Article

"Labor Relations, Labor Relations Law and Public Policy"

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Relations industrielles / Industrial Relations, vol. 19, n° 4, 1964, p. 440-462.

Labour Relations, Labour Relations Law, and Public Policy

J.T. Montague

In this address the author explains how and why, legislation in Canada appears to have compartmentalized its own activities within the labour market so that a number of legislative efforts are continued through the economy with little relationship one to the other. *

Assessment of « gaps » in industrial relations research with an eye to the needs of public policy leads one quickly to issues of first principle. Locating gaps, or spaces, between firmly established positions is a difficult task in a field so inadequately stocked with analytical breakthroughs. Areas for pillaging by research workers come quickly to mind. But the perspectives of those working in the field vary so widely that it is next to impossible to list such areas in a way calculated to gain wide acceptance as a meaningful and organized onslaught on the unknown. Uncharted sorties into the field have been the rule, at times parading as the compromise required for inter-disciplinary work and, on other occasions, as the view of a particular breed of social scientist for others to gore at will.

It seems all too evident that behind the gaps so necessary to fill for policy purposes in industrial relations is an urgent and primary need for points of reference. The search for these within existing knowledge is difficult and not widely encouraged, but nonetheless needed to give meaningful purpose to industrial relations work.

Many words have flowed from academic pens ascribing shortcomings to the legal procedures Canadian law settles on the practice of labour relations. Prodded by an aversion to the undisciplined tinkering with the economy impli-

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* *This paper was presented at the First Meeting of the Canadian Industrial Relations Research Institute, held at McGill University, July 6th, 1964.*

cit in the law, the economist has time and time again sketched requirements of an effective bargaining process. The lawyer has agreed that the law is not equipped to reach toward the goals he and the economist are convinced are uppermost in our society. Social scientists generally are at odds with the way law channels the social and economic processes of industrial relations.

Such academic unrest has failed to influence wider analyses of the economy. One result is that current research has been only mildly successful in shaking the faith of Canadian civil servants in existing processes. The failure of current analyses to influence actions of politicians is synonymous with frustration.

This paper bridges research and public policy. The bridge appears, at best, to have been tentative and, on less happy occasions, a passing enthusiasm of the moment, and deceptively superficial. One must reach the rueful conclusion that research work and practice in industrial relations are poles apart in Canada. An impasse has emerged to handicap constructive thinking. The law has, if anything, become more inviting to academic attack. Research ideas in the field have, in spite of notable refinements, [1] been singularly repetitious and detached from the requirements for policy in recent years.

The Impasse

While research endeavours travel the road of the tolerated, legislators continue to find existing laws to be reliable friends in times of need. The legal requirements now known are, at once, both so unbending and so easily manipulated, that labour relations laws seldom embarrass the politician with unsightly struggles over principle, or even leave him without a choice of action.

Research workers have been diligent in encouraging manipulation and indifference. The labour analyst has been strangely attracted to taxonomy in the fields of policy and law, in spite of the fact that he avoids such exercises like the plague in other phases of labour studies. [2]

(1) Notably in the legal field, e.g. CARL GOLDENBERG, *Report to the Lieutenant Governor of Ontario*, March 12, 1962.
(2) MILTON DERBER, W.E. CHALMERS and MILTON T. EDELMAN, « Types and Variants in Local Union-Management Relationships », *Human Organization*, Vol. 21, No. 4, Winter 1962-63, pp. 264-270.

Perhaps more important, the literature is « descriptive and contentious » and at times narrowly circumscribed in its social and economic dimensions. [3]

On the other side of the impasse, recent changes in the law bear the mark of the administrator more distinctly than any imprint of the innovator. Amendments to the Labour Relations Acts of the provinces are with few exceptions [4] presented as means to make the purposes of the Act more readily realized; [5] purposes, by the way, which were evolved in what now appears as the uncomplicated industrial relations atmosphere of more than a generation ago. The heart of the legislation continues to be government aid to dispute settlement on the assumption that society as a whole is not prepared to tolerate undue strike action. The law in British Columbia goes so far in its search for administrative convenience as to deal with strikes that are « not illegal under the Labour Relations Act ». [6] Newfoundland broke new ground in the same area only to the extent required to permit usual organizational activities [7]. Ontario changed its Act in 1962 to make way for the more effective use of the tenets of the Act in the construction industry. [8] Protection for the principles of labour relations Acts has been both ingenious and far-flung.

Part of the problem has been that originally we did not realize the extent to which compulsory collective bargaining would require changes in economic relationships. After some three decades of trial and error, we apparently have still not ensured to our satisfaction the full working out of the original ideas, or changes in the economy have raised difficulties.

So uncrystallized are views on labour issues that few are moved to question the wisdom of meeting short term, and on occasion basic issues, with *ad hoc* legislation. In one province comment was favour-

(3) See SANFORD COHEN, « An Analytical Framework for Labour Relations Law », *Industrial and Labour Relations Review,* Vol. XIV, 1960-61, p. 350.

(4) E.g., Ontario Labour Relations Act, 1962; Newfoundland Labour Relations Act, 1963; B.C. Labour Relations Act, 1961.

