LABOR DISPUTES AND THEIR SETTLEMENT. By Kurt Braun. Baltimore: The Johns Hopkins Press, 1955. Pp. xi, 343. $6.00.

This is a book about various methods for the settlement of labor disputes, principally in the United States, but with some excursions into the continental countries of western Europe, particularly the pre-Nazi Weimar Republic and the present Federal West-German Republic. It is concerned almost entirely with governmental settlement agencies and, mainly, with disputes over "rights," as distinguished from labor disputes over "interests." The author's frequent use of these terms corresponds pretty closely to what are generally referred to in the United States as disputes over the interpretation and application of the provisions of agreements between the parties and disputes over what should be provided in the agreements. The author, while not saying so directly, seems to favor the fairly widely prevalent foreign practice of making strikes in the first type of labor disputes unlawful and providing that they must be settled "according to the rules of contract law."[1] He is not clear on what policy should be followed in disputes over "interests," but sees progress, even in the United States, toward the settlement of such disputes on principles other than the relative economic power of the parties.

The author was a judge of a German court in the early twenties, and then for 15 years a labor lawyer in Berlin. He has been in the United States since 1940 and lives near Washington, D. C. After coming to this country, he was for several years connected with the University of New Hampshire and more recently was a professor at Harvard University. In the last years of World War II, he was employed in the Industrial Personnel Division of the War Department and by the U. S. Bureau of Labor Statistics. For a time during the Korean War, he was with the Wage Stabilization Board. In a recent statement he listed himself as a "writer." While living in the United States he has written three other books. One of these was *The Settlement of Industrial Disputes,* published in 1944, of which the book reviewed is "an extensively revised and enlarged edition."

On the cover, reference is made to "the author's thirty year's experience in industrial relations." This does not seem to have included any actual experience in this country as a member, mediator, or arbitrator of any of the settlement agencies whose organization and functioning he describes. His account is that of a thorough and careful student, based largely on the text of laws. It presents only scant statistical data upon the functioning of the settlement agencies and altogether lacks per-

1. P. 34.

sonal touches and impressions based upon inside information. Very learned, it is thorough and accurate,[2] and gives quite a few conclusions and recommendations. But it is more of a reference book than a book likely to have great influence.

Part I is introductory; it is concerned with the nature of industrial relations and the types of labor disputes and their settlement. There is little that is distinctive in these chapters, except the very slight attention given to collective bargaining. It is not quite fair to say that the author misses entirely that most labor disputes in the United States over "interests" are settled through collective bargaining, and that in disputes over "rights" the provisions of the collective bargaining agreements constitute the "law" setting forth the rights of the parties. But the study lacks any clear statement of how mediation and arbitration are related to collective bargaining.

Parts II and III deal, respectively, with "Mediation, Conciliation" (interchangeable terms to the author) and "Arbitration." While in both of these Parts there is discussion of the meaning of terms and of "Principles," the author chiefly analyzes the statutes governing the functioning of the agencies for labor disputes settlement. Almost completely lacking is an evaluation of the operations of the agencies described. The number of agencies concerned with the settlement of labor disputes in the United States is surprisingly large. Treated as mediation agencies are the Federal Mediation and Conciliation Service and its predecessor, the Conciliation Service of the U. S. Department of Labor; the National Mediation Board; state mediation agencies, existing in nearly every state; municipal mediation systems, especially those formerly in operation in Toledo and Newark and the existing Division of Labor Relations of the City of New York; and one private labor mediation agency, the Industrial Relations Council of Metropolitan Boston. Given even more extensive treatment are labor arbitration agencies. Included are arbitration under the Railway Labor Act and under the National Labor Relations Act; a lengthy discussion of labor disputes settlements in World War II by the National War Labor Board; the statutes governing state labor arbitration agencies (which run the gamut from the Kansas Industrial Relations Court of the early nineteen twenties and the public

