Relations industrielles
Industrial Relations

State Intervention in the Settlement of Interests Conflicts
Intervention de l'Etat dans le règlement des conflits d'intérêts

Adolf Sturmthol

Volume 13, numéro 4, octobre 1958

URI : https://id.erudit.org/iderudit/1022409ar
DOI : https://doi.org/10.7202/1022409ar

Aller au sommaire du numéro

Éditeur(s)

Département des relations industrielles de l'Université Laval

ISSN

0034-379X (imprimé)
1703-8138 (numérique)

Découvrir la revue

Citer cet article

Sturmthol, A. (1958). State Intervention in the Settlement of Interests Conflicts. *Relations industrielles / Industrial Relations*, *13*(4), 392–416. https://doi.org/10.7202/1022409ar

Résumé de l'article

Le choix d'une ligne de conduite repose fondamentalement sur l'analyse de différents systèmes de valeurs. En matière de relations industrielles, il existe un conflit entre les valeurs contradictoires de la négociation collective et de ce qu'on est convenu d'appeler la paix industrielle.
La négociation collective a été interprétée de bien des manières, tant par ceux qui la pratiquent que par ses théoriciens. Il peut être utile de jeter un coup d'oeil rapide sur les théories les plus couramment admises du processus de la négociation.

TROIS THÉORIES DE LA NÉGOCIATION COLLECTIVE

1—La plus simple de ces théories est celle qui considère la convention collective purement et simplement comme UN MARCHÉ. Dans cette optique, le contrat pose les conditions auxquelles le travail sera vendu aux compagnies. Certes, le contrat n'est pas une vente; il ne fait que stipuler les conditions auxquelles les membres du syndicat accepteront de vendre leur travail. Cependant, ceci est sans doute plus un point de droit que de fait. La négociation se termine par une vente aux prix indiqués dans le contrat. Les syndicalistes ont autrefois frayé eux-mêmes la voie à cette interprétation en dénommant ces accords des «liste de prix». L'objet de la négociation collective, par opposition à la négociation individuelle, est d'éliminer les inégalités de forces inhérentes aux relations d'un travailleur isolé avec son employeur.
Selon Selig Perlman, dans sa théorie du mouvement syndicaliste, la négociation collective n'éliminerait pas la rareté des possibilités d'emploi qui est, toujours selon lui, le fait fondamental du syndicalisme, mais elle empêcherait l'employeur d'exploiter la disproportion qui existe entre l'offre de travail et une demande réduite.
La théorie du marché a été extrêmement populaire dans une très grande partie du mouvement ouvrier lui-même, particulièrement parmi les anciens syndicats professionnels; mais elle a aussi trouvé des partisans parmi nombre de penseurs, dont le professeur W.W. Hurt et Henry Simons.
Du point de vue de cette théorie, le droit de grève découle de la liberté du commerce, et toute interférence de l'Etat dans ce domaine devrait entraîner logiquement des restrictions à la vente d'autres produits et services de l'économie. Les partisans d'une économie libérale devraient être normalement conduits à rejeter les restrictions aux droits de grève et de lock-out, de même qu'ils rejetteraient de telles restrictions dans un marché libre d'un produit quelconque.
La théorie du marché est une vue peu satisfaisante de la convention collective. La vente ordinaire est une opération qui est normalement close lorsqu'elle est accomplie. Certes, elle peut être accompagnée d'une garantie qui prolongera l'obligation entre les parties, mais d'une façon limitée et pour une période déterminée. Il est au contraire de l'essence de la convention collective d'établir une relation permanente entre les parties au contrat, relation qui est d'ailleurs très vivante et très animée, du fait de la procédure des réclamations.
2—La théorie dite du GOUVERNEMENT, dont W. Leiserson fut l'un des protagonistes, vient ensuite. Selon lui la convention collective est la constitution d'une communauté industrielle à maints égards comparable à notre communauté politique et sociale plus vaste. Le contrat collectif est la constitution (la charte) de cette «cité». Chaque partie est investie d'un droit de veto, et des organes de gouvernement sont établis dont l'objet est de faire des lois et de les mettre en vigueur. Dans cette communauté, le législatif, ce sont les comités de revendication, l'exécutif, c'est la direction, et le judiciaire, ce sont les arbitres impartiaux ou les comités paritaires employeurs-employés qui règlent les désaccords. On peut même découvrir des idées qui évoquent le concept de souveraineté nationale: les droits exclusifs de négociation, du côté du syndicat majoritaire, et le droit de contrôle sur les éléments d'actif de la compagnie, du côté de la direction. Il y a à la base de cette théorie le concept d'une autonomie industrielle qui serait partagée par les travailleurs et les patrons, et dont l'exercice en commun présente deux aspects. En premier lieu, de même que sur la scène internationale un condominium est exercé par deux puissances souveraines, ces deux autorités autonomes que sont le travail et le patronat ont un contrôle commun de l'entreprise. En second lieu, cette façon de voir implique que les deux parties, exerçant leur autonomie, unissent leurs forces pour tenir à l'écart toute intervention extérieure, et en particulier celle de l'Etat.
Dans cette perspective, le droit de grève ou de lock-out est un attribut indispensable de la souveraineté. Mieux, c'est le moyen essentiel par lequel elle s'exprime, ainsi que le droit de veto, que les deux parties doivent posséder pour mener à bien leur condominium industriel.
3—Une autre théorie, qui a rencontré une faveur croissante parmi les experts, ces dernières années, c'est celle qui considère la convention collective comme étant l'expression de la PARTICIPATION DU SYNDICAT À LA DIRECTION de l'entreprise. La convention collective devient donc une forme d'administration de l'entreprise, une méthode pour prendre les décisions qui la concernent. Le syndicat participe au processus de décision, et ceci, qu'il le souhaite ou non. Il est vrai que le rôle du syndicat dans l'administration de la compagnie va différer suivant l'échelon de l'autorité de décision en question. Aux échelons les plus élevés, le syndicat négocie avant que les décisions soient prises. A des niveaux plus bas, la direction conserve l'initiative, et les syndicats ne peuvent les mettre en question que lorsqu'elles sont déjà prises. Il faut dire aussi qu'en pratique, la plupart des syndicats ont limité leurs préoccupations à une petite portion du domaine des décisions directoriales, c'est-à-dire au domaine des problèmes concernant le personnel. Néanmoins, à l'intérieur de ces limites le syndicat apparaît bien comme un partenaire dans le processus de direction.
Dans cette théorie, le droit de grève est un instrument indispensable dont le syndicat se sert pour renforcer sa revendication d'une participation aux décisions. Alors que les délégués des actionnaires peuvent diriger parce qu'ils représentent des droits de propriété, le syndicat participe à la direction uniquement à cause et dans la mesure de sa faculté de refus de fournir la main-d'oeuvre.

LES VALEURS QUI CORRESPONDENT AUX THÉORIES

Voyons comment s'établit, dans chacune de ces théories la matérialisation de certaines valeurs sociales que la négociation collective est censée représenter.
1—*A la théorie du marché correspond le concept d'équité*. La négociation collective est censée équilibrer la force des parties en présence. On obtient ainsi un résultat qui a des chances d'être plus proche de notre concept de l'équité (*i.e.*, de ce qui est juste), que ne le seraient des décisions unilatérales venant soit de la direction, soit du syndicat. Quelles sont les alternatives à la discussion collective, à la lumière de cette notion? Nous en voyons de trois types.

