The New Climate for Collective Bargaining

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As I reflected on our topic, I became increasingly concerned about my assignment. At first I derived some comfort from a rather old story about the dream of a young lady. She dreamt that as she was lying in bed, a wild-eyed man burst into her room, dragged her down the stairs, out of the house, and into a waiting car. The intruder sped over city streets, into the country, stopped at a dark, secluded spot, and roughly pulled the lady from the car. Frozen with terror, she managed to ask: "What are you going to do with me now?" The answer was: "How should I know, lady; it's your dream." But the more I thought about that story, the more I worried—and not about the young lady. For if anything is clear about our topic, it is that the climate for collective bargaining is shaped by a variety of conflicting dreams, aspirations and values. There is no stable consensus as to how these conflicts should be reconciled. And there is a torrent of discussion advancing with varying explicitness and candor one value at the expense of another. As a result, there is a risk that appraisal of the general climate may be based on soundings or sounds that are incomplete and that wholly personal dreams may be confused with those of the community.

There is a second and related risk which bears mention, that of overgeneralization. It is useful to inquire about the general drift of opinion, as we are doing. But the term "collective bargaining," like the law's reasonable man, is a convenient but misleading abstraction. Collective bargaining obviously covers a broad spectrum of quite different relationships, and no single climate applies to all of them. The current climate for Hoffa and the truckers is not the same as that for Reuther and the auto companies. In addition, there may be quite significant variations in the individual response to any general climate. For example, unions in bad odor because of corruption or tyranny may be pushed to a vigorous exercise of power because of the unfortunate tendency to excuse disreputable conduct by leaders who do bring home the bacon.

The final difficulty comes from the word "new." That word presupposes some fixed base period. Are we, for example, talking about a new climate in relation to the Wagner Act and the thirties or in relation to 1947 and Taft-Hartley? Each of those statutes marked important shifts in opinion. And Landrum-Griffin marks another shift, especially in relation to corruption and despotism in some unions. But the climate for bargaining tends to be a continuum, and, apart from legislative registers of significant changes, there are no nicely identifiable reference points. And so, as I turn to major influences in the current climate, I disclaim any general warranty of novelty as to these influences or, indeed, as to what I shall say.

Perhaps the most important influence is the increased concern about major strikes. An obvious explanation for this attitude lies in the economic consequences of such strikes. Even though such consequences are typically exaggerated, they transform a major strike from a private quarrel into what appears to be a war against the community. Although strikes generally result from the failure of both management and unions to reach agreement, the onus of disrupting the community's flow of income and denying it goods and services typically falls on the union because it usually is asking for more and because it formally declares the economic war.

The economic effects of strikes may, however, be less important for the current climate than more subtle psychological effects. A major strike reflects internal conflict and disorder. The surcharged international climate may aggravate our disquiet about dramatic shows of internal division, whether in Little Rock or the steel industry. Furthermore, our system, we know, is competing with the Soviets: indeed, we have sometimes been told that our rate of growth is to be governed by Soviet statistics. The Soviet system gives the appearance of internal peace and of order. Such a system may have a special appeal to new nations, anxious to make "giant leaps forward." On the other hand, our system, in which a handful of tugboat employees or disaffected flight engineers may paralyze transportation facilities, may seem like anarchy to nations that do not understand a free society. But even Americans may find a disquieting contradiction between the new emphasis on growth and a mechanism of industrial adjustment whose ultimate weapon is idle men and idle machines on a broad economic front. And we may also be perturbed by reading in the same newspaper about our missile gap and about jurisdictional strikes at missile centers. In short, a community which in general does not tolerate major strikes in a hot war feels increasing concern about strikes during the cold war.

But the massive or critical strike is not the only disturbing aspect of contemporary collective bargaining. Peace, we know, is important, but peace, we also know, is not order. And there is today increased concern that even strike-free bargaining may produce settlements which do not promote that elusive object—the public interest.