(5) E.g., excerpts from an *Address During Debate on the Speech from the Throne,* by the Hon. L.R. Peterson, mimeo., Victoria, 1963, p. 18.

(6) B.C. Labour Relations Act, Sec. 57, c. 205, R.S.B.C. 1960, as amended by c. 31, 1961.

(7) Newfoundland Labour Relations Act, 1963, Sec. 43A, c. 82, s. 4.

(8) Ontario Labour Relations Act, 1962, Sec. 90, 96, c. 68, s. 16.

able when changes in this fundamental area of legislation proved short term, and were withdrawn when the crises which gave rise to the changes passed.

The chronology of the sparse number of turning points in the build-up of Canadian labour legislation gives warnings that problems will emerge. The ideas in the legislation were declared on paper in the forties, but hit upon in Canada and elsewhere during a period stretching from the 1900's to the 1930's. Even such straightforward « theories » of labour law as those derived from some form of economic determinism should raise some alarm about legislative concepts which journey unaltered through so lengthy a period of rapid change in the economy. [9]

Framers of Labour Policy

Canadian collective bargaining has grown and matured in a society that included ever-present conciliation procedures. The loss of working time among all non-agricultural employees, which is one measure of strike problems among voters, has been proportionately lower than in the United States and many other Western countries. [10] However, the incidence of strikes measured in terms of the unionized labour force and days lost by union members reveals the Canadian unionist as strike-prone relative to his counterparts in most parts of the world. As a result, the politician is faced with two convenient and uncomplicated reference points for labour policy. On the one hand, the extent of public involvement in strikes, in overall terms at least, does not give rise to an urgent continuing cause for concern in policy. On the other hand, a group of less than one-third of non-agricultural workers are seemingly ready users of the strike weapon. [11] The situation is not even complicated, if the past is any guide, by non-union strike activity similar to that experienced in France or Italy.

Over-all use of the strike lever in Canada, important though it may be at the industry or firm level, appears to work out at the practical level of public policy as something other than a pressure for positive in-

(9) E.g., C.O. GREGORY, *Lamour and the Law*, (New York, 1946), pp. 18-19.
(10) A.M. Ross and P.T. HARTMAN, *Changing Patterns of Industrial Conflict* (New York, 1960), p. 32.
(11) See S.M. JAMIESON in J.T. Montague and S.M. Jamieson, eds., *British Columbia Labour Management Conference - 1963*, Institute of Industrial Relations, University of British Columbia, 1963, p. 77.

dustrial relations policy. In fact it seems to have the obverse effect. Policies of the past in minimizing strikes may well have grown from a desire to protect an infant union movement. But continuance of these policies in the present has support in the unbalance of voter involvement and a hard-hitting labour movement. The politician has an open invitation to brush aside, in the least uncomfortable way, overt signs of industrial relations problems and to by-pass any probing for unseen issues.

Discussions of the absence of the strike and its effect on the delicate intrigues of bargaining are irrelevant to short-term thinking at the political level. To the politician, aware of a direct relationship between the discomforts of office and the incidence of strikes in the working life of the electorate, the thought of any unpredictable change in the strike picture is too troublesome to contemplate. Even the assessment of the problem made above is sliced into eleven parts by jurisdiction to further reduce the concern of any one legislative group.

It may be that the economist is justifiably skeptical of the absence of the catalytic action of the strike in disputes. The process of obscuring industrial unrest we now follow so assiduously may heighten conflict when it does emerge.[12] Or the conciliation processes may unduly harden positions so that disputes are lengthened in time and made more complicated in strategy.[13]

Such arguments turn inward on the effectiveness of the industrial relations process. But framers of labour policy look outward from industrial relations to the needs of the economy.

Orientation for Labour Policy

Public policy will be only marginally concerned with the fact that the law and the general legislative attitude limits the effectiveness of industrial relations. But policy implications grow with the conviction that reduced effectiveness of industrial relations has significance for the economy. Industrial relations singly is a second-rate core of interest,

(12) *Ibid.*

(13) H.D. WOODS, « Canadian Collective Bargaining and Dispute Settlement Policy », *Canadian Journal of Economics and Political Science*, Vol. 21, (November 1955), pp. 447-65, 531-3.

for it represents little more than the structuring of the way in which labour and management work together given the variety of social, economic, legal and other parameters which shape the relationship. The first-rate core for analysis is industrial relations as one of the many parameters of our social and economic system. This elevates industrial relations to a level where concern for its functioning is difficult to ignore.

So far little has been done to evaluate industrial relations after the fashion of other parts of the economy. Analysts are quick to indicate inadequacies in monetary and fiscal policies, but slow, or adverse, to appraise the usefulness and effectiveness of industrial relations policy to the economy. Research endeavours have stopped short of encouraging the originator of labour policy to assess the wide swath his policies cut through the economy or even providing adequate tools for the purpose.