2. As is inevitable in a book loaded with details, some errors occur. For instance, on page 60 it is stated that the Federal Mediation and Conciliation Service always operates through individual conciliators, never through panels of conciliators. Actually both are used. On page 121, the author gives the impression that all mediation efforts of the Wisconsin Employment Peace Board are made by *ad hoc* outside mediators appointed by the Board. Such outside mediators were named in a few early cases, but most of the fairly extensive mediation work of the Board has been carried on by Board members and employees. Factual misstatements, however, are rare.

utility disputes settlement laws of the last ten years, to the provisions for voluntary arbitration in many of the state mediation and arbitration acts) and the functioning of the American Arbitration Association.

The author's detailed analysis of the statutes governing all of these settlement agencies, with but few statistics on their operation and almost on evaluation, will confuse many readers. Many more pages are devoted to the relatively unimportant municipal and private mediation agencies than to the Federal Mediation and Conciliation Service, which is by far the nation's most important labor mediation agency. Much attention is given to each of many state services which have little existence other than on paper.

Part IV deals with "Labor Courts." This includes a chapter of the German Labor Court System, principally as it functioned in the pre-World War II period. As the author had first hand knowledge of this subject, this may well be the best chapter in the entire book. Also included is an almost line-by-line discussion of a bill by Senators Ferguson and Smith introduced in 1946 for the establishment of a labor court in this country. This received scant consideration in Congress but rates an entire chapter in this book because it represents the type of settlement machinery favored by the author. The author advocates what might be called "legal determination" of labor disputes, in accordance with fixed principles. He believes in formal procedures and adherence to precedents in arbitration cases and prefers judges to lay arbitrators. The entire book is written, as stated in its Introduction, "to discover principles of universal validity"[3] to be applied in the settlement of labor disputes. Compulsory arbitration does not scare him and he sees but limited value in settlement machinery and methods falling short of "guaranteeing both a settlement and application of established principles."[4] While he does not advocate outlawing strikes in peacetime, he can be said to come very close to such a position.

This is a very different approach to labor disputes and labor disputes settlement from that generally favored in this country. Few men who have had extensive experience as mediators or arbitrators in the United States, or for that matter in England, take such a position. Rather they prefer settlement through collective bargaining, where settlement is actually effected, whether the dispute be of "interests" or "rights." They insist that, before an issue is arbitrated, there must have been prior resort to collective bargaining and also strict adherence to the grievance adjustment procedures of the contract. It is the American

3. P. xv.
4. P. 151.

creed that a settlement arrived at by voluntary agreement of the parties is preferable to any determination by outsiders. Even after an arbitration award is rendered, the parties are free to modify it by mutual agreement. While there is now a good deal of sentiment for a legal requirement that every labor-management agreement must include orderly steps for the adjustment of grievances culminating, as a last resort, in arbitration, for the settlement of disputes over the meaning and application of contract provisions, even that has not become a legal requirement in the United States, except for the railroads and airlines. Most arbitrators are opposed to the conduct of proceedings under rigid rules of law, and they shy away from precedents not directly applicable to the contract provisions and relationships at issue in the particular arbitration. Arbitration is usually thought of in this country as an integral part of the collective bargaining process. The arbitrator's principal function in disputes over "rights" is that of determining what the parties intended when they wrote their contract as they did. Similarly, in disputes over "interests" their aim is to find a solution which both parties are willing to live with, even if it is not completely satisfactory to them. It is improved industrial relations which we seek through arbitration, rather than the development of principles to govern the settlement of future disputes.

It is in presenting very different concepts that much of the value of this book is to be found. The author's views are those of an informed scholar, who has been influenced profoundly by his western European origin and experience. An American by choice, who values freedom as much, if not more, than native born Americans, he has views greatly at variance with those generally prevailing in the United States on how desired maximum freedom can best be attained. The reviewer doubts the soundness of these views for this country, but they surely merit consideration, based as they are upon broad scholarship, unlimited by geographical boundaries.

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