Such doubts about collective bargaining are connected with profound changes in our social framework since
the depression of the thirties—changes that are now so familiar and so fixed that their significance is sometimes overlooked. The government has accepted affirmative responsibility for full employment. Through unemployment insurance and social security, we have increased the workers' protection against the rigors of our economic system and against their own inability or unwillingness to provide for their old age. Furthermore, organized labor, backed by legal protection and moral approval, has since the thirties dramatically grown in numbers and apparently in power. I say "apparently" because power is a fuzzy word and is meaningful only if we talk about power to achieve specified objectives. While these changes were becoming accepted, employed American workers, organized and unorganized, were in the post-war period enjoying a material progress that was the envy of the world.

There remain dismal pockets of poverty and the enduring problem of our system, full employment. But there is increasing doubt that unions through collective bargaining can do much about those problems. Indeed, most economists have rejected the purchasing power rationale which was one of the justifications for the Wagner Act. And a good many economists have turned that justification on its head and have suggested that inflation or unemployment or both are the price for the significant accomplishments of American unionism.

Against this backdrop, Samuel Gompers' philosophy of "more" no longer has the automatic appeal of any plea to improve the lot of the underdog. "More" is, of course, not the only objective of unions and it may be less important than the grievance-arbitration mechanisms which have subjected economic power to the rule of law. But "more" is the objective which, when it produces large-scale strikes, catches the public eye. "More" may have been enough when the issue was bread, but it is not enough when the issue appears to be a new T.V. On the contrary, the question is being increasingly asked whether more is financed by the weaker elements of the community and especially by lower paid workers who pay more as consumers and who are excluded from the better-paying jobs because of the link between costs, prices and output. This is, of course, an old question. What is new is that it can no longer be dismissed as an aberration of the rearguard of the N.A.M. or of economists wedded to the nineteenth century.

The greater frequency of that question is related to a change in the popular image of management. Management in performing its historic responsibility of cutting costs no longer necessarily appears as the capitalist exploiter hungry for dividends. On the contrary, management may appear to be a defender of the social interest, and especially of consumers, who otherwise are not represented at the bargaining table. There are, however, doubts about management's capacity and will to protect the consumers' interests. One source of such doubt is

that some unions appear to have great power. Although our yardsticks of power are imperfect and our empirical data about wage determination inadequate, there is enough information to suggest that some unions have gotten more only because they have had the power to do so. In those situations, the persuasion of power seems more important than the power of persuasion, if I may use a Reutherism. The community need not accept the preexisting distribution between shareholders, workers, and consumers as sacrosanct to ask whether power is an acceptable ethical basis for a changed distribution.

Another source of doubt results from the fear that competition has been undermined as a disciplinary force. If so, it cannot be assumed that managerial conduct in the interests of the enterprise will be socially responsible. The powerful union may then be justified as a form of countervailing power which will siphon off some of the monopoly loot for workers. Such a sharing has a powerful appeal. Nevertheless, the interplay between union and enterprise power may result in a cooperative monopoly, aggravating the position of the consumer. This interplay may be accompanied by mutual recriminations or by a strike. But when the rhetorical dust has settled, the consumer generally will find a higher price tag, and he increasingly is saying "a plague on both your houses" or at least is giving labor less unreserved support.

This disquiet about the impact of collective bargaining is not overcome by solemn and well publicized declarations by each side that it is defending the public interest. Those who represent and are advancing particular interests customarily draw on the ethical currency of the community. The union will naturally phrase its demands in terms of justice and fair treatment; it cannot admit that it is seeking preferential advantage or that power carries its own justification. Management is subject to similar compulsions. And each side with varying degrees of sincerity or cynicism can identify itself with the public interest; employers, by invoking their responsibility to consumers or the evils of allegedly wage-induced inflation; unions, by resort to purchasing power arguments.

The public interest is one of our many precious phrases which are more important as aspirations than as guides to conduct in concrete situations. The problem here again is an old one. In 1929, Owen D. Young proclaimed the gospel of responsible corporate citizenship. Management was to protect and balance the interests of consumers and workers, and shareholders. But no one, to my knowledge, has devised either a formula for discharging those conflicting responsibilities or an effective mechanism of accountability.