1. *L'exploitation*: en l'absence de négociation, une partie ou l'autre, et plus probablement le patronat, atteindra une position assez puissante pour lui permettre de fixer les conditions du travail à sa guise.
2. *Le paternalisme* qui peut, ou non, conduire à un arrangement convenable. Il faudra, quant à cela, s'en remettre à ce que le bon père estimera être un accord équitable. Mais la notion d'équité étant malheureusement hautement subjective, il y aura fréquemment des différences d'opinion considérables entre le « père », ses employés, et le reste de la communauté sur ce point. De fait, il est probable que, pour bien des gens, l'équité réside beaucoup plus dans le procédé qui conduit à une décision que dans son contenu. Ceci est vrai, par exemple, de nos instances légales, où la procédure de jugement est, sans contredit, une caractéristique primordiale de ce que nous considérons comme la justice.
3. L'intervention ou le contrôle de l'Etat. Une fois de plus, nous rencontrons cette question de l'équité. N'est-il pas inévitable qu'un gouvernement qui intervient fréquemment ou systématiquement dans le procédé de détermination des salaires et des conditions de travail soit accusé, et ce à tort ou à raison, d'avoir pris parti de l'un des antagonistes? Peut-on attendre de l'intervention de l'Etat qu'elle tombe plus près d'une solution juste et équitable qui soit acceptée par les citoyens en général?

2—Quant à la théorie gouvernementale, et au moins dans une certaine mesure *la théorie de la participation à la direction*, elles *font appel à d'autres valeurs*. Pour elles, la négociation est un procédé qui introduira les valeurs de la *démocratie* dans le monde industriel, qui favorisera la prise de *confiance en soi*, et qui donnera plus de contenu et de *sens au travail*.
Les philosophes de la politique ont établi depuis longtemps qu'il existe une relation relativement étroite entre la démocratie et la décentralisation. S'il est vrai que démocratie signifie que les règles doivent être faites par ceux qu'elles gouverneront, il faut faire établir les règles dans l'industrie par ceux qui auront à vivre avec elles, c'est-à-dire par les employés et les patrons. C'est ceux que cela concerne le plus étroitement qui doivent déterminer leur propre destinée. C'est, dès lors, le degré d'intérêts que l'on a dans une situation donnée qui détermine si l'on doit être inclus ou non dans la préparation des règles qui régiront ladite situation.
L'idée de détermination par soi-même est étroitement apparentée à l'idée précédente. Les démocraties, et particulièrement les démocratie libérales, ont une préférence pour le systèmes de participation volontaire, plutôt que pour des méthodes de contrainte, partout où c'est possible. La démocratie repose sur l'action des individus ou des groupes, plutôt que sur la coercition par la loi. Elle rejette le paternalisme, même s'il est équitable, en faveur de la décision autonome par les groupes, et ceci même si le résultat est, comme l'ont noté certains observateurs, parfois moins juste.
Finalement, il y a la tendance à rendre plus de sens au travail par le système de négociation collective. La division du travail, la mécanisation, et les progrès de l'automation enlèvent toute signification au processus du travail industriel moderne, pour le participant individuel. L'ouvrier spécialisé, qui constitue la catégorie prépondérante dans l'industrie moderne, n'est guère qu'un robot devant sa machine. Certains penseurs sociaux ont rêvé le retour à une société artisanale, où le travailleur individuel, qui a réalisé un travail, peut dire que c'est là son oeuvre propre, et en faire une expression de sa personnalité. Dans le monde entier, il y a une tendance vers toujours plus d'industrialisation et vers une mécanisation toujours plus poussée, car ce sont là les conditions nécessaires de l'abondance. Que faire, dès lors, pour donner au travailleur un sentiment de participation à sa vie professionnelle? Le retour à l'artisanat médiéval étant exclu, la négociation collective apparaît comme un moyen possible. L'ouvrier pourrait ainsi au moins avoir son mot à dire, en ce qui concerne son salaire et les conditions de son travail.
Pour réaliser toutes ces valeurs, notre accent essentiel doit dès lors être placé sur la liberté de négociation collective. Toute entorse à ce principe doit être interdite, ou au moins exceptionnelle, car elle viole ces valeurs que nous venons de discuter. Mais personne n'a encore découvert un moyen de conserver une libre négociation collective tout en éliminant les grèves, car sans elles, on aurait peu de résultats effectifs.

PROPOSITIONS FONDAMENTALES

1—Une grève n'est pas forcément l'indication d'un manque de santé dans les relations industrielles. Il y a toute sorte de grèves, de la grève-éclair au conflit normal correspondant à une divergence d'intérêts. Et s'il est vrai que certains de ces types de grève sont plus discutables que d'autres; il nous faut cependant apprendre à considérer le grève comme une simple étape du processus de négociation, dont elle fait partie intégrante.
2—Le conflit industriel a bien d'autres formes d'expression que la grève. L'anxiété et la tension chez l'individu, l'absentéisme, les retards, les ralentissements de production, le sabotage et un taux de renouvellement du personnel anormalement élevé sont quelques-unes des formes possibles d'expression du conflit industriel. L'avantage semble douteux si, pour supprimer une de ces formes, on doit aggraver les autres.
3—Toute l'expérience des nations industrielles modernes semble indiquer qu'avec le développement de systèmes de négociation collective d'une plus grande maturité, la fréquence des grèves tend à diminuer. Mais ceci n'arrive que si la négociation collective peut mûrir, c'est-à-dire si les deux parties peuvent discuter sans crainte d'une intervention systématique de l'extérieur.

