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Book Reviews

BOOKS REVIEWED

Crisis in the Courts. By Howard James. New York: David McKay Company, Inc. 1968. Pp. xv, 267. $5.50.

As the flyleaf states, this book is based upon a series of articles that originally appeared weekly in *The Christian Science Monitor* from April to July, 1967. It is fair to say, I think, that the articles and the book have engendered diverse reactions: from acclaim to criticism to a parochial relief and smugness. Those who praise predicate their reaction upon the demonstrated continuing need for reorganization and reformation of the judicial branch of government. The critic dismisses the effort as a shotgun, superficial approach. The smug appraise the study with a nothing-is-said-about-us attitude and so relax, content with the lot of justice as they know it. These are over-simplified reactions which mistake the purpose of the survey undertaken by the author and his ideas and his hopes for improvement in our judicial structure.

It restates the obvious to note that the courts and the problems of the courts have multiplied and become magnified in recent years. Increasing and shifting populations, together with changing societal concepts and mores, have brought problems to many areas, including increased litigation—whether this takes the form of automobile accident suits, juvenile delinquency hearings, drug addiction proceedings, or criminal cases—all of which put severe strain upon facilities and resources. It is no excuse to complain of these phenomena. They exist; they *are*. The question is, it seems to this observer: What are *we* doing about it? By *we*, I mean courts, judges, lawyers, bar associations, the legislative and executive branches of government and the people. I do not ask the question to denigrate or question the efforts of a relative few, including judges, to ensure the adaptation and accommodation of the judicial system to the needs of a 1969 civilization. The question is asked only to underscore the fact that, in public and private circles generally, there is an apathy toward, an unawareness of and a lack of concern with the third branch of government.

The function of the courts is the prompt, fair, efficient determination of causes. Apart from that, they can only make known their needs and rely, for implementation, upon the other branches of government. The bar must also assume some share of responsibility for the operation of our court system. As officers of the court, attorneys must accept the obligation and discipline the profession imposes, as well as the benefits. The public—for whom alone the courts exist—should take an intelligent and inquisitive interest in their operation and well-being just as it does in the tax rate or the school system.

Platitudes? Rhetoric? Not necessarily. Most, if not all, of the problem areas discussed by Mr. James have their roots in the failure of courts, legislatures, executives, lawyers or the public to act, to become involved or even, sad to say, to be concerned.

The recital of acts and events which cast the judicial establishment and its adjunct establishments in shadow and shame us all has its counterpart in the roster of those who have striven mightily and ceaselessly to improve the ad-

ministration of justice in this nation and to whom generous credit is paid by the author. Unfortunately, in his accolade, he does include some whose contributions to the cause have been minimal albeit well-publicized.

Those areas to which Mr. James has directed his attention are not new or novel nor, I submit, were they intended to be. Court congestion and delay, the quality and performance of the judiciary, youth in difficulty, disparity in sentencing, correctional systems, continuing education of judges, to name but some, are matters of continuing concern and study in many jurisdictions including my own. But this is not an answer; it partakes of that parochial smugness mentioned at the beginning of this review. Whatever progress we have made, we have not made enough. It is easy and self-satisfying to catalog virtues and laud our accomplishments. It is quite another and a more difficult thing to take an objective look at ourselves and the judicial process of which we are a part. The author has taken that look for us. Are we satisfied with what we see? It is respectfully suggested that we cannot rest satisfied as long as any part or facet of the court system, be it in our own jurisdiction or some other, is in difficulty or failing to discharge its obligations to the community in particular or society in general.

The author has done a notable service in outlining an action program to improve justice in the United States. He outlines for citizens, legislators, educators, judges, lawyers, prosecutors, bar groups and the press the course they can and should follow to achieve this necessary end. To this reader, the action program was perhaps the most valuable feature of the study because it implicitly recognizes the need for community interest in the courts. At the same time, it gives rise to the nagging question: Who will read this study and be concerned or moved by it? No doubt, *some* lawyers, *some* prosecutors, *some* judges, *some* editors, *some* educators and *some* of the public will. To these relative few will fall, as it always does, the lonesome, and often frustrating, task of evangelizing the need for strengthening and improving the judicial system in this country, particularly in an era of changing social and legal concepts. However, these few can now take new heart in their endeavors for they have found a stout champion in Mr. James. He and *The Christian Science Monitor* deserve our thanks.