I am not suggesting that the ideal of the public interest has no impact on corporate management, but I doubt that that ideal will cause it to sacrifice its vital interests. Nor do I believe any such sacrifice desirable or appro-
priate. The leaders of American industry are presumably picked to promote the interests of their enterprise and their shareholders within a framework of legal and ethical compulsions. Their burdens in discharging their traditional duties are substantial, given the relentless pressure of change and competition at home and abroad. Those leaders are not picked to save the country, and they may not be equipped to do so. If they attempt to do so, they are likely to be faced by intolerable conflicts, and they are likely to confuse their interests with the broader interests of the nation.

The same conflict and the same confusion results when labor leaders invoke the public interest to rationalize bargaining demands, and the same public skepticism results. Furthermore, labor leaders who restrain their power in order to protect the public interest run the risk of being outshone and replaced by those unconcerned by vigorous use of power in the interests of their own group.

The current tendency to rationalize bargaining positions in terms of the public interest may paradoxically be contrary to the interest in peaceful settlements. One result has been a barrage of public pronouncements before and during bargaining. Such pronouncements tend to harden positions, first, because they are public and secondly, because concessions or compromises are all right in a horse trade but not in a holy war waged on behalf of the community. Thus, bargaining by press release often interferes with the flexible search for pragmatic accommodation, which is at the heart of collective bargaining.

In making that point, I do not underestimate the strong pressures which exist to enlist the help of Madison Avenue. Public opinion, it is said, may in the end affect the terms of settlement by way of its impact on the parties, on politicians, neutrals or other adjuncts to bargaining. Thus it is natural for both parties to try to enlist public support even though they recognize that such efforts may complicate the bargaining process. The parties are caught in the perennial dilemma of foreign offices. They want to avoid war, if possible, but to win it if it breaks out. The search for allies may have to go forward even though it may increase the risk of war.

You may ask, if the corporate conscience or the laboristic conscience will not protect the public interest, what will do? Our faith is that somehow these rival aggregations moved, not by conscience, but by their own interests will achieve a tolerable balance. That faith is in essence Adam Smith’s invisible hand in a new context of collective or countervailing power. But the present climate seems to me to contain as much skepticism about the collective hand as there was about Adam Smith’s.

This skepticism is an important factor behind current suggestions for a greater use of neutrals both to keep the peace and to protect the larger interest. There is the suggestion that the third chair at the bargaining table, the public’s chair, is to be filled by neutrals picked either by the parties or by the government. This is reminiscent of the suggestion popular in the thirties, that consumers be represented on the Board of Directors. The use of neutrals in collective bargaining may help in some cases to avoid strikes, but it is doubtful that neutrals can do very much to promote settlements which will serve the public interest. One reason for this is that, except in extreme cases, there are no criteria for determining what is a fair wage, a fair price, or a fair profit; and general criteria become even less serviceable after differences have been narrowed by bargaining. A related reason is that neutrals are likely to view their main task as avoiding strikes rather than as promoting the sound settlements even if they could identify them. What is acceptable to the parties will, to the harried neutral, seem sound.

There are, however, reasons to doubt that mediators or more activist neutrals operating in major bargains, such as steel or automobiles, will be an effective peace corps. Mediators can help parties who are unsophisticated, who get emotionally involved, who leave themselves no avenue of face-saving retreat, or who do not know their own or the other party’s interest. I doubt that many major negotiations have these characteristics. It is commonplace that they frequently deadlock, not because the parties misunderstand each other, but because they understand each other only too well. In such circumstances, mediation does not promise to be of very much help to sophisticated bargainers. But in some circumstances, informed, resourceful, detached and tactful outsiders may be able to make a contribution, especially where the parties have picked them to lubricate the bargaining process and have fixed the time when they should be called.

The imposition of neutrals by the government is, of course, an entirely different matter. Where such intervention becomes typical, the prospect that it will occur is likely to chill bargaining and increase the bargaining gap. Management is likely to save something for the neutrals to give, and the unions, something for the neutrals to take away. Thus government boards and other forms of intervention may become a kind of social narcotic; the more they are used, the more they are likely to be needed.

The history of intervention in steel and in railroads in avoiding strikes is not an encouraging one, but it is difficult for any administration to resist pressures to intervene. This administration has its share of people who criticized the inaction of the last administration. Some of this criticism may be dismissed as the inevitable grumbling of those out of power, but the current weather-map suggests that we will have more government intervention and at a higher echelon of government.

