moment to pass beyond a 'reasonable' regard for private group interests and move into the realm of exploitation of others.

We may think of these as unfair labor practices committed by the labor or management groups as against the consumer. The banning of such gross practices will presumably leave with unions and managements a sufficient degree of control to permit them to protect their interests as creative producers, and yet leave them subject to competitive forces sufficient to protect the public which looks to them for the satisfaction of consumer needs. . . . Such a pragmatic approach may fail to please those who insist upon rigorous solutions, but it appears most capable of meeting the present issues. The neat, systematic solution has not yet disclosed itself. (When it does arrive, as it undoubtedly will, in time, events will probably have already begun to outmode it.) In the meantime, we can at least read the signs and discover the general directions in which we should move to reach the desired objective.[21]

Chapter Seventeen warns of the dangerous effects of monopoly in a full employment economy. It is not entirely clear whether Professor Chamberlain supports "a national wage policy" to meet this threat, with which we are likely to be faced for at least the next few years, or whether

20. P. 407.
21. Pp. 408-9.

he believes such policy to be a realistic possibility. The fact that inflation is produced by pressures from other groups as well as from unions provides no key to the solution. Recent experience seems to demonstrate that in time of greatest danger these groups vie with each other in promoting dangerous inflation and in thwarting government attempts to control it.

Chapters Eighteen and Nineteen are essentially an enthusiastic endorsement of institutionalized union-management cooperation and an expression of confidence in the hopefulness of its future. There are few who share this view.

Perhaps the lack one feels in the analysis presented in these chapters arises out of the concept of some interests as being "common" to management and union and others as being "divergent." The treatment of collective bargaining in the early chapters, and, indeed, the whole managerial theory, is based on the idea of an overall "common" interest in the enterprise, though divergences still require the services of an arbitrator to determine in what direction the common interest lies. But it may well be that in a realistic sense there are no "common" interests at all, because though the two groups deal in common with certain subjects, their objectives ("interests") are in fact "divergent." Why, for example, are "wages" a divergent interest while "production" is common?[22] Both parties may be called upon to consider a problem of production, but the management has in mind, among other things, greater production at lower cost; the union is thinking of wages, hours, speed-up, union security, job security and any number of other considerations. The fact that they are considering the same problem does not make their interest in that problem "common" in any realistic sense. If we should accept the proposition that interests are divergent (and, of course, Professor Chamberlain would not, because to do so would seem to him to impair his main thesis of cooperation) the resolution of conflict would come from the process of collective bargaining and would be reflected in the agreement itself, rather than from the institutional cooperation which Professor Chamberlain advocates. The bargaining solution would also incidentally provide the formalized machinery, the lack of which has proved to be such a stumbling block to the institutionalized form. As the unions have extended the scope of bargaining, more effective instruments have been devised for administering the newly won territory.

The most interesting aspect of the final chapter is the argument advanced in favor of compulsory arbitration. Professor Chamberlain says:

22. P. 476.

> It is true, of course, that compulsory arbitration is not a certain process and may prove ineffective against large numbers of workers unwilling to accept the terms of an award. This is a standard argument against its use. The answers to that argument are several, though to some perhaps not sufficient. In the first place, no social arrangement can be expected to be certain. As Professor Pigou has pointed out, it is needful only to conclude that arbitral determination 'is likely to make the occurrence of a stoppage of work less probable than it would otherwise be.' This likelihood is supported by those instances when what has virtually amounted to compulsory arbitration, even when we have disguised it with names such as fact finding or with agencies such as the United States presidency, has proved successful. Second, a system of compulsory arbitration is likely to succeed only to the extent that a sentiment on its behalf can be stimulated. One or the other of the parties will be less inclined to flout an award if public opinion emphasizes the ethical expectancy of conforming to such authoritative decision. Finally, to the extent that methods of collective bargaining and cooperation become better understood and more effectively practiced, the need for such intervention will be minimized. As we have seen, if the price of a strike is the loss of a cooperative relationship, that cost may be greater than either of the parties will willingly accept. Over time, as the union-management relationship becomes more commonplace and matter of fact, the conflicts which are injurious to the public are likely to diminish, so that compulsory intervention—to prevent disintegration of an essential relationship—will be less and less invoked.[23]

A compulsory process which is not compulsory may have certain serious disadvantages. In the first place it almost surely tends to become an instrument by which, like Presidential Boards under the Railway Labor Act, the unions secure what they want, since the law can easily be enforced against management but not against labor, and since management, judging by past experiences, is more willing (or is subject to more effective pressure) to accept the award than is the union. In the second place such a procedure tends over a period of time and after successive floutings to become more and more a mere fact finding recommendation procedure without even the support of the psychological forces suggested by Professor Chamberlain. Moreover, as it is flouted there will inevitably be indignation and an outcry for stronger laws, laws with teeth. These objections are, of course, cumulative with those made against compulsory arbitration which *is* compulsory, except for the basic objection to compulsoriness itself. Professor Chamberlain makes no adequate answer to

23. P. 483.

such objections as that it would be impossible to devise appropriate standards of decision, that setting such standards (*i.e.* fixing wages) would tend to lead to a managed economy (*i.e.* fixing prices), that it would discourage, if not destroy, free collective bargaining.

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DEFENSE WITHOUT INFLATION. By Albert G. Hart.* New York: The Twentieth Century Fund. 1951. Pp. xiv, 186. $2.00.

Under the respected imprimatur of the Twentieth Century Fund, Professor Hart has prepared this conspectus of the battle against inflation. On the basis of his survey, the Fund's Committee on Economic Stabilization, consisting of Professors Clark, Schultz, Smithies and Wallace, have briefly summarized their views on the problem. Generally, they agree with the prescriptions of Professor Hart.

It is good to know that, amidst the weltering confusion of special pleas, self-serving briefs and nutty nostrums, men of learning, experience, wisdom and common sense are brooding upon vital issues and affording us the benefit of their cerebrations. One might wish that to them had been added an economic journalist with, shall we say, the gifts of Stuart Chase. This volume, far too sketchy for the purposes of the professional scholar, is designed, presumably, for the eye and mind of the citizen seeking enlightenment. But such a citizen, for all his good purposes, finds it hard going when five professionals gang up on him.

However, even one who is patently no intellectual may derive benefit from this little chart through the perilous paths of partial mobilization. Such a one will find here a healthful antidote to the monolithic creeds being preached in so many economic quarters by the right-wing counterparts of the radical money bugs who abounded on the fringes of the left during the depression days.

Professor Hart and his colleagues do not, of course, minimize the role of fiscal and monetary measures in stabilizing the economy. On the contrary, they argue that control over the money supply is even more essential during a long-pull partial mobilization of "readiness" which may last for a decade, than during a more temporary season of all-out war.

The choice, as Professor Hart describes it in terms of "equilibrium," "mild disequilibrium," or "severe disequilibrium," is whether to try for

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