THOMAS F. MCCOY*

Labor and the Legal Process. By Harry H. Wellington. New Haven: Yale University Press. 1968. Pp. xi, 409. $10.00.

Labor relations, along with other aspects of the political, economic and social fabric of our society, is currently the subject of searching re-examination and critical evaluation. The national labor policy in the private sector, embodied in the National Labor Relations Act, has been, and currently is, under direct attack

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by those representing management.[1] The recent rash of strikes by public employees has caused some tremors in the foundations of government-labor management relations and has caused many, including those in the labor movement itself, moments of agonizing self appraisal and soul searching.[2]

Professor Wellington's book, a studied inquiry "into the utility of law and of legal institutions in attempting to solve" these modern problems "of ancient lineage"[3] is timely. It may also fill a void and satisfy a need in the labor relations field. Cox and Bok, in the introduction to their outstanding textbook, *Labor Law*, list three treatises, Teller's *Labor Disputes and Collective Bargaining* (1940), Gregory's *Labor and the Law* (1946), and Cox's *Law and National Labor Policy* (1960), as worthy of serious perusal, and they then go on to state that there "are a few other labor law texts covering major parts of labor law, but none of them sufficiently useful to mention . . . ."[4] That this situation is true highlights the difficulty of approaching labor relations problems, as Professor Wellington does in this volume, from a purely legalistic point of view.

Labor and the Legal Process undertakes the Antaean task of reassessing the underlying relationships in the labor field, *e.g.*, those of the immediate principals to collective bargaining, and those between the employee-union member and the exclusive bargaining representative. The author considers the role of government on various levels, the union, employer and employee interests, the

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1. E.g., The United States Chamber of Commerce has urged that the National Labor Relations Board be eliminated and replaced by labor courts or by transferring the Board's unfair labor practices cases—about 17,000 cases each year—to the United States Federal District Courts. Other drastic proposals would reverse many major United States Supreme Court, Courts of Appeals and National Labor Relations Board decisions.

On the other hand, voices in support of the National Labor Relations Board have been heard in the halls of Congress. 114 Cong. Rec. 10,118 (daily ed. Aug. 2, 1968) (remarks of Senator Morse); 114 Cong. Rec. 9520-21 (daily ed. Oct. 7, 1968) (remarks of Representative O'Hara); 114 Cong. Rec. 8661 (daily ed. Oct. 7, 1968) (remarks of Representative Thompson). In the hearings of a subcommittee of the Senate Committee on the Judiciary, held in the spring of 1968, nine out of ten academic authorities praised the Act "as an instrument for peaceful and orderly resolution of labor-management differences" and "expressed the belief that the law is being fairly and honestly administered, that the statutory system of judicial review works quite satisfactorily, and that the charge that the National Labor Relations Board and the courts have ignored the will of Congress is without substance." Address by Frank W. McCulloch, Chairman, NLRB, Alabama Bar Association, July 19, 1968.

Compare Petro, Injudicious Agency: The National Labor Relations Board Must Go, N.Y.L.J., Dec. 16, 1968, at 4, Dec. 17, 1968, at 4, Dec. 18, 1968, at 4, with Vladeck, Should the National Labor Relations Board Go?—A Response to Professor Petro, N.Y.L.J., Dec. 23, 1968, at 4, Dec. 24, 1968, at 4.

2. See N.Y. Governor's Comm. on Pub. Employee Relations, Final Report (March 31, 1966); N.Y. Governor's Comm. on Pub. Employee Relations, Interim Report (June 17, 1968).

3. H. Wellington, Labor and the Legal Process 46 (1968).

4. A. Cox & D. Bok, Cases and Materials on Labor Law 4-5 (5th ed. 1962).

public interest, and the impact and the result of the balancing of these interests against the national economic well-being. He undertakes a "search for theories which explain the relationship between the legal process and the political, economic, and social forces that combined ultimately to elevate collective bargaining to its present position."[5]