Secretary Goldberg is apparently ready to assume an activist role and to do so publicly. He has great energy,
great gifts, and a world of experience, and I would not underestimate his potential contribution. But his availability may encourage the parties to postpone the painful process of getting down to brass tacks. Furthermore, with each intervention that involves something more than the delaying action involved in his two initial successes, there is likely to be more dissatisfaction from one side or the other and a decrease in the moral authority he represents. High level mediation or pressure tends to become less effective the more it is used.

The current proposals for intervention are basically an attempt to build a half-way house between free bargaining and government direction. In a society whose genius is compromise, one should not automatically sniff at half-way houses. But if bargaining with such intervention produces an "intolerable" amount of strikes, there is likely to be strong pressure for direct government resolution of bargaining deadlocks.

While I am dealing with new forms of intervention, I want to mention the familiar suggestion that the President should by law be given a choice of methods for dealing with so-called emergency disputes. Support for that approach has almost become an academic literacy test. With great respect for my more exuberant colleagues, I believe that this method has been oversold. The basic justification for it seems to be that the package is better than the individual procedures it contains because the package creates uncertainties as to what the government may do and thus will complicate efforts of the parties to adjust their bargaining to the possibility of intervention. I share Professor Livenash's view, expressed in his recent study of bargaining in basic steel, that the hope of keeping the parties guessing is somewhat unrealistic. Indeed, the parties may well discount the possibility that intervention will take the most coercive form and may adjust their bargaining accordingly. Furthermore, if a given type of procedure were desirable for a given type of strike, the parties would presumably have better knowledge of this correlation than anyone else and would adapt to it. On the other hand, if there is no such correlation—and none to my knowledge has been spelled out—it is hard to see how a choice of procedures would really permit a flexible adaptation of procedure to differences among various types of strikes.

Familiar interventionist devices are being supplemented by proposals and arrangements designed to avoid disputes and to promote sound settlements through advance studies of problems in particular plants or industries or by meetings of national councils drawn from labor, management, and the universities. Both types of arrangements may be useful at least as a symbolic recognition of the need for quiet, long term inquiry and of the important general interests involved. As for more concrete benefits, my own hunch is that they will increase accordingly as the agenda for such studies is more rather than less specific. We know that it is usually easier for parties with clashing interests to agree to a solution of particular problems as opposed to an abstract doctrine which is to govern future problems whose shape and impact are largely unforeseen. As a result, there are justifiable doubts about the value of summit meetings, which are now à la mode domestically, if not internationally. There are enough similarities in these two different forms of summity to keep in mind Dean Acheson's observation that "Nothing grows on the summit." Summitiers may, of course, rejoi n that it is the lack of growth which permits an uncluttered view.

I want now to turn from the somewhat elusive intangibles I have touched on to some of the other determinants of the new climate which you outlined. First there is the shift of a larger proportion of employees from manufacturing which is highly organized into white collar and service occupations, which are more difficult to organize. The unionized sector has traditionally been a minority of the total work force. Current tendencies suggest that it will represent a progressively smaller minority, even if its absolute numbers remain fairly constant. Furthermore, in some industries, the absolute number of union members may decline because of changing technology, more effective foreign competition, and changing demand. Numbers are important to any organization, as an index of success and prestige, as a source of money, and of political power. The normal pressures for organizational success may move unions losing members to press for dramatic bargaining gains in order to solidify the loyalties of any waverers in their own ranks and to present a record of achievement in new organizational battles. Unions may thus be bargaining hard. Management will, of course, say that's an old story. Hard bargaining by either side increases the risks of strikes, which may alienate the uncommitted worker and sometimes the waverers. It is difficult for me to judge how these conflicting pressures will be reconciled or, indeed, whether the immediate pressures of particular negotiations may be so strong as to override long run and speculative considerations. But one general point seems clear. Threats to organizational survival, whether on the air lines or elsewhere, are likely to provoke severe union responses.