This is a surprising omission, if only because the economist has been subjected to continuing frustration in theoretical and practical analyses affected by labour bargains, particularly in the area of price-wage analyses. European experience with wage policy within the broader context of national economic policy since the war has been anything but reassuring for the economist. Wage negotiations have more often than not proven the inadequacies of economic knowledge to meet the challenge of industrial relations. Even with the free-wheeling use of econometric analysis in the economic policy of Holland, the thrust of wage negotiations has made itself felt. Professor Pen holds, in contradiction to the position taken by B. C. Roberts in making a similar appraisal in the United Kingdom, that Dutch labour policy has been partially successful in altering wage patterns to conform with the interests of the Dutch economy.[14] The European countries would seem to have removed any doubt as to whether or not knowledge in the labour market stands up to the level of understanding of other price and product markets.

Economic analysis has all too often reserved a place among the « on balance » items for industrial relations. « On balance », the analysis runs, such items are self-eliminating in analysis leaving a hard core of

(14) J. PEN. « The Strange Adventures of Dutch Wage Policy », *British Journal of Industrial Relations*, Vol. I (1963), No. 3, pp. 318-330.

concern for monetary and fiscal policy. Attractive though this position may be, it has in the past lacked empirical support and is losing out to accumulating evidence.

The question to be asked is how does current labour policy in Canada influence our economy through the vehicle of industrial relations. What in the structured industrial relations system imposed by the law is of economic significance? For Canadians more than Europeans, and perhaps even more than Americans, this question has added significance. The Canadian labour movement, apart from some early and eminently successful sections, grew in the shadow of the law. The majority of unions cut their teeth in Canada on problems of labour law and were influenced by the experience both in structure and policy.

Economists, lawyers, unionists and businessmen have been so caught up in the workings of the law that it is in the same area of law that they have sought to fathom industrial relations. It is the unanimity with which this common meeting ground has appealed to all sides that has made it difficult for the research worker to grope his way towards asking questions of purpose and effect. Existing processes have been dissected almost exclusively in terms of the objects of existing Acts.

The analyst has viewed his understanding of elaborate models of such phenomena as prices, interest rates, growth, social organization, or legal enactments as convenient tools for working out vehicles for social objectives. But industrial relations through the failure to question its purposes remains self-justifying, simply to be understood, not appraised. The economist, like other social scientists, balances at the edge of collective bargaining, fearful lest economic policy will become twisted in the unpredictable machinations of bargaining, and reluctant to venture through this additional demand for refinement of analysis. The industrial relations analyst, for his part, has occupied much of his time stressing the extreme unpredictability of his field, an effort sure to further isolate his work from the wider consideration.

Economics of Existing Labour Policy

In the score of years since the wartime addition of compulsory collective bargaining to the Canadian economy profound changes have taken place in the methods of determining labour compensation. The

integration of the apparatus for compulsory bargaining into the operations of the economy have given rise to some uniquely Canadian innovations.

At birth, compulsory collective bargaining in Canada was already over-shadowed by preconceived notions which had some forty years to gain priority. The required shape of the union-management relationship was, in fact, prejudged. The over-riding concern of the legislation was to limit overt conflict. Canadian labour law brought together for the first time two aspects; compulsory bargaining as a means of establishing unions and compulsory conciliation as a means of keeping a rein on them. It was a new-found game of checks and balances. Even though the legislators of the day were driven to face union recognition squarely, the demands of wartime conditions favoured continued preoccupation with disputes which now could conceivably arise. Conditions since the war, as noted above, have done to change the rationale of the legislator's position than the conclusions upon which labour policy is built.

The legislative purpose of stalking conflict has itself been exhaustively stalked in analysis. But little has been said about the structure imposed on industrial relations by this gesture of preoccupation with conflict. Much remains to be said about the conflict cycle and the economic effects of legislative timing of longterm conclusions in industry.

Negotiations and Bargaining

Canadian law limits its concern to labour-management conflict. Negotiations over contract changes are rigidly separated from the broad sphere of collective bargaining. [15] In this way the law is confined to a much smaller segment of concern than Dunlop's concept of an industrial relations system. After designating disputes during the contract term illegal, and thereby removing one potential area of concern, the legislation is centred on negotiations. Attention is concentrated on the use of power at the time when policy for the « web of rules » is being set at the work place. The law points, and the parties have followed, to a mould for industrial relations which gives a periodicity to the process and a concentration of effort about the negotiations.

(15) CARL M. STEVENS, *Strategy and Collective Bargaining Negotiation* (New York, 1963), pp. 1-3.

The market system represented by industrial relations is subject to public policies which are at odds with those followed in other economic markets on at least two levels. First, there is a contrast with the more usual search for stability which has been a primary objective of many other phases of economic policy. Labour law in seeking to avoid conflicts has institutionalized conflict and set its regularity.

Second, public policy twisted the market forces until the existence of a market is in doubt. Steps have been taken in public policy, for example, to ensure the effectiveness of a lengthy list of commodity markets. The purpose has been to ensure that such markets are fragmented, responsive to change, and as free as possible from impediments to entry. The industrial relations market appears as an enigma in this context. The law has bestowed on this single market elements of monopoly, restricted opportunities for responsiveness, and has abridged in many respects access to the market.