In this study of the *entente* between government and labor that has been in effect since the nineteen-thirties through the national labor policy enunciated in part by the National Labor Relations Act, which deliberately set out to create a situation of equality between labor and management at the bargaining table, Professor Wellington briefly traces the growth of the labor movement from the days of "criminal conspiracy"[6] to its present position of strength. In his search "for the appropriate response of law," he suggests "freedom of contract"[7] initially as a basis for the collective bargaining relationship; for his concern with the "work stoppage that sometimes accompanies the periodic establishment of the terms and conditions of employment through collective bargaining, and the totality of inflationary pressures thought to be generated by bargaining settlements,"[8] he offers "government intervention in collective bargaining . . . directed to the end of channeling the parties into settlements that are consistent with public fairness, with national economic policy."[9] To implement "[i]ntegrating guidepost policy with collective bargaining,"[10] Wellington suggests that "a tribunal of labor, management, and public members under the jurisdiction of the Secretaries of Labor and Commerce might be established with responsibility to define, in conjunction with the Council of Economic Advisors, standards of public fairness that related national economic policy to collective bargaining . . . . Subordinate to this tribunal, permanent commissions . . . might be created on geographical and industry lines with power to intervene in selected negotiations, the results of which were thought to be especially important to the economy."[11]

No one can argue with the proposition that, in addition to the benefits that flow to the parties to the collective bargaining relationship, the effect upon the public should be considered.[12] However, we can argue with the author's underlying premise of union responsibility for inflation, that the "wage push"[13] has exceeded productivity increases. As Profesosr Wellington himself points out,

5. H. Wellington, supra note 3, at 2.

6. Id. at 8.

7. See id. at 49-90.

8. Id. at 269-70.

9. Id. at 321.

10. Id. at 325.

11. Id. at 327-28.

12. Thus, on December 28, 1968, President Johnson's Cabinet Committee on Price Stability, headed by Arthur M. Okun, Chairman of the Council of Economic Advisors, recommended a "guidepost" for business and proposed a new wage guidepost, urging that "voluntary restraint" and "mutual short-term sacrifices" by business and labor were essential elements to stem inflation. N.Y. Times, Dec. 29, 1968, at 42, col. 2.

13. H. Wellington, supra note 3, at 303.

when in March 1962, the Steelworkers exercised the discipline he advocates and demonstrated restraint in their wage demands, pursuant to the pressures of the Kennedy Administration, the steel companies nevertheless raised the price of steel six dollars a ton. Such experience indicates that industry is perhaps not entirely motivated by the "push of wage costs."

Similarly, it would seem that there is little evidence to support the thesis that the confrontation between major industries and the trade unions has resulted in a decline in productivity or efficiency; at least, none is provided in this volume. Consideration should be given to the fact, on the other hand, that much of the dividends of concerted activity never appears on the payroll or the balance sheet. Indeed, Professor Wellington has not considered whether labor has shared the substantial benefits that have been gained by industry from computerization and automation in our fast fading 1960's. All of us are aware that many strong unions, the UAW, the Steelworkers, the UMWA, have felt the impact of technological change upon their membership. Therefore, the assault against union "monopoly power"[14] and the call for union restraint in wage negotiations would seem to place the cart before, if not upon, the horse. To his credit, Professor Wellington considers other viable alternatives, *e.g.*, "[b]reaking up the unions," which he terms "a chancy business at best, and history suggests that the cost could be extensive industrial unrest . . . reminiscent of pre-Wagner Act days."[15]

Government intervention in collective bargaining, *i.e.*, involvement at the bargaining table, which Professor Wellington advocates, raises more problems than it solves. What assurance is there that the parties, either management or labor, will accept government as a neutral? History has proven to the contrary! The use of "permanent commissions" sounds like substituting "Peter" for "Paul." I would venture to prophesy that very shortly the commissions would find themselves the object of attack, joining the National Labor Relations Board, the federal courts, and the United States Supreme Court, all of which are now entrusted with the administration and implementation of the national labor policy. Indeed, in a subsequent volume, Professor Wellington perhaps would relish fashioning a new appellation for the commissioners, a follow-up on his current characterizations of the members of the National Labor Relations Board as "Washington bureaucrats" or the federal judiciary now relegated by him to "Oshkosh." Why should Professor Wellington expect his "permanent commissions" to fare better than the current "Washington bureaucrats" or the judges in "Oshkosh"?[16]

Professor Wellington's solution of "[i]ntegrating guidepost policy with collective bargaining"[17] would seem to suggest a further erosion of the benefits

14. Id.

15. Id. at 320.

16. Id. at 50-51.

17. Id. at 325.

gained from "freedom of contract" that has governed labor relations, a doctrine espoused by the Professor himself in other parts of his tome.