This point is equally pertinent in connection with the promise and the pains of automation. I shall leave to others the question of whether automation is a new phenomenon or merely a continuation of the unrelenting drive for technological advance among highly developed societies. A similar question, you will remember, surrounded the use of the term "industrial revolution." What is new is the wider recognition among labor and management that the worker is not to bear the whole brunt of change, which benefits the whole community. But this consensus, although significant, does not take us far in resolving specific controversies. For example, although the principle of severance pay may be estab-
lished, the criteria as to its magnitude may be a fertile source of conflict. There are other difficulties which I must pass over. The point which I would emphasize is that bargaining over such pliable matters may be directed at cushioning the effects of change or may be exploited to block change. The danger of such exploitation is especially acute where new technology threatens the existence of particular unions. Thus, railroad spokesmen have urged that union rejection of proposals, modelled on the Canadian solution, to eliminate certain firemen jobs only as the incumbents retire or resign is an effort to protect the union rather than the employees. I lack the knowledge necessary to appraise that charge, which I mention only as an indication of problems which may arise when change threatens organizational interests.

Our Chairman also mentioned tough bargaining by companies because of diminishing profits, increased competition both domestic and foreign, and pressures and exhortations for modernizing their plants. Here our union friends may urge that tough company bargaining is not new but an old occupational disease. But the apparent and well-publicized success of tough bargaining in some negotiations and the pressures now operating on business suggest that there will be increased resistance to demands for more.

Our gold and international payments position may, it seems to me, operate in the same direction. The Administration seems to have dealt with the immediate gold problem. But unless we are to be pushed into restrictionist trade policies or into substantial reduction in our international commitments, our international balance of payments position will ultimately depend on the level of our costs. And if there is to be any coherence in government policy, which one cannot guarantee in this or any other administration, this Administration will encourage wage and price restraint and will increasingly link the two.

In searching for that elusive imponderable, the social climate, I have perhaps unduly emphasized the storm clouds that may be ahead. There are two reasons for that emphasis: First, collective bargaining is on trial, and both its costs and its accomplishments will be under sharp scrutiny. Secondly, a note of disquiet may be a desirable corrective against a pervasive element of our folklore. We tend to believe that there are neat simple solutions for extremely complex problems, and that frictionless accommodations can be achieved by exhortation about responsibility, public interest, and the good life. One need not believe in original sin to react against such oversimplifications as they are applied to the bargaining process. Its ideal is reasoned consent, but its motive power is economic warfare. It embodies also the ideal of economic democracy and individual dignity in a context where democracy is both difficult to define and to achieve and where democracy and socially responsible action may pull in different directions.

It would be strange if this complex and paradoxical process were free from substantial problems. The factors which have been touched on here may aggravate those problems. But that risk may be offset by the increased recognition on the part of labor and management that they have joint interests as well as conflicting ones, and by the increased maturity of many of their relationships. More specific and meaningful predictions of the bargaining weather would require me to go beyond the limits of my ignorance. I must leave such prophecy to those with greater capacity and taste for such hazardous work.

The Harold J. Green Law Lounge

(The following story appeared in the Chicago Daily Tribune on October 3, 1961)

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"All a law school does is pay attention to the rigors of learning," Green said. "But a lawyer isn't going to be just a machine, so that's why I did it."

A YOUTHFUL DESIRE

Green, who lives at 6922 Jeffery blvd., said he often wished for such a place to relax when he was working his way thru the law school in the 1920s. "I promised myself, when I was doing all the menial jobs that one does when he works his way thru school, that if I ever made good I'd establish a place like that," he said.

Green maintains that a lawyer should develop a manner comparable to a doctor's bedside manner, so that he can deal better with clients.

He said such a lounge also has academic values. "Not only will it serve as a place of study and sociability, but it helps the student distill and retain what he's learned," he explained.

AN ENTIRE FLOOR

The lounge, which occupies the entire main floor of the six story library-office building at the law school center, will be furnished with four main conversational areas, each of which will include two 12 foot sofas, one 10 foot bench, a 7 foot octagonal marble topped coffee table, and two large lamps.

Two central groups will consist of a 9 foot table with a lamp and 12 chairs. The color motif thruout will be set by the black leather upholstery of the sofas and chairs, and the wood and metal benches.
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