LÉGITIMITÉ DE L'INTERVENTION DE L'ÉTAT DANS DE RARES CAS

S'il est vrai qu'en démocratie les règles doivent être faites par ceux que cela concerne le plus directement, il est indéniable que dans certains cas, le public peut avoir aussi son mot à dire au sujet d'un conflit industriel. Et s'il est vrai que la suppression d'une forme de conflit industriel en intensifie d'autres, il faut encore admettre que du point de vue du public, certaines formes de ce conflit sont préférables à d'autres. En d'autres termes, certaines grèves affectent le public dans une mesure que l'on ne saurait négliger. Il ne peut bien que le public préfère à une grève importante la guerre des nerfs entre patrons et ouvriers, au sein de l'entreprise. Mais il est bien évident que ces cas doivent demeurer exceptionnels, si nous désirons préserver les valeurs démocratiques, c'est-à-dire un système de négociation collective libre. L'intervention extérieure dans le processus de négociation doit être l'exception qui nécessite justification chaque fois qu'elle se produit. Si elle est régulière et fréquente, cela créera un état d'attente de l'intervention. Le résultat sera que, si l'une des parties espère tirer un bénéfice de l'intervention extérieure, elle ne s'engagera pas dans la négociation normale.
Un examen plus attentif révèle que bien peu de conflits économiques dans une société moderne sont de nature à justifier une intervention étatique. Certes, beaucoup de grèves gênent le public et nuisent au pays; mais s'il fallait chaque fois faire intervenir l'Etat, nous aurions abolî le libre système des conventions collectives.
En effet, une grève qui ne gêne personne a peu de chances de réussir. Et s'il n'espère pas affecter le fonctionnement d'une ou plusieurs entreprises, et par là même, le bien-être public, aucun syndicat n'entreprendra une grève. Il nous faut donc accepter ces quelques atteintes à notre bien-être comme étant le prix à payer pour de libres négociations collectives. Ce n'est que dans le petit nombre de cas où nous rencontrons plus qu'une gêne passagère, et où la santé et la sécurité du public sont en danger, plutôt que son seul bien-être, que des limitations extérieures à cette liberté semblent se justifier.
Autrement dit, un système démocratique doit choisir ces valeurs de décentralisation, détermination par soi-même et participation des travailleurs à la direction de leurs propres vies, du moins tant que la situation est normale. Et ceux qui désireraient limiter ces droits démocratiques auront la charge de la preuve. Pour exprimer le problème différemment, la paix industrielle est un objectif souhaitable, mais est-ce le plus souhaitable? Elle peut être obtenue au prix de la collusion employeurs-employés contre le public. Ce n'est pas le genre de paix que la plupart souhaiteraient. La paix industrielle peut aussi être obtenue par la suppression du conflit. C'est un système essentiellement autoritaire; c'est la paix du tombeau. Si une telle paix est le bien le plus souhaitable, ce sont les systèmes sociaux de l'Allemagne nazie et de l'Union Soviétique qui semblent les plus proches d'un tel idéal.

State Intervention in the Settlement of Interests Conflicts

Adolf Sturmthal

The Author first describes the « contradictory values » which surround collective bargaining and industrial peace, going through a brief analysis of various industrial relations theories: those of Market, Government *and* Union Participation in Management. *He then goes on to distinguish between various manifestations of industrial conflicts—one of which being the strike, which is not necessarily a symptom of « unhealthy » industrial relations. The Author states that government intervention in conflicts of interests must be the exception and must have their justification in each case. He founds his thesis on the on-the-spot study of numerous data collected from the United States, Great Britain, France, Germany and, Sweden.*

Any discussion of policy is fundamentally an investigation of systems of values. It is only in exceptional cases that we can find issues on which a simple set of values produces a decision. In most cases what we are confonted with is a conflict of values. It is the fundamental task of the policy maker, his expert adviser, and — in a democratic society — of the intelligent citizen to make a choice among conflicting values. Our first task, therefore, is to establish what the values are that are involved in a system of collective bargaining, then to contrast these values with those involved in what may be called industrial peace and on that basis to come to some conclusion as to a choice or choices and various sets of circumstances under which we make these different choices.

Three Theories of Collective Bargaining

Collective bargaining has been interpreted in many different ways both by its practitioners and its theoreticians. We

STURMTHAL, ADOLF, Ph.D. (Economics), professor of Industrial Relations at Columbia University; lecturer in International Trade Unionism at Roosevelt College; author of many books on trade unions and collective bargaining at the international level.

shall not aim at being complete in a field in which there are widely disparate opinions, but it may be useful to look rapidly at the most outstanding, that means most widely accepted theories of the bargaining process.

THE MARKETING THEORY

The simplest of these theories is the one that may be described as the marketing theory. It regards the collective agreement simply as a deal. The terms of the agreement set the conditions under which labor will be sold to the firm or firms. True, the collective agreement itself does not sell anything but merely stipulates the conditions under which the union members will be willing to sell their labor. Yet, this is perhaps more of a legal than a real qualification. The bargaining process ends in a sale at prices set in the agreement. Unionists themselves have paved the way for this interpretation by calling their early agreements frequently « price lists ». The purpose of collective bargaining as opposed to individual bargaining is to eliminate the inequality of bargaining power inherent in the dealings of an individual worker with his employer. In the terms of the theory of the labor movement which Selig Perlman has formulated, collective bargaining would not eliminate the scarcity of job opportunities which in his view is the fundamental fact of trade unionism but it may prevent the employer from taking advantage of the disproportion between the supply of labor and the restricted demand for it.

This theory has been exceedingly popular with large segments of the labor movement itself, particularly of the older craft unions, but it has also found support among a number of academic persons such as Professor W. W. Hutt or Henry Simons.

From the angle of this theory the right to strike is derived from the freedom of sale and any governmental interference with the right to strike would have its counterpart in government restrictions on the sale of other commodities and services in the economy. Those who believe in the free market economy should be logically led to reject the restrictions on the freedom to strike or to « look out », to the same extent to which they would reject similar restrictions on the free market.

I shall not conceal that I do not regard the marketing theory as a very satisfactory way of looking at the collective agreement. The ordinary sale is a process which terminates when the sale is completed. Quite possibly the sale may be accompanied by some type of guarantee which may extend the relationship between the marketing partners in a limited way for some time. However, it is the essence of the collective agreement that it establishes a permanent relationship between the partners to the contract and one which is very much alive and animated by the grievance procedure. For these reasons other interpretations of the collective agreement seem more meaningful.

THE GOVERNMENTAL THEORY

There is in the first place the governmental theory of which the late Professor William Leiserson has been one of the most articulate advocates. From that point of view the collective agreement is the constitution of an industrial community comparable in many ways to our larger political and social community. While the agreement is the constitution of this polity with veto power for each side, it sets up at the same time organs of government prepared to make laws as well as means for their enforcement. In this community the legislature is represented by the grievance committees, the executive by management and the judiciary power by the impartial umpires or the joint labor-management committees that arbitrate disputes. Ideas similar to national sovereignty can be discovered on both sides: the exclusive bargaining rights of the majority union on one hand, the right to control property by management, on the other hand. There is at the bottom of this theory a concept of jointly shared industrial autonomy of labor and management. This joint exercise of industrial autonomy has two aspects. In the first place, it implies that just like a condominion on the international scene is exercised by two sovereign powers the two sovereign authorities of labor and managmeent have joined control over the enterprise within the framework of the constitution they have jointly elaborated. This approach also implies, in the second place, that the two parties exercising their autonomy combine their strength in order to keep out outsiders, in particular, intervention of the government.

From the angle of this approach, the right to strike or to lock out is an indispensible part of sovereignty. Indeed, it is the primary means

by which industrial sovereignty is expressed and that veto power is exercised, which both sides must have in order to carry on their industrial condominion.

THE UNION-PARTICIPATION-IN-MANAGEMENT THEORY

One more theory should be mentioned because it has found increasing favor among the experts in the last few years. This approach regards the collective agreement as the expression of union participation in management. Collective bargaining then is a form of management, a method of making business decisions. The union plays a part in this decision-making process and does so whether it wishes or not. (It is perhaps proper to point out that in large parts of North America the unions do not wish to participate openly in management). It is true that the unions' role in management is different according to the levels of authority in management which we are considering. At the highest managerial levels, the union engages in bargaining prior to decision making. At the lower levels, management has the initiative and unions are limited to challenging managerial decisions after they have been taken. It is also true that in practice most unions have limited their concern to a small part of the entire decision making area in business, in particular, to personnel management. Nevertheless, within these limits and with these qualifications, the union appears as a partner within the managerial process.