The strain upon this legal concept of "freedom of contract" in labor-management relations is evident from Professor Wellington's advocacy that the permanent commission "would itself become involved in the negotiations and, where it deemed desirable, state, in terms of varying specificity depending upon the situation, the government's position and indeed, in some cases, openly recommend alternative settlement terms within the developed standards of public fairness."[18] Professor Wellington has recognized this danger when he states, elsewhere in his work: "Nor, if the law intervenes, can collective bargaining be an effective instrument for the achievement of industrial democracy or industrial peace."[19]

Mediation, ad hoc intervention, fact finding, injunction, seizure, compulsory arbitration, the non-stoppage strike, a choice of procedures—all these possible solutions to our current labor relations difficulties, as examined by Professor Wellington, have been found wanting. To this "arsenal of weapons" Professor Wellington has added the proposal of "accommodation between collective bargaining and economic policy."[20] This, however, is not the complete solution.

Professor Wellington has sought to apply common law concepts to the developing field of industrial relations, of which labor law is but a part. He seeks to force the law of industrial life, the code of the plant and the bargaining table, into the legalistic mold of "freedom of contract" and he thereby falls victim to the syllogism of his own logic. The United States Supreme Court aptly described the collective bargaining process as follows:

> It must be realized that collective bargaining, under a system where the Government does not attempt to control the results of negotiations, cannot be equated with an academic collective search for truth—or even with what might be thought to be the ideal of one. The parties—even granting the modification of views that may come from a realization of economic interdependence—still proceed from contrary and to an extent antagonistic viewpoints and concepts of self-interest. The system has not reached the ideal of the philosophic notion that perfect understanding among people would lead to perfect agreement among them on values. The presence of economic weapons in reserve, and their actual exercise on occasion by the parties, is part and parcel of the system that the Wagner and Taft-Hartley Acts have recognized.[21]

In regard to the "freedom of contract" doctrine, Cardozo, weighing that legalism against the need for overall protection of growing institutional rights, commented as follows:

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18. Id. at 328.

19. Id. at 321.

20. Id. at 324.

21. NLRB v. Insurance Agents' Int'l Union, 361 U.S. 477, 488-89 (1960). For an historical treatment of the underlying concepts of collective bargaining, see S. Webb & B. Webb, Industrial Democracy (1920).

Encroachments have been adjudged at times when the inroad was less apparent to the eye of philosophy or justice. In particular this has been so in defining the bounds of liberty of contract. The duty of delimiting the sphere of exemption must be cast, however, upon some one. In our constitutional system it has been cast upon the courts. . . .

. . . .

Often a liberal antidote of experience supplies a sovereign cure for a paralyzing abstraction built upon a theory. Many a statutory innovation that would seem of sinister or destructive aspect if it were considered in advance, has lost its terror with its novelty.[22]

It would seem that experience melded to theory would dissolve many of the complexities of Wellington's enigmas.

Professor Wellington, his protestations to the contrary notwithstanding, perhaps has not fully embraced the concept of collective bargaining, and may be too eager to accept as basic what may be a temporary imbalance in management-labor relations. He is too quick with positive drastic resolutions of what may be built-in variables in the process to provide flexibility. Thus, although Professor Wellington acknowledges that "[f]reedom of contract means many things,"[23] he has failed to accord sufficient weight to the efforts of the NLRB to insure "freedom of contract" by establishing ground rules for both parties at the bargaining table. "Freedom of contract, in the case of children, is but another word for freedom of coercion."[24]

Similarly, in his pursuit for purity of the legal concept of "freedom of contract," Professor Wellington's argument that all "subjects arguably within the statutory language, 'wages, hours, and other terms and conditions of employment,' should be mandatory subjects about which the parties must bargain in good faith if one of the parties so desires"[25] raises the spectre of co-determination in areas traditionally reserved to management prerogatives, *e.g.*, "requiring bargaining over the relationship between projected pricing policies, the criteria for pricing behavior, and wages."[26] Professor Wellington's recital of the "advantages and difficulties"[27] that are inherent in such a proposition demonstrates the unreliability of engrafting the strict legal doctrine of "freedom of contract" upon the field of labor relations. This, of course, does not detract from the Professor's evaluation that the Board's conclusion with respect to certain subjects as non-mandatory subjects of collective bargaining may require revision on an *ad hoc* basis.