In part, the differing attitude to the industrial relations market is an effort at accommodation of the individual worker and the potential abuse of his minuteness in the market. The workers' agglomerative step in establishing unions for collective bargaining over the relationship of the worker and his employer received the stamp of social acceptance. But there is little value in singling out purposes if the manner of fulfilling them minimizes the operational effectiveness of the new instrument once it has been established.

Industrial relations channelled, or at least strongly propelled, toward a mould of periodic negotiations necessarily involves added areas of imperfection to the industrial relations market. The monopolistic bent to the industrial relations market has been discussed at length.[16] But Canadian practice seems to have interfered with the market on two counts. The protection of the worker through the guarantee of his right of association is, of course, fundamental. Judging by the conventions and recommendations of the International Labour Office on freedom of association[17] Canadian law falls short of ideal standards, principally in the areas of universal coverage, protection

(16) GEORGE H. HILDEBRAND, « Collective Bargaining and the Antitrust Laws », *Public Policy and Collective Bargaining*, Joseph Shister, Benjamin Aaron and Clyde W. Summers, eds., Harper & Row, New York, 1962, pp. 152-181.

(17) International Labour Office, *Freedom of Association and the Protection of the Right to Organize*, (Geneva, 1959), pp. 58-61.

from extra-legal action and freedom of entry. Such deviations were originally justified in terms of institutional and operational continuity. [18] This was undertaken as a cost of compulsory collective bargaining. What was not underwritten, or possibly understood, at the time was the second area of definition given to the institution of collective bargaining by the close surveillance maintained on conflict.

Legislative designation of overseers of negotiations has focussed, almost glued, attention to negotiation and conflict. Firm, and largely irrevocable, answers are demanded of the process on designated occasions which may or may not permit the industrial relations market so laboriously built to carry out its task.

The criticism has been that the manner of shaping the ground rules for negotiations together with the act of designating the parties to negotiations have reduced the potential for collective bargaining. Concentration on negotiations squeezes from the collective bargaining process all efforts save those directed to the division of the spoils of economic endeavour. It means intensive market activity during periods of negotiations which are legislatively pointed with all haste in the direction of binding answer.

Yet the economist has long since demonstrated the value of continuity at the market place and warned of the potential dangers of discontinuity. Constant revision of the equilibrium position to meet changes in the market are significant, in the view of the economist, in the allocation of resources.

If the economist's warning is translated into the terms of industrial relations it would seem to indicate a potential failure to realize the full market value of the labour-management relationship. The point of the economist's analysis is that not all market influences make their way through to influence the existing equilibrium at any given time.

Labour-management Co-operation

Belated and limited recognition of the confinement imposed on the labour-management process can be recognized in government labour policy. A procession of efforts have been made to encourage labour

(18) PETERSON, *op. cit.*

and management to fill the virtual void between negotiations and collective bargaining.

The only continuous push toward filling out the labour-management relationship has come in the form of promotion by the federal government of labour-management committees. This effort had its beginnings during the last war. Actually the first efforts were formalized by order-in-council dated just one month before the passage of P.C. 1003. [19] This step, probably unintentionally, reflected the ingrained doubt of policy-makers that the compulsory collective bargaining P.C. 1003 was to launch nationally would be more than negotiations.

This promotional activity still continues and reveals at least two predilections of policy-makers, first a narrow view of the issues covered by bargaining as elicited by the law, and second the conviction that there are a variety of issues which labour and management can discuss to the betterment of the economy. Wartime production needs were a ready challenge to widen the scope of the labour-managemnt relationship. Since then, problems of safety, production, absenteeism, fire prevention, have been suggested as peacetime challenges. The curious part of the program is that action is put forward as a venture separate and apart from the labour-management relationship so carefully structured under industrial relations law.

Policy-makers have been reaffirming their doubts in recent years. The work of the Productivity Council was heavily weighted with labour-management endeavours over and above the negotiation level [20] Even the much wider scope of the present Economic Council is, through the processes and the personnel involved in organization, referred to labour-management consideration.

The question to be asked is whether the obvious dissection of the bargaining relationship at the policy level is consistent with a meaningful collective bargaining system at the operational level. Conflicting answers to such a question are possible, but only tentatively supported by available analysis. Returns on bargaining over issues other than « bread and butter » items have been significant, particularly as shown by a number of examples in the United States. The same examples,

(19) P.C. 162 (January 18, 1944) and P.C. 1003 (February 17, 1944)
(20) National Productivity Council, Second Annual Report 1962-63, Ottawa, 1963.

however, contain warnings that bargaining has built-in frontiers of competence. Much remains to be known of the inter-relationship of private bargaining activities and wider economic objectives.

Labour Standards

The cumulative effect of decisions by policy-makers in the labour field demonstrates with greater force the fragmentation of industrial relations. Work in the labour standards field has been piecemeal in the sense of being without pattern or any clear-cut relationship to market processes. Far too little is known about the way in which the economy, labour standards and collective bargaining fit together. Neglect of this field is common to analysts and policy-makers alike. Policy-wise, the approach has been that the state has a responsibility for ensuring minimum conditions of employment. The unspoken addendum to this policy has been that the free right of contract available to the individual and his organization would carry working conditions high enough to permit setting labour standards consistent with human needs, but low enough to inconvenience only the niggling employer of the sub-marginal operation. Standards legislation ranges from simple application of this concept of minima to the more sophisticated extension principle applied to bargaining under Quebec legislation.