In this theory the right to strike is an indispensable tool with which the union enforces its claim to participation in management. While the representatives of the stockholders can manage because they represent property rights, the union can share in management only because and to the extent to which it can withold labor.

Corresponding Values

Now, regardless of which of these theories we accept — assuming that we have to make a choice among them and that we cannot simply regard them as interpretations of different situations — we can find in these approaches the rationalization of certain social values which collective bargaining is supposed to represent. What are some of these values? The following order does not represent a sequence of importance but is rather related to the sequence of the theories that

have just been exprounded. To the marketing theory corresponds the concept of FAIRNESS. Collective bargaining is supposed to equalize bargaining power on both sides and thus to produce a result which is likely to be accepted as closer to our concept of fairness than one-sided decision by either management or the union. What are the alternatives to the collective bargaining process in the light of this value? They may be classified in three groups.

1— *Exploitation.* In the absence of collective bargaining one or the other side, more probably management, will obtain a position of power which would enable it to set the terms of work according to its own liking.

2— *Paternalism.* This may or may not produce a fair arrangement. We shall depend upon what the good father believes a fair arrangement should be. Since unfortunately the concept of fairness is highly subjective, we must expect that quite frequently there will be considerable differences of opinion between the "father", the employees, and the rest of society on this issue. Indeed, it is very likely that for many people fairness is described much more properly by the process by which the decision was arrived at, rather than by the content of the decision. This is true, for instance, in our legal processes in which the procedure by which a decision is arrived at is to say the least an indispensable characteristic of what we regard as justice. There are other objections which we may have to paternalism, but from the point of view of the marketing theory those that we have stated right now are probably decisive.

3— *State intervention or state control.* Once again we are confronted with the question of fairness. Is it not inevitable that a government which intervenes systematically or frequently in the process by which wages or working conditions are determined will be accused, rightly or wrongly, of having sided with one party against the other? Can we expect that government intervention will come closer to the fair and just arrangement than the bargaining process of the two partners?

The governmental theory of collective bargaining and at least to some extent the managerial theory postulate different values. For them collective bargaining is a device which will introduce the values of DEMOCRACY into the industrial process, foster SELF-RELIANCE and make WORK MORE MEANINGFUL. About each of these three I should like to make a few remarks.

Political philosophers have long established that there is a fairly close connection between democracy and decentralization. If democracy means that the rules of the government are to be made by those who are to be governed by them, then it would follow that the rules of industrial government are to be established by those — management and employees — who will have to live under them. Those most intimately concerned determine their own fate. The degree of involvement in a problem or a situation then determines whether or not one is to be included in the making of the rules governing that problem or that situation.

Closely related to that idea is that of self-reliance. Democracies, particularly liberal democracies, show a preference for the operation of voluntary agencies rather than for methods of compulsion wherever possible. Democracy relies upon individual or group action wherever possible rather than upon action imposed by law. It rejects paternalism, even if it were fair, in favor of the self-determination for autonomous groups, even if the result sometimes would be regarded as less fair by many observers. Finally, there is the attempt to make work more meaningful by the process of collective bargaining. The division of labor in modern industry, the process of mechanization, and the impending advance of automation make the industrial work process meaningless to the individual participant. The semi-skilled worker who has become the predominant type in modern industry is merely a machine tender. Some social philosophers have dreamed of a return to a society of artisans and handicrafts in which the individual worker who has completed a piece of work can point at it and say that this is his own achievement, an expression of his personality. Very few people, however, believe that the dreams of William Morris will ever be achieved. All throughout the world there is a movement asking for more and more industry, better and better mechanization because these are regarded as indispensable conditions for abundance. What can be done under these circumstances to give the worker some participation in his professional life? If the return to the medieval craft is excluded, then collective bargaining appears as one possible device by which the worker may have at least some say in those matters which relate to his wages and his working conditions. (It is incidentally for this reason that union democracy is such a desirable institution, because only if the worker effectively participates in the life of his union does it serve as a device to influence his working life).

If these values are to be achieved, then our primary emphasis must be on the freedom of collective bargaining. Any departure from such freedom, because it would violate the values which we have just discussed, needs to be defended and surely would have to be exceptional. But, no one has yet discovered a way to preserve free collective bargaining while eliminating strikes. Without the possibility of strikes effective collective bargaining is hard to conceive. In the words of a recent report to the U.S. Senate:

> Under collective bargaining, disagreements of the parties which appear to be final are tested by work stoppages before the parties are willing to make further compromises and adjustments in order to settle the dispute.... Since the product or the service which is the end result of the enterprise is needed by its customers, many will be inconvenienced or will suffer losses or hardship when the supplies or services are cut off. This is a price paid for the function of the joint determination of the terms and conditions of employment by the parties most at interest.... That there could be such stoppage of production is the risk of every effort at collective bargaining... It is the known cost of a strike to the parties which generally results in the avoidance of the stoppage by acceptable compromises. Even when a strike occurs, its cost to the parties remains the most effective deterrent against its prolongation. [1]

Fundamental Propositions

I suggest therefore that we accept the following propositions:

1.—A strike is not necessarily a sign of unhealthy industrial relations. There are all kinds of strikes running from the « quickie » to the normal conflict involving a dispute of interests. While some of these types are more objectionable than others, we must learn to regard strikes as merely a stage in the process of negotiations, an integral part of the collective bargaining.

2.—Industrial conflict has many other forms of expression in addition to the strike: anxiety and tension in individuals, absenteeism, tardiness, slow-downs, carelessness, sabotage and abnormally high labor turnover are only some of the alternative

(1) *Emergency Dispute Settlement*, staff report to the U.S. Senate Subcommittee on Labor and Labor-Management Relations, 1952, p. 3.

forms in which industrial conflict may express itself. It may be a dubious advantage to suppress one form of expressing industrial conflict only at the price of having other forms aggravated and extended.

3.—Indeed, a strike may be a very wholesome expression of conflict preferable in many cases to long-run internal tensions. By preferable, I mean preferable from the point of view of management, labor and the public. Acts of sabotage or long drawn out slow-downs, frequent acts of carelessness may prove much more costly from the point of view of the public and of the firm than a strike. In addition, they may leave behind unsettled problems which may call forth further acts of industrial warfare from time to time. It is true, of course, that strikes too may leave behind a heritage of conflict and tension but in our context, the modest point we want to make is that there is no particular reason to single out the strike while leaving untouched the other forms of industrial conflict, and that quite frequently to suppress the strike merely means to transfer the tension from one form of expression to another.

4.—All experience that we have from modern industrial nations seem to indicate that with the development of more mature collective bargaining relations strike frequency tends to diminish. But this happens only as collective bargaining is permitted to mature, which means that the two parties are permitted to engage in bargaining without fear of systematic interference from the outside.

Legitimacy of State Intervention: When?