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22. B. Cardozo, The Paradoxes of Legal Science 124-26 (1928).

23. H. Wellington, supra note 3, at 28.

24. 2 J. S. Mill, Principles of Political Economy 459 (1899).

25. H. Wellington, supra note 3, at 81.

26. Id. at 332.

27. Id. at 80. E.g., "[U]nquestionably a cry of pain would be heard throughout the land from employers and their associations." Id. at 83.

Nobody, including the unions involved, looks with favor upon spiraling inflation or like the strike as an alternative to collective bargaining. People strike, whether it is called a demonstration, non-work stoppage, or plain old-fashioned strike, for many reasons. The expressed action, whatever it is, serves many purposes, some of them cathartic, some therapeutic.

Despite the drama of some of the national strike situations, I cannot agree with the underlying premise that collective bargaining is in "danger"[28] or that the current plethora of strikes and work stoppages, or even the discontent of union rank and file with its leadership, manifested by their refusals to ratify contracts, has reached epidemic proportions. I do not agree that his dire forebodings are warranted or that radical changes, be they price fixing or wage fixing or "permanent commissions" to establish "accommodations" with national economic policy, undermining the system of free collective bargaining, are called for at this time.

As Archibald Cox put it, "The extraordinary accomplishments of collective bargaining in the . . . years since [1935] . . . are all too easily forgotten. It is hard to think of any institution that has accomplished so much in the short span of [a few] years. . . . What equal example is there of extending a rule of law—both substantive rights and duties and also the machinery to administer them—into so large an area of human life affecting so many people within so short a time."[29]

Labor relations is extra-legal and draws water only in part from the deep well of judicial experience. It is broader and is derived from the totality of the economic and social environment. As it adapts, adjusts and uses the resources of our society, it survives, and, as it fails to do so, the industrial society dependent upon it suffers. Ancient precepts suited to the needs of another age, therefore, cannot be strictured into the needs of the developing industrial society of this fast fading century.

Professor Wellington has been too quick to accept newspaper headlines as definitive socio-economic statements—*e.g.*, "The nation has become very tired, indeed, of major work stoppages;"[30] "[T]he concern in the administration and the newspapers of the land with the hurtful effects of collective bargaining settle-

28. Id. at 2.

29. Quoted by Rathbun, Labor Arbitration: Britain and the U.S., The Atlantic, Jan. 1969, at 22, 26. In the same article, the author, an associate editor of the Bureau of National Affairs in Washington, validly places the American system of collective bargaining in juxtaposition with that of Britain and he quotes Theodore W. Kheel, renowned labor mediator, arbitrator, and troubleshooter, to the effect that the British employee relations system is "at least 50 years behind that of the U.S." Id. at 24. In this connection, it is interesting to note that recently the British Labor Government has seriously considered replacing its current policy of no government intervention or limitations on the right to strike with laws comparable to the National Labor Relations Act, as amended. N.Y. Times, Jan. 4, 1969, at 1, col. 1; Wall St. J., Jan. 6, 1969, at 8, col. 2.

30. H. Wellington, supra note 3, at 2.

ments on national economic policy has reached an intensity which may well shatter existing institutions unless accommodations are forthcoming."[31] He does succeed, however, in pointing out how deep the visceral reaction has been to allegedly trade union created crisis. In this respect, and in evaluating the various alternatives to collective bargaining, Professor Wellington has provided a meaningful and useful service. However, one wishes that he had gone a little further. His solutions for major work stoppages and for the economic impact of current bargaining settlements and his concept of "freedom of contract" as a basis for the collective bargaining relationship treat only a limited phase of the labor relations picture—relevant only after the collective bargaining relationship has been established. One of the major confrontations between labor and management occurs in the efforts to establish the relationship or to prevent the organization of employees. Other confrontations occur in connection with midterm contract disputes and "wildcat" strikes.[32] Professor Wellington could perform a further service to collective bargaining by joining in the dialogue in these spheres of activity by both management and labor.

Another subject of great concern and interest today, and a fertile area for innovation, is the subject of remedies to be afforded to aggrieved parties under the National Labor Relations Act as a means of strengthening collective bargaining.[33] Further, Professor Wellington could share his erudition and shed

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31. Id.