Without exception labour standards legislation substitutes socially acceptable decisions for dissatisfactions with the realities thrown up by the labour market. Such expressions of a nation's social conscience are commendable and, on most counts, probably necessary. There is ample evidence, however, of discomfort, confusion and, most regrettably, « do-goodism » in this field. One must turn, in part, to industrial relations for analytical assistance, and again few leads are available.

Professor Bora Laskin pointed to the issue in the opening of his Report to the Ontario Minister of Labour of the Committee of Inquiry into the Industrial Standards Act.[21] The Committee appraised the impact of the Act as « not . . . a means of fixing 'fair' wages, but rather *it has* tended toward prevailing union rates ». Other uses of union rates in the labour standards field undoubtedly exist at the more or less informal level, especially in the area of fair wages.

(21) Report dated July, 1963. See p. 1.

The Laskin Committee found, in spite of its conclusion at the empirical level, only an oblique reference to trade unions in the Industrial Standards Act of Ontario. Since the Committee appears to have been offered no acceptable alternative to standards legislation it suggests taking unions in their representative capacity into the decision-making processes of the Act. [22] Institutional problems which may arise out of the competing activities of unions are recognized and illustrated from experience under the Quebec Collective Agreement Act. [23] But the exercise of straightening out the legislation takes the only path current knowledge provides with any assurance and gambles that bargained compensation prevailing in one section of an industry will likely be a valid compromise in another section.

Carl Goldenberg in his Royal Commission Report on Labour Management Relations in the Construction Industry [24] turns the tables and suggests the use of minimum wages to work out a difficult industrial relations problem. [25] In effet he recommends the use of techniques from the uniquely centralized labour markets of British Columbia to the more diffuse and larger markets of Ontario.

Professor Crispo, in his comments on the Goldenberg report, points to the suggestion for the use of a minimum wage as avoiding many of the problems of industrial standards legislation. [26]

Essentially it avoids the decision the Laskin Committee took as to the validity of decisions made in one section of an industry for another. Crispo feels such a decision would be out of place in the construction industry. His argument in favour of the minimum wage position of the Commission, however, stresses the importance of decisions made in bargaining.

Professor Sheila Eastman attacks the labour standards logic of the construction report on wider economic grounds. [27] She reflects on the

(22) *Ibid.*, p. 39.

(23) *Ibid.*, p. 51.

(24) Report to the Lieutenant-Governor of Ontario, March 12, 1962.

(25) *Ibid.*, p. 75.

(26) JOHN H. G. CRISPO, « Labour-Management Relations in the Construction Industry : The Goldenberg Report », *Canadian Journal of Economics and Political Science*, Vol. XXIX, No. 3, p. 361.

(27) SHEILA EASTMAN, « An Economic Analysis of the Goldenberg Report », *Canadian Journal of Economics and Political Science*, Vol. XXX, No. 1, Feb. 1964, p. 116.

economic wisdom of the wage recommendation for the industry and balances the labour issues of the industry with the level of economic activity in the general economy.

A summation of analyses in the labour standards field leads to a half world of social purpose and economic manipulation. There would appear to be an overriding feeling that bargaining should make decisions less onerous in the standards field. This feeling becomes obscured in the realities of a labour market which may be dominated by concern for collective bargaining, but not controlled by what goes on at the bargaining table.

Our society has underwritten an industrial relations process to structure industrial relations. Apparently confused by events in areas of non-conformity, society as represented by the framers of labour policy has kept to one side the potential corrective weapon of labour standards. The weapon can be used for commendable social efforts, but the more it interferes with the labour market the more likely it is to require consideration of the implications for the economy. It is the uneasy feeling that the second potential may be at hand that has given rise to the concern of Professors Eastman and Crispo. The single safety valve available seems to be in the economically respectable decisions reached within the context of the industrial relations system. The theoretical hitch lies in how to marry the two areas and at the same time retain the conveniently viable vehicle of labour standards.

Labour policy in Canada, apart from the example of the Quebec Collective Agreement Act and the unintentional realities in the use of industrial standards Acts, is to enforce a rigid separation of industrial relations and standards legislation. Within labour departments, functional divisions are frequently made among personnel on the basis of the two types of legislation. The decision-making process, as the Laskin Committee found, largely sets aside the representational functions of unions. But provincial labour groups, as in recent experience in British Columbia, participate significantly in the discussions of minimum wage Acts.

The conclusion is unavoidable that labour standards legislation is one more area in which industrial relations has a role to play, undefined it is true, but simply not realized. Again, the conclusion is inescapable that industrial relations, which has been painfully injected into the eco-

nomy, has been limited to loculi within the economy where its potential languishes. Without a full return on investment in the revision of the economy implied in the adoption of compulsory bargaining, the labour standards field will continue to miss an economically defensible place in labour law. Indeed, labour law will continue to be a two-headed and incongruous whole.