Having examined rather rapidly the values upon which a free collective bargaining system is based, let us now examine equally briefly the values upon which limitations on such a system may be built. If it is true that in a democracy rules should be made by those most directly concerned, then it cannot be denied that in some cases and under some conditions the public may also be concerned in the development of industrial warfare. If it is true that suppressing one form of industrial conflict is likely to intensify other forms, then it must still be admitted that from the point of view of the public, some forms of industrial warfare are preferable to others. In other words, some strikes may affect the public interest to an extent which cannot be disregarded and the public may prefer the growth of neurosis among some of the management people or some of the employees to a major strike. But it is quite obvious that these cases must be regarded as exceptional if we wish to preserve the democratic values of self-

reliance and of decentralization; in other words if we want to preserve a system of free collective bargaining. Intervention from the outside in the collective bargaining process must be the exceptional case which needs justification whenever it occurs because regular and frequent intervention will set up an expectation of such intervention with the result that one of the two parties hoping to gain from ouside interference will fail to engage in simple collective bargaining.

Closer examination tends to show that very few economic conflicts in a modern society are of a nature to warrant government intervention. It is true that many strikes inconvenience the public and affect public welfare; but if any strike that inconveniences the public or affects public welfare were to be the object of government interventoin we would have abolished the free collective bargaining system. For a strike which does not hurt anyone is unlikely to be won. Unless the union can expect that its strike will affect the functioning of one or several enterprises and thereby to some extent public welfare the union is unlikely to undertake the strike. We must accept some inconvenience and some harm to public welfare as the price which we shall have to pay for free collective bargaining. It is only in the few cases in which we are confronted with more than inconvenience and with danger to public health and safety rather than to welfare alone that outside limitations on the freedom on collective bargaining would seem justified.

In other words, a democratic system would seem to me to choose the values of decentralization, self determination and workers' participation in some aspects of management, at least for all normal situations. The burden of the proof must lie with those who wish to limit these democratic rights. Expressed in different terms, industrial peace is a desirable objective, but is it the most desirable objective? Industrial peace may be bought at the price of joint labor-management collusion against the public. This, I suspect, is not the kind of peace that most of us would desire. Industrial peace may be obtained by the suppression of conflict. This is essentially an authoritarian system; it is the peace of the graveyard. If industrial peace were to be the highest criterion then I suggest that the social systems of Nazi Germany and of the Soviet Union would seem to come closest to this ideal.

Indeed, it may be useful if you bear with me to look at this issue in the light of international experience.

International Experience

The advantages that we may derive from international experience must be seen in proper perspective. Solutions of industrial relations problems are not comparable to technical gadgets or gimmicks which operate the same way in all parts of the universe. There is, as the cultural anthropologists have taught us, an individuality about cultures which does not permit the easy application of one country's experience to other countries. International experience contains usually two elements: first, one which within limits may be expected to have reasonably general validity because it relates to some basic similarities in at least the Western world; and another very substantial element which is related to the personality of a given culture. To separate that part of the experience which is very substantially determined by the institutional, cultural, historical, individuality of an area from the elements of more general validity, is one of the most difficult assignments in comparative research in the social sciences. Without entering into the manifold problems of methodology let me just point out that we might regard it as a result of some considerable significance if we were to find similar experiences in a number of countries of western civilization. Such similarity in four or five countries would not yet be sufficient to justify the belief that we have discovered a basic social law: but at least we might be entitled to believe that there is a presumption of commonbehavior patterns and some justification for hesitation if we wanted to go counter to such common experiences. In that light, I would like to discuss very rapidly the experience of four or five countries, namely the United States, Great Britain, France, Germany and Sweden, in the field of government intervention in industrial conflicts.

THE UNITED STATES

The American experience is probably the best known and has been repeatedly referred to in these proceedings. I can, therefore, be exceedingly brief. In principle, the United States government offers merely conciliation and mediation facilities available if both parties agree on their use. In addition, there are some cases in which unions and management agree to voluntary arbitration, usually by a private agency, in the case of conflicts on new contracts. Only about 2% of our wage changes are the result of such voluntary arbitration. Beyond this there is the mechanism set up by the emergency provi-

sions of the Taft-Hartley Act. Briefly stated this law provides for a waiting or cooling-off period plus the possibility — but by no means probability or certainty — of some action by Congress, if at the end of that waiting period no agreement has been established. The government or the presidential boards of inquiry do not propose solutions to the conflict. Somewhat similar provisions exist for the railways. Let me merely add that the record of the use of this part of the Taft-Hartley Act shows in the first place that the emergency provisions have been used sparingly and that in the judgement of most experts they have not functioned too well. The most widespread criticism is that the formalization of government intervention has tended to weaken the self-reliance of the parties to the dispute and that the cooling-off period has only rarely been used for effective collective bargaining. In any case, it should be established that government intervention in the United States is regarded as an exceptional procedure to be used only in extreme emergencies when national health or safety are endangered by a strike in all or most of an entire industry.

GREAT BRITAIN

The British experience is of considerable interest. The fundamental division there is not between disputes on a new agreement and those relating to the interpretation of an existing agreement as is the case in the U.S., but rather between national and local conflicts. To some extent the latter may relate to disputes over the interpretation of agreements, and the first to disputes over the conclusion of an agreement. But this coincidence is far from being perfect. In any case, there is far greater readiness in Britain to resort to arbitration in national than in local disputes. Such arbitration is mostly of a private nature.

The main experience with government-sponsored arbitration was represented by the "Conditions of Employment and National Arbitration Order, 1940," familiarly known as Order 1305. To meet the wartime need "of preventing work being interrupted by trade disputes", Order 1305 superimposed a general system of compulsory arbitration on the various voluntary provisions for the settlement of disputes. Strikes and lockouts in connection with trade disputes were prohibited with the one proviso that they were legal if the Minister of Labour, having had the dispute reported to him, failed to take

action to secure a settlement within three weeks. The Order also established, as a final authority for the settlement of disputes, a National Arbitration Tribunal, normally consisting for the purposes of a particular case, of three appointed members (including the chairman) and two representative members, one each from the trade unions' and employers' panels. The Tribunal was not intended to displace or weaken the accepted practices of collective bargaining or voluntary arbitration. Under the Order the Minister was obliged to see that any existing joint machinery suitable for settling the dispute was used before a case was referred to the Tribunal. In sharp contrast to the experiment with compulsory arbitration during the First World War, the general working of Order 1305 was sufficiently smooth and acceptable both to employers and trade unions for the central organizations on both sides to favor its continued operation for six years after the ending of hostilities. All the same the general prohibition of strikes and lockouts which it contained could not be indefinitely maintained when the nation was no longer at war. The issue was brought to a head by the prosecution of strikers to enforce this prohibition in 1950. This led to an overwhelming trade union demand for the repeal of Order 1305, and from August 1951 it was replaced by a new Industrial Disputes Order (No. 1376) after its terms had been agreed by the British Employers' Confederation, representatives of the Nationalized industries, and the TUC General Council.

The penal prohibition of strikes and lockouts was abolished, but limited provisions for compulsory arbitration were retained. The Industrial Disputes Tribunal, which has taken the place of the National Arbitration Tribunal — though similarly constituted — considers "disputes" end "issues" referred to it by the Minister of Labour, and its awards become an implied term of contract between the employer and the workers to whom an award applies. The definition of a "dispute" given in Order 1376 is narrower than that given to a "trade dispute" in its predecessor and excludes the Tribunal from considering disputes concerned with the employment or nonemployment of any person or the obligation of a worker to belong to a trade union. The new term "issue" is used for a dispute as to whether a particular employer should observe "recognized terms and conditions of employment" in the district.