32. "And, make no mistake, these strikes are no mere sideshow to the crucial emergency affairs. Despite the gravity of the questions raised by major strikes over new contract terms, most of today's ablest managers would regard the return of midterm 'wildcat' strikes as an equally serious menace. Management's willingness to pay a high price in return for strike free day-to-day stability is generally overlooked by the press. This attitude was aptly summarized some years back by Harry W. Anderson, General Motors vice president for industrial relations at the time: 'The public doesn't understand about these highly-publicized settlements: the big thing we're buying is the union's collaboration in making that grievance system work. That day-by-day union performance on dealing with grievances and keeping production going smoothly is a damn-sight more important than the money deal we make with Walter [Reuther].' In Britain, no such gyrostabilizer for day-to-day employee relations has been developed. As Theodore W. Kheel . . . pointed out recently, the most important practical difference between the U.S. and British systems is the power of a local shop steward in Britain to 'call a nuisance walkout any time he chooses.'" Rathbun, supra note 29, at 24 (paragraphing omitted).

33. "No problem has given the National Labor Relations Board or is giving the Board more concern than the simple question, 'How can we effectively remedy the commission of an unfair labor practice?' How can the Board decide these cases expeditiously and efficiently, and at the same time seek out and devise effective remedies to deter recalcitrant employers and unions from continuing their unlawful course of conduct. Innovative remedial proposals by scholars and litigants are constantly presented to the Board. In the past, proposals have been offered to make the knowing commission of an unfair labor practice a crime, to include the blacklisting from Federal contracts of those companies which engage in repeated and willful violations, to prohibit the deduction of back pay for income tax purposes, to award treble back pay in cases where the Board finds violations to be aggravated

some light in the public employee sector, a subject of ever growing concern, particularly in light of the difficulties of "freedom of contract" in that area.[34]

The solutions for labor relations problems do not rest in any one of the proposals and suggestions, those of Professor Wellington or anyone else. Ultimately, they rest with the recognition of the merit and strength of the collective bargaining concept itself, its service both to labor and management and to the public. In the search for solutions, this writer suggests that energies be directed—by labor, management and the public—to improve the process.

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in nature, and to impose monetary penalties for violations which continue beyond the finality of Board orders. The rationale of the supporters of these approaches is that those who willfully flout the Board and court orders and seek to frustrate the congressional policies embodied in the Act should be made to realize that the cost of such defiance will be high. In addition to these general proposals, a number of suggestions for more specific remedial innovations have been made. Proposals have been made to permit discharged employees to borrow up to the amount of their weekly wages from a federal rotating loan fund during the period between the issuance of a complaint and final decision and to authorize the Board to order immediate reinstatement of discharged employees after a trial examiner's decision without awaiting the outcome of the employer's appeal. Another proposal has been offered for more fully compensating employees for losses caused by unfair labor practices discharges, such as losses of property purchased on the installment plan, automobiles, homes, etc., on which payments could no longer be made because of the illegal discharges. The Board also has before it a suggested remedy requiring employer reports concerning not only the reinstatement of the discriminatee but treatment subsequent to reinstatement." Address by John H. Fanning, New and Novel Remedies for Unfair Labor Practices, Fifth Annual Labor Relations Institute, Nov. 21, 1968 (Atlanta, Ga.).

See the cases now under consideration by the Board involving possible monetary compensation as a remedy for employer refusal to bargain. Herman Wilson Lumber Co., No. 26-CA-2536 (N.L.R.B., Sept. 6, 1966); Zinke Foods Inc., Nos. 30-CA-372, 30-RC-400 (N.L.R.B., April 1, 1966); Ex-Cell-O Corp., No. 25-CA-2377 (N.L.R.B., Nov. 18. 1965). See also Raymond Buick Inc., 173 N.L.R.B. No. 199 (1968), wherein the Board rejected the trial examiner's recommendation, based upon a past history of violations, that a union be enjoined from acquiring bargaining rights for a period of five years by any means other than a Board supervised election.