Union Organization

Unanswered questions about industrial relations law are not confined to the bargaining level. Unspoken invasions of union structure guarantee the continuance of the conflict mould. Policy of government in the area of internal union affairs is, in principle, one of non-interference. In practice, the union as an institution is unlikely to be left unaltered by industrial relations policy, or in this case the absence of policy. At the first level the union will structure itself to cope with the mould of periodic conflict. Energies will be channelled into negotiations almost to the exclusion of digging deeply into the potential or the limitations of industrial relations. The international structure of unions may well be sustained, in part at least, by the need for the widest possible base of support to cope with the mould of conflict. Unions in Canada have almost as a partial requirement of their operations become far more adept in the manipulation facets of their work, such as in substantiating positions or conducting strikes, than in facing the outer limits of the labour-management relationship. Little energy can be spared, and the atmosphere of awaiting the next conflict is scarcely conducive, for a union to set its sights widely. Unions in Canada seem to have become of necessity almost exclusively instruments of negotiations and, at the same time, objects of abuse for giving economic responsibility only marginal attention.

A second level of observation reveals a further worrisome lack of government policy or even a consensus of views. The law has put limits on certain integral parts of union activities with an eye to the potential threat to the mould of conflict rather than with a view to the potential of the union fulfilling its role in the economy. In the extreme, the way it has been necessary to move indeterminately through the Seafarers' issue, or even that the issue reached reality, demonstrates the lack of policy and research work. Or on another front, the total failure to come to grips with the phenomenon of picketing is disturbing.

Professor A.W.R. Carrothers has held that common law doctrines are ill-equipped measures for judging events in an industrial relations context. [28] One could document widespread discontent with legislative answers in the area of picketing. Professor Carrothers notes, for example, with respect to the British Columbia Trade Union Act of 1959, that there has been widespread feeling that it unduly restrained free speech. He suggests this antagonism might be offset by a saving provision as in the Newfoundland statute which permits communications other than by picketing. But picketing, particularly for organizational purposes, has yet to be appraised as a part of the industrial relations processes. The predisposition of the moment is to treat picketing as disruptive by definition to the mould of conflict.

These have been two examples at the extreme. So long as industrial relations law is centred on conflict, the techniques of bargaining will be measured as techniques of negotiation. In fact, in various parts of Canada the techniques of union organization and operation are so confined in the limitation of the approach to unions through conflict that union effectiveness at all levels has required a parade of ingenious, but nonetheless outlandish, alternatives. In British Columbia, the use of motherless and fatherless mystery pickets, the accomplishment of distributing unauthored and unprinted copies of « line-ups » at football games, and the sudden concentration at a non-union store of low-paid workers all with twenty dollar bills as tender for ten cent items, must reveal a misappropriation of precious talent.

Possibilities for Innovation

It is incongruous, or even dangerous, to undertake a moulding process without first installing a safety valve. Otherwise the desired end-product may be destroyed. Safety valves are absent or effectively sized up in bargaining. Ingrained characteristics of labour policy by themselves are sufficient for this seizure. There is, for example, a long history of faith in tripartite approaches. Tripartite approaches have run the course of Canadian labour policy without the blessing of analytical support. The easy logic of the approach discourages analysis. Three-way representation is a key-stone in conciliation processes, labour rela-

(28) A.W.R. CARROTHERS, Professor of Law, University of British Columbia, *Labour Law : Doctrine, Dogma, Fiction and Myth*, a paper given before the Mid-Winter Meeting of the New Brunswick Branch of The Canadian Bar Association at Moncton, N.B., February 15, 1964.

tions boards, advisory groups, and even special committees to examine the legislation istelf.

There is an abundance of literature dealing with the question of tripartite boards in the settlement of industrial disputes. [29] Discussions in the United States have slipped conveniently back and forth between the concepts of fact-finding and tripartite conciliation boards. Canadian experience offers no such convenience for confusion of terms since our boards are specifically tripartite in nature and free, on the surface at least, to employ fact-finding, mediation, or any other tool that comes to hand, in an effort to settle a dispute. The major goal of Canadian legislation has been to provide a supplement to the usual give-and-take of collective bargaining. The complain has been that boards, in fact, supplant or distort collective bargaining. Analysts have been reluctant to venture past this point.

Neither those who favour the tripartite approach adopted in Canada, nor those who have been critical in their comments, have reached into the area of economic effectiveness for support in their position. Arguments have waged over the economic effects of strikes, the importance of face-saving endeavours, and the broadening of the area of search for answers to outstanding issues. But little has been said as to whether fiddling with an economic market by way of tripartite boards necessarily bolsters collective bargaining as a dimension of the economy.

Provision of a supplement to the industrial relations market presumably means aiding the decision-making process by innovation in any one of an infinite variety of ways. Arbitration would be an extreme form of innovation, providing a complete answer. If arbitration is rejected as a regular means of settling industrial relations issues, and it is by most analysts, then the question concerns the degree of innovation best suited to industrial relations markets and whether boards will do the job.