The other provisions of Order 1376 have been designed "to strengthen the authority of existing voluntary systems of negotiations and

arbitration and to uphold the sanctity of agreements and awards." The wartime experience with arbitration encouraged an increasing acceptance of its use in the last resort under the terms of voluntary agreements. In all the nationalized industries, with the exception of the railways, there is a binding commitment to this effect. The Experience with Wages Boards will be referred to briefly below.

The encouragement of voluntary arbitration thus remains the main objective of the British System of industrial relations. Compulsory arbitration and government intervention are only subsidiary; the main principle has been stated as follows: The order of preference is very clearly established throughout the voluntary system and is the basis of all labor legislation since 1896 as well as the daily practice of the Ministry of Labour: direct negociation is better than mediation, and mediation is better than arbitration.

FRANCE

In this milieu, it may be of particular interest to relate the French experience in the area that we are concerned with. When under the Popular Front Regime in 1936, collective bargaining was forced upon recalcitrant management for the first time to any substantial extent, this was followed shortly afterwards by a system of compulsory arbitration. Without this the unions would not believe that they could in fact enforce the new law. The attempt to revive this system in 1950 when France returned again to collective bargaining after the war and the war created emergency was however utterly unsuccessful. A clause which would have provided for compuslory arbitration in interest disputes met with the opposition of both employers and unions, and failed. Even an amendment for arbitration in disputes which "endanger the functioning of services and activities essential to the life of the nation" was rejected by the Assembly. What is left, therefore, is voluntary arbitration alone and even that is used only to a very small extent. There is on the other hand a law providing for compulsory conciliation. The two parties are compelled under the law to submit their disputes to conciliation prior to their own action; in other words prior to calling a strike or a lock out. But this compulsion exists in words only, not in fact. The legislature neglected — quite intentionally — to provide for any sanctions against the party or parties which fail to comply with the law.

In fact, therefore, both arbitration and conciliation are purely voluntary.

There are other forms in which the government intervenes in the collective bargaining process such as the calling of the mixed commissions to negotiate the agreement, the setting of minimum wages as well as certain clauses about what can and what cannot be in agreements. But, as for the settlement of interest disputes France seems to have turned its back upon government intervention.

WEST GERMANY

This very same story could be told about West Germany as well. The Weimar Republic permitted a considerable degree of government intervention in the determination of contracts. Government-appointed arbitrators had the authority to settle conflicts and then awards were given the power of law. At a later stage, in the final years of the Republic, the Brüning government changed by way of decree the existing labor contracts in order to reduce wage rates. Some observers have felt that these processes greatly weakened the democratic system in Germany by making the government responsible for the outcome of social conflicts which elsewhere were left to the parties to settle. In any case, the system of compulsory arbitration in the German Republic seems to have made the transition easy into the Nazi system which prohibited all strikes, provided for government appointed trustees of labor to decide conflicts and maintained almost perfect surface industrial peace.

The new regulations now enforced in the West German Republic exclude the government altogether from the process of contract determination unless the parties agree on government mediation or voluntary government arbitration. Disputes on the interpretation of agreements are handled by the so-called labor courts. There has been some discussion recently about compulsory conciliation. Some management representatives have called for changes in legislation which would create a compulsory conciliation process. No action has occurred so far and the attitude of the unions and of a considerable part of public opinion would seem to indicate that considerably more time for discussion will be required before action, if any, can be taken.

SWEDEN

Last but not least, I would like also to refer to Sweden, because it has often been described as one of the countries most successful in handling its industrial relations problems. Briefly summarized, the Swedish system provides for labor courts to handle disputes on existing agreements and lately also, on disputes about union recognition. There is a conciliation service available if both sides wish to make use of it. It contains no element of compulsion and both sides are free to act on their own after a 7-day notice.

We have briefly surveyed the existing institutions for the settlement of interest disputes in five major western countries, namely the United States, Britain, Germany, France and Sweden. The generalization may be permitted that in none of them does the government regularly intervene in the settlement of interest disputes, that in most of them it has no power to intervene even in major emergencies and that its regular function consists in providing facilities for mediation and conciliation if both parties are interested in availing themselves of these services. Quite clearly this does not mean that some other countries could not fare better under a different system but it is perhaps permitted to point out that international experience would raise some doubts as to the usefulness of such government intervention.

Are There Objective Standards?

What is more — such a survey indicates what the basic philosophic problem of all alternatives to free collective bargaining is — namely, the absence of objective standards for the settlement of interest conflicts and the resulting danger of authoritarianism.

Let us take the example of the Fair Labor Standards Act in the U.S. or of the British Wages Councils or Wages Boards — the cases most favorable to the thesis of those favoring the settlement of disputes by a third party. What are the standards to be used in setting the wage (or determining proper working conditions, etc.)? Some inferences may perhaps be drawn from the intentions of the law-makers. Thus, in the case of the British boards, two ideas emerge from the text of the law and the parliamentary discussions — namely, first, the intention to raise the "unreasonably low" wages in the industries concerned,

namely those in which workers' organizations are too weak for effective collective bargaining, and second, the objective of reaching those wage levels which might have been attained had there been effective collective bargaining in the industry.

This may sound better than it is: (1) An attempt to estimate what collective bargaining might have produced is not more than a guess as to what the power relationships between the bargaining parties would be if the workers' side were better — how much better? — organized. The result of such a guess may differ considerably from what "justice" might prescribe. (2) The determination of what is an "unreasonably" low wage requires some notion of what is a reasonably low wage. What are the criteria? The required calories for physical survival? The essentials of contemporary standards of decency and comfort? For which kind of a family — how many children? Which living costs shall one take into account — those of metropolitan areas, of small towns, of villages?

This is the relatively easier case: we are dealing with minimum wages. Their determination is assumed to be less arbitrary than that of other wage levels. Yet in every case, there have been sharp debates and disagreements. The setting of the "minimum vital" in France has been described in the following terms: "Each meeting of the Commission has been the scene of intense wrangling among the representatives of employees, of wage earners, peasant leaders and representatives of the associations of large families, each with index figures in their hands, established on different foundations and justifying exactly opposite policies".

Beyond the minimum wage level and in the absence of clear instructions, the arbitrating agency must rely on the wits of its members. One may be tempted to speak of a "common law" of wage arbitration — for brevity's sake we use the term "wage" to cover all the issues that may come before arbitration in industrial relations — in so far as the arbitrators will express the prevailing ideas of their time and place in their awards, just as the judge does in applying the common law. Yet there is a fundamental difference: there is no case law in wage arbitration, nor is there any intention anywhere to establish it. "Precedent", as Barbara Wootton says, "in any formally binding sense has no place in wage awards". Moreover, arbitration agencies only rarely state explicit reasons for their awards.