For further discussion of this subject see also P. Ross, The Government as a Source of Union Power (1965); Subcomm. on the NLRB of the Comm. on Educ. and Labor, Administration of the Labor-Management Relations Act by the NLRB, 87th Cong., 1st Sess. 20-22 (Comm. Print 1961); L. Aspin, A Study of Reinstatement under the National Labor Relations Act, Feb. 1966 (unpublished dissertation at Massachusetts Institute of Technology); B. Wolkinson, Joy Silk Bargaining Orders: An Examination of the Remedial Efficacy of Board Remedies in Joy Silk Cases, Nov. 10, 1968 (unpublished dissertation at Cornell University); Graham, How Effective Is the National Labor Relations Board?, 48 Minn. L. Rev. 1009, 1023-24 (1964); McCulloch, Past, Present and Future Remedies Under Section 8(a)(5) of the NLRA, 19 Lab. L.J. 131 (1968); Note, The Need for Creative Orders Under Section 10(c) of the National Labor Relations Act, 112 Pa. L. Rev. 69, 82-83 (1963).

34. See, e.g., Kheel, Collective Bargaining and Community Disputes, 92 Monthly Lab. Rev. 3-8 (Dep't of Labor, Jan. 1969): "Collective bargaining is particularly designed for the reconciliation of group differences that are not susceptible to solution through the

Professor Wellington concludes his work with the admonition: "Let us hope that the unions learn to read the signs."[35] The need for reform of our institutions, Professor Wellington's "search for the appropriate response," should neither begin nor end at labor's door. Professor Wellington could well have ended this book with his other observation that "unions are institutions of great utility for American democracy" and "collective bargaining remains the best way of ordering labor-management relations."[36]

Professor Wellington, in weighing the collective bargaining process and finding it wanting, has to share the responsibility for its failure along with all of the specialists in the field. He has boldly and bravely expressed his views and his volume, on balance, is a worthwhile examination of a difficult aspect of the field. The "rule of law" has and will continue to play a role in the developing industrial relations of our time and he has made a contribution to our overall understanding of this aspect of labor law today.

All of us are toilers in the same vineyard and we are committed to the same goal in industrial relations, but, peace and stability alone are not enough.

"We may speak vaguely of life, liberty, and the pursuit of property and happiness, but these moving terms have no meaning save as interpreted as terms of particular men and times. In every growing society there is as much need for the revision and reinterpretation of its rights as there is in the growing child for the alteration of its clothes."[37]

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dictates of law. . . . It is . . . important to continue the study of labor and management negotiations for the guidance it can provide in resolving other group disputes. We must examine ways to select negotiating representatives in community disputes; the scope of subjects appropriate for bargaining in particular kinds of disputes; the proper role of communications and media; the most effective forms of action by individuals and groups in the community who are not parties to the dispute; and the general problems of bargaining tactics and techniques as they apply to community conflict. The institutes at major universities that have specialized in labor-management relations should consider expanding their activities to include community relations and group disputes outside the industrial arena. Students of labor-management relations have tended to focus too sharply on substantive issues, questions of a guaranteed annual wage, pension plans, vacations, seniority schedules, and other terms of labor contracts, and not enough on the mechanics of dispute settlement. Even when studies are made of impasse procedures, they are concerned mainly with legislation, or the kind of board to be appointed, or the number of days allocated for the procedures. Inadequate attention has been given to the problems inherent in group relations—problems of communication through representatives, the psychology of the group and individual members of the group, the limitations and difficulties of group leadership, and others. These subjects should be explored further in labor-management context, and the inquiry should be extended to other group disputes. Despite the obstacles to the development of effective techniques for resolving community conflict through collective bargaining, there is much that can be gained by such study and little to lose. The need is urgent." (paragraphing omitted).

35. H. Wellington, supra note 3, at 333.

36. Id.

37. N. Wilde, The Ethical Basis of the State 83 (1924).

To this revision and reinterpretation of rights, our basic obligation and duty, Professor Wellington has made his contribution. Let us all go forth and do likewise. As Machiavelli has said:

> [T]he dangers incurred by citizens or by those advising a prince, who take the lead in some grave and important matter in such a way that for the whole of this advice they may be held responsible. For men judge of actions by the result. Hence, for all the ill that results from an enterprise the man who advised it is blamed, and, should the result be good, is commended; but the reward by no means weighs the same as the loss. . . . Nor do I see any way of avoiding either the infamy or the danger other than by putting the case with moderation instead of trying to force its adoption, and by stating one's views dispassionately and defending them alike dispassionately and modestly; so that, if the republic or the prince accepts your advice, he does so of his own accord, and will not seem to have been driven to it by your importunity.[38]

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38. 1 N. Machiavelli, Discourses 560-61 (L. Walker transl. 1950) (footnote omitted).

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