Tripartite approaches are necessarily conservative in character. It would be unusual for three parties, representing three separate sets of backgrounds, to join in a conspiracy of innovation. The representatives

(29) See for example the interesting exchange between Professor Northrup and Dean Lazar in *Industrial Relations — A Journal of Economy and Society*, University of California, Vol. 3, No. 1, pp. 125-131.

of the two parties are conscious of their place in a lengthy bargaining process. The chairman, most often appointed by government, is at once coveted and disowned. He becomes released and bound by his position of neutrality to the point of becoming an innovator who is limited to choosing within the range of two positions, or two vested interests, which could scarcely be called innovation.

Chairmen have two avenues open to them. They may be legalistic and adhere closely to rules of evidence, in which case they add only their judgments to those of others. Or they may mediate, which more often than not involves innovation only to the extent of facilitating a face-saving process. Conciliation board reports reveal only limited innovation. The supplement to collective bargaining provided by tripartite efforts can scarcely be more than an extension of bargaining within an ultra-conservative forum. The purpose of supplementing or adding to the bargaining process is, at best, only partially achieved.

Reliance on answers upheld by two or more of the parties is almost uniquely Canadian. Plagued by vagueness of purpose and a basically illogical approach to innovation, the tripartite approach is difficult to evaluate in other than industrial relations terms. Yet available analyses are far from neo-classical in approach. A fair consensus reveals that the core of concern is to define the most effective and the realistic limits to the support for bargaining.

Conservatism is not only injected by the law at the dispute stage but also through the many administrative processes employed to make labour law operational. Even such basic functions as the interpretation, and often the setting, of ground rules is subjected to three-way decision which it is difficult to believe encourages innovation any more than boards.

Policy Innovation

Economic theory offers little aid in conceptualizing industrial relations. Difficulties in marrying national policy and bargaining objectives lead the economist to assign a causal, rather than a contributory, role to bargaining in the working of the economy. The word « restraint » appears in many different garbs throughout the literature.

Government policy in the United States at the federal level in recent years reflects attempts to cope with the limited knowledge

available to balance national economic policy with actions in industrial relations issues. The period of the Kennedy administration brought attention to the concept of guidelines. Expression was given to many of the diverse aspects of labour policy in the President's earthy reactions to events in the steel case. Running through the events of the time was the assumption that bargaining would play its part in the economy if wages and benefits were kept in line with changes in productivity.

It has been suggested that those concerned with the responsibilities of the administration in the labour field and those charged with the task of defining the broad outlines of monetary and fiscal policy differed in their views as to the appropriateness of guideposts. [30] The Council of Economic Advisors were serving notice that bargaining decisions had significance in national economic policy. The labour specialists must be forgiven some apprehension at the request that they carry a measure evoked by analysis at the national level to the atmosphere of the bargaining table. Tools in the form of an understanding of the meaning of national policy for bargaining are simply not available. Even the original document of the Council referred to qualifications and, indeed, the emergency disputes of 1962 forced the administration beyond its own guidelines. [31] The point to be made is that national economic policy in the United States was required to grapple with the telling jibes of collective bargaining. Opposition to guidelines expressed by management and labour should not obscure the value of the touchstones the guidelines have provided. Most recent among the critical statements has been the indication of the executive council of the A.F.L. - C.I.O. that member unions will not follow policies in keeping with the guidelines. But there is cause for reflection in Ewan Clague's findings which show the over-all level of wage and salary increases in the U.S. in the past five years has not been significantly greater than productivity gains. [32]

Labour policy in Canada, in contrast to the United States, has steered a strange and uncharted course through industrial relations. Rather than confront issues of translation from one level of economic or social understanding to another, Canadian policy is rationalized in the

(30) See comments of James Stern in « Symposium : Labour Relations and the Kennedy Administration », *Industrial Relations*, Vol. 3, No. 2 (1964), p. 24.
(31) *Ibid.*, p. 25.
(32) CLAGUE, EWAN, *Automation — The Economic Perspective*, Washington, mimeo., 1963.

difficulties of politics in a federal state and flounders in the backlash of *ad hoc* expeditions into, and out of, the area known as industrial relations. The impressive list of such activities runs a lonely course from the sorties of the conciliation process, which once initiated seems to live the life of a disowned disciple of peace, to acts of seemingly unimpeachable altruism in the form of minimum wages or maximum hours.

The gossip of the industrial relations world bristles with stories of the extent of improvised policy made to cope with urgencies of the moment and without the advantage of reference points other than minimizing overt conflict. The law in Canada hides the extent of improvisation, by including wide areas of administrative decision without at the same time providing more than the broadest of policy indications. It seems likely that the admonition to « endeavour to bring about an agreement between the parties to a dispute » has as many interpretations as interpreters. One has the feeling that the term « trade-union » achieves operative meaning which is more rigid than the wording of some Acts and more indefinite than others.

The course is indisputably lonely for industrial relations. Negotiations and unions suffer, at the hands of the analyst and the politician alike, treatment reserved for the tolerated guest in place of that afforded a participant in decision-making.

Policy-makers in Canada reap freedom of action from the failure of the analyst to show the importance of a functioning industrial relations system. Concentration on fiscal and monetary analysis has so occupied the academic that the niche for labour analysis in new-found knowledge has been neglected. Academic disinterest and inadequate public policy grow together.