Which principles are to be used by the arbitrator? Shall he be concerned with settling the dispute in such a way as to avoid a strike or is some concept of justice to be his guiding star? H.A. Turner, in a thorough study of arbitration in England, says that in fact "the concern of arbitrators... is to make the decision which is least likely to provoke resistance by either side. In effect, this means that arbitration awards — like ordinary collective agreements — will be most favorable to workers when the unions generally are strong and determined, and to employees when they are strongest. Arbitration awards reflect, on the whole, the industrial situation, with the personal prejudice of arbitrators". This may or may not be a fair description of what arbitrators do, but in any case it would seem to be a highly improper procedure for a government agency: Not only do arbitrators try to perform their functions in a setting and with methods that resemble judicial proceedings; but a government agency in particular is expected to perform according to standards of justice rather than according to the power relationship among the applicants before the agency. Their reasoning ordinarily is not in terms of their power, but rather of ethical principles. The unions will refer to wage advances in what they describe as similar industries or similar occupations in the same or a neighboring area, or they will emphasize the rise, of the cost of living; management speaks of the public interest that would be endangered by giving in to the union demands. It would be ill-fitting if the government were to reply that it was not concerned with the justice of the arguments, but simply with the power of the two sides in an issue which public opinion is inclined to judge on ethical grounds. Clearly, however, the more the avoidance of strikes is to be the primary aims of arbitration, the more closely must the award correspond to power, regardless of the justice of the cause of either side. Peace at any price then becomes the main objective of arbitration, but can that be an acceptable standard for the government-guardian of impartiality and justice?

Obviously, however, we are even worse off when we turn to the argument of justice. Not only are the concepts of what justice implies different from person to person and social group to social group — they may also clash with the requirements of the economic system. Let us take two examples: cost of living, and comparisons with other groups.

Changes in the cost of living are among the most widely used arguments in favor of changes in wage rates and earnings. Expres-

sed differently, real wages must be kept constant. Why this should be so is rarely explained, nor does the public apparently expect any such explanation. This is usually regarded as a moral argument whose justice is hardly questioned. In fact, it seems to have little foundation. If the national income shrinks, why should wages be excepted from this decrease so that the entire burden of the loss falls on other social groups?

When the national income rises, why should the wage earner be prevented from sharing in this gain? How — if real wages are to remain constant — are workers to be directed from one company to another, one industry to another, one occupation to another? Why should there be no change ever in the wage structure, *i.e.*, the relationship of wages among themselves? Must those who are at the bottom of the wage scale stay there forever while those who have privileges will be permitted to enjoy them in all eternity?

No less dubious is the comparison with other industries or other occupations in the area, common as the argument is in collective bargaining as well as in arbitration proceedings. This argument is regarded as so forceful that Professor Arthur Ross has spoken of "orbits of coercive comparison". This comes under the general heading of the "theory of reference groups" which modern sociology has developed: why is group A comparing itself with B rather than group C, etc.? This, however, is a problem for social science, not of social justice. No standards are known upon which such comparisons could be based without opposing standards being formulated by the other side. Indeed by following the history of bargaining or arbitration of a particular industry or union over a period of time, it would be possible in many cases to show that comparisons that were proposed by one side, are repudiated by the same side on another occasion, only to be taken up by the other group which previously rejected that very same comparison. Nor has it ever been made clear why wage relationships, once established, have to be maintained for ever after — regardless of the economic fate of the industries or occupations concerned, changes in job content, in educational levels in the community, etc.

It could be argued that those very same inconsistencies appear in collective bargaining. This is true, but of relatively little significance. For collective bargaining does not claim to set standards of justice.

A private arbitrator may be accused or found guilty of a miscarriage of justice — that may affect his personal or professional standing —, but it would not involve the political or social system under which we live. Government settlements, however, are of such a nature. They must meet standards of justice while at the same time permitting the unhampered functioning of our economic and social system (or of an improved version of that system).

But our society has few universally accepted standards of justice unless we employ vague and ambiguous terms that are of no help in solving actual problems, of the kind that are in special favor in political speeches. Inevitably, thus, government is induced to set up its own standards and to impose them upon the partners to the government-sponsored arbitration process and upon public opinion. This, I submit, is an authoritarian procedure. There may be extreme emergencies justifying such intervention — but they are likely to be rare, far rarer than an impatient and aroused public opinion may believe. It is, I believe, advisable for the government to resist the pressures of public opinion as far as possible and, in any case, justify intervention by demonstrating the extreme character of the emergency.

Conclusion

In conclusion, let me quote the lesson that Matthew Kelly has drawn from Nazi experience in this field:

> The strike, lockout, and other outward manifestations of industrial unrest may be suppressed. But industrial strife will take other forms unless a sense of mutual respect and responsibility can be developed. The notion in the National Socialist ideology that there is a common interest which can overcome labor and management differences has merit. But so long as the dignity of human labor was not maintained and the leadership principle rather than equality was sought, it was inevitable that industrial peace would have to be maintained by the sword. Even then, while strikes and other major forms of industrial conflict were ruthlessly suppressed by the National Socialists, they had a continuing and increasingly serious problem of deterioration in the quality of output and supervision. Even from a pragmatic point of view it cannot be conceded that Nazi labor and economic policy was more successful and efficient than that of democratic capitalism.
>
> Fascism has been on the decline since the defeat of its major proponents and practitioners in World War II. But it is disturbing to note that the state control of industrial conflict, on the other hand, has been on the rise. The stringency with which labor-management relations today are controlled the world over gives cause for real concern. The parallel between fascist methods of controlling labor and those practiced by Soviet Russia and the communist satellite countries is well known. But of even greater concern is the extent state control over labor relations has become the accepted policy in countries uniformly expousing individual freedom. That the state is obliged to enact « rules

> of the game » in the protection of its citizency against the excesses of strong labor organizations, powerful management groups, or bilateral monopoly, as the case may be, is self-evident. The danger, however, is that such a goal will be deemed insufficient and industrial peace will be sought at all costs. Extreme care must be taken to avoid giving succor to the very infringements of individual freedom and liberty we fought so hard to stamp out when practiced under a different name. Where industrial peace is obtained through stringent regimentation or elimination of labor's freedom to organize, through state control of wages, hours, and working conditions generally, and through compulsory arbitration, the price is prohibitive. It is perhaps well to review the Nazi experiment in its entirety from time to time, since for most of us it will serve to reinforce our rejection of the autocratic approach to the industrial-relations problem. [2]

L'intervention de l'Etat dans le règlement des conflits d'intérêts

Le choix d'une ligne de conduite repose fondamentalement sur l'analyse de différents systèmes de valeurs. En matière de relations industrielles, il existe un conflit entre les valeurs contradictoires de la négociation collective et de ce qu'on est convenu d'appeler la paix industrielle.

La négociation collective a été interprétée de bien des manières, tant par ceux qui la pratiquent que par ses théoriciens. Il peut être utile de jeter un coup d'oeil rapide sur les théories les plus couramment admises du processus de la négociation.