So far approaches to firming up labour policy have been limited by knowledge. The economist, for example, has blunted his tools of analysis by branding hours or wage rates or even the supply of and demand for labour as discrete series having the good sense to fit the techniques of analysis developed for price series. It has become almost predictable that the economist will list the vagaries of industrial relations among the potential modifiers of theoretical analyses. The labour economist has tended to support the position by insisting on the unique nature of almost every venture into the industrial relations field.

Inept concessions are made by the analyst, as for example in removing the influence of strikes from employment statistics. But grapp-

ling with national policy at the industrial relations level is lacking in academic endeavours. There are few other places in the economic structure of the economy so heavily regulated by law and yet without meaningful integration into the totality of the economic thought. Canadian policy-makers put forth almost as the lone piece of constructive national policy in industrial relations that there shall be collective bargaining. This decision is far from firm, being largely permissive. At times even this resolve appears to have wavered. [33]

The real question is whether or not expectations of any better labour policy are practical. Purposes, structures and rules of the game are not easy, or even possible, to define or verbalize on the basis of experience limited to the pursuit of agreement almost at any cost.

So far the labour analyst has limited his efforts to move forward to recommendations in the more carefully developed fields of monetary and fiscal policies. Without entring the intriguing area of explaining the widespread acceptance given the economics of monetary and fiscal policy, it is important to point to the growing efforts to fit labour issues under the umbrella of monetary and fiscal conclusions. This represents a doubtful circumventing of the need to appraise the requirements of industrial relations and the economy.

Bargaining in a constructive fashion or filling out the labour-management relationship is an unlikely product of tax rebates.

Financial incentives and virtually unrestricted capital formation may or may not solve structural problems in the labour force. Demonstration that the negotiation process wobbles uncertainly on its present base will not likely lead politicians and civil servants to change their ways.

Conclusion

This paper has been one of assessment. It clearly commands silence of the author in the future unless he can cope with some of the issues raised or is seeking to become the Cassandra of the labour field. In

(33) E.g., Case No. 211 of the Committee on Freedom of Association of the I.L.O. See p. 30 of the Minutes of the 151st Session of the Governing Body for conclusion reached in the case.

defense of the paper it should be noted the CIRRI sought views on gaps in industrial relations research and the meaning for public policy. Public policy in this field is largely the product of steps taken in the past to phase a new economic and social instrument into the economy. The new instrument in the space of a single generation has found a place in the economy. But a recognition that the new-found process has now become an established part of the economy has won only a gruding admission in policy change. Political expediency has played a role in forestalling change. But the gap in industrial relations research looms large for even the most astute hewer of labour policies.

Industrial relations research has an inbred quality which discourages over-all assessment. Evaluation of the give-and-take in collective bargaining has its difficulties, but even this complexity grows when bargaining is viewed against the background of the operations of the community. Uncertain steps to secure more adequate contributions of industrial relations at the level of the individual, of the firm, of the industry and of the community, are a feature of current bargaining. Such efforts deserve and require better analysis of the relationship of bargaining to the economy.

Lacking further insights industrial relations will continue to be allowed to spin on its own axis at a resticted level of concern. At best the process will be submerged in answers of a fiscal or monetary character while operations at its present level of effectiveness churn up only partial questions for consideration.

LES RELATIONS INDUSTRIELLES, LES LOIS DE RELATIONS INDUSTRIELLES ET LES POLITIQUES PUBLIQUES

Il est assez frappant dans le domaine des sciences sociales, ici au Canada, qu'on ait semblé négliger les résultats des recherches en relations industrielles, pour l'élaboration de la législation qui gouverne les relations du travail. Les législateurs ont été peu enclins à introduire dans la loi des modifications suffisamment stables donnant aux gouvernements la liberté d'action requise pour faire face aux conflits industriels.

Les analyses théoriques de l'économie ont minimisé l'importance des politiques en matière de relations industrielles dans une politique économique nationale. Les résultats pratiques, à introduire dans une analyse économique d'ensemble, rendent le changement difficile. Il reste encore beaucoup d'analyse à faire pour connaître

l'effet de la législation ouvrière sur le marché du travail ainsi que l'effet des activités de ce marché sur la politique économique.

La législation ouvrière a ajouté et mêlé des éléments du marché des relations de travail de telle sorte que le comportement de ce marché diffère de celui d'un marché économique comme on le conçoit traditionnellement. Principalement, la structure du marché semble avoir institutionalisé le conflit et limité la possibilité d'innover.

La législation canadienne semble avoir compartementalisé ses propres activités à l'intérieur du marché du travail de sorte qu'un nombre d'efforts législatifs se poursuivent sur le plan économique sans y retrouver une relation entre eux. Les structures syndicales et patronales sont affectées par l'institutionalisation du conflit que l'on trouve implicitement dans la législation canadienne.

Il est nécessaire d'avoir plus d'études sur la façon dont les marchés du travail et les relations industrielles devraient être agencés pour être plus efficaces. Ceci a été réalisé avec un certain succès en Europe, et on retrouve aux Etats-Unis des tentatives dans ce sens. Au Canada, les efforts se sont limités à l'agencement des exigences générales des politiques ouvrières à l'intérieur des conclusions tirées des politiques monétaire et fiscale de notre économie.