TROIS THÉORIES DE LA NÉGOCIATION COLLECTIVE

1—La plus simple de ces théories est celle qui considère la convention collective purement et simplement comme UN MARCHÉ. Dans cette optique, le contrat pose les conditions auxquelles le travail sera vendu aux compagnies. Certes, le contrat n'est pas une vente; il ne fait que stipuler les conditions auxquelles les membres du syndicat accepteront de vendre leur travail. Cependant, ceci est sans doute plus un point de droit que de fait. La négociation se termine par une vente aux prix indiquées dans le contrat. Les syndicalistes ont autrefois frayé eux-mêmes la voie à cette interprétation en dénommant ces accords des « liste de prix ». L'objet de la négociation collective, par opposition à la négociation individuelle, est d'éliminer les inégalités de forces inhérentes aux relations d'un travailleur isolé avec son employeur.

Selon Selig Perlman, dans sa théorie du mouvement syndicaliste, la négociation collective n'éliminerait pas la rareté des possibiltés d'emploi qui est, toujours selon lui, le fait fondamental du syndicalisme, mais elle empêcherait l'employeur d'exploiter la disproportion qui existe entre l'offre de travail et une demande réduite.

(2) KELLY, Matthew A. « Industrial Relations in National Socialist Germany », in *Industrial Conflict*, Chapter 36. Edited by Arthur Kornhauser, Robert Lubin and Arthur M. Ross. New York: McGraw-Hill Book Co., 1954, p. 477.

La théorie du marché a été extrêmement populaire dans une très grande partie du mouvement ouvrier lui-même, particulièrement parmi les anciens syndicats professionnels; mais elle a aussi trouvé des partisans parmi nombre de penseurs, dont le professeur W.W. Hutt et Henry Simons.

Du point de vue de cette théorie, le droit de grève découle de la liberté du commerce, et toute interférence de l'Etat dans ce domaine devrait entraîner logiquement des restrictions à la vente d'autres produits et services de l'économie. Les partisans d'une économie libérale devraient être normalement conduits à rejeter les restrictions aux droits de grève et de lock-out, de même qu'ils rejetteraient de telles restrictions dans un marché libre d'un produit quelconque.

La théorie du marché est une vue peu satisfaisante de la convention collective. La vente ordinaire est une opération qui est normalement close lorsqu'elle est accomplie. Certes, elle peut être accompagnée d'une garantie qui prolongera l'obligation entre les parties, mais d'une façon limitée et pour une période déterminée. Il est au contraire de l'essence de la convention collective d'établir une relation permanente entre les parties au contrat, relation qui est d'ailleurs très vivante et très animée, du fait de la procédure des réclamations.

2—La théorie dite du GOUVERNEMENT, dont W. Leiserson fut l'un des protagonistes, vient ensuite. Selon lui la convention collective est la constitution d'une communauté industrielle à maints égards comparable à notre communauté politique et sociale plus vaste. Le contrat collectif est la constitution (la charte) de cette « cité ». Chaque partie est investie d'un droit de véto, et des organes de gouvernement sont établis dont l'objet est de faire des lois et de les mettre en vigueur. Dans cette communauté, le législatif, ce sont les comités de revendication, l'exécutif, c'est la direction, et le judiciaire, ce sont les arbitres impartiaux ou les comités paritaires employeurs-employés qui règlent les désaccords. On peut même découvrir des idées qui évoquent le concept de souveraineté nationale: les droits exclusifs de négociation, du côté du syndicat majoritaire, et le droit de contrôle sur les éléments d'actif de la compagnie, du côté de la direction. Il y a à la base de cette théorie le concept d'une autonomie industrielle qui serait partagée par les travailleurs et les patrons, et dont l'exercice en commun présente deux aspects. En premier lieu, de même que sur la scène internationale un condominium est exercé par deux puissances souveraines, ces deux autorités autonomes que sont le travail et le patronat ont un contrôle commun de l'entreprise. En second lieu, cette façon de voir implique que les deux parties, exerçant leur autonomie, unissent leurs forces pour tenir à l'écart toute intervention extérieure, et en particulier celle de l'Etat.

Dans cette perspective, le droit de grève ou de lock-out est un attribut indispensable de la souveraineté. Mieux, c'est le moyen essentiel par lequel elle s'exprime, ainsi que le droit de véto, que les deux parties doivent posséder pour mener à bien leur condominium industriel.

3—Une autre théorie, qui a rencontré une faveur croissante parmi les experts, ces dernières années, c'est celle qui considère la convention collective comme étant l'expression de la PARTICIPATION DU SYNDICAT À LA DIRECTION de l'entreprise. La convention collective devient donc une forme d'administration de l'entreprise,

une méthode pour prendre les décisions qui la concernent. Le syndicat participe au processus de décision, et ceci, qu'il le souhaite ou non. Il est vrai que le rôle du syndicat dans l'administration de la compagnie va différer suivant l'échelon de l'autorité de décision en question. Aux échelons les plus élevés, le syndicat négocie avant que les décisions soient prises. A des niveaux plus bas, la direction conserve l'initiative, et les syndicats ne peuvent les mettre en question que lorsqu'elles sont déjà prises. Il faut dire aussi qu'en pratique, la plupart des syndicats ont limité leurs préoccupations à une petite portion du domaine des décisions directoriales, c'est-à-dire au domaine des problèmes concernant le personnel. Néanmoins, à l'intérieur de ces limites le syndicat apparaît bien comme un partenaire dans le processus de direction.

Dans cette théorie, le droit de grève est un instrument indispensable dont le syndicat se sert pour renforcer sa revendication d'une participation aux décisions. Alors que les déléguées des actionnaires peuvent diriger parce qu'ils représentent des droits de propriété, le syndicat participe à la direction uniquement à cause et dans la mesure de sa faculté de refus de fournir la main-d'oeuvre.

LES VALEURS QUI CORRESPONDENT AUX THÉORIES

Voyons comment s'établit, dans chacune de ces théories la matérialisation de certaines valeurs sociales que la négociation collective est censée représenter.

1—*A la théorie du marché correspond le concept d'équité.* La négociation collective est censée équilibrer la force des parties en présence. On obtient ainsi un résultat qui a des chances d'être plus proche de notre concept de l'équité (*i. e.*, de ce qui est juste), que ne le seraient des décisions unilatérales venant soit de la direction, soit du syndicat. Quelles sont les alternatives à la discussion collective, à la lumière de cette notion? Nous en voyons de trois types.

1. *L'exploitation*: en l'absence de négociation, une partie ou l'autre, et plus probablement le patronat, atteindra une position assez puissante pour lui permettre de fixer les conditions du travail à sa guise.

2. *Le paternalisme* qui peut, ou non, conduire à un arrangement convenable. Il faudra, quant à cela, s'en remettre à ce que le bon père estimera être un accord équitable. Mais la notion d'équité étant malheureusement hautement subjective, il y aura fréquemment des différences d'opinion considérables entre le « père », ses employés, et le reste de la communauté sur ce point. De fait, il est probable que, pour bien des gens, l'équité réside beaucoup plus dans le procédé qui conduit à une décision que dans son contenu. Ceci est vrai, par exemple, de nos instances légales, où la procédure de jugement est, sans contredit, une caractéristique primordiale de ce que nous considérons comme la justice.

3. L'intervention ou le contrôle de l'Etat. Une fois de plus, nous rencontrons cette question de l'équité. N'est-il pas inévitable qu'un gouvernement qui intervient fréquemment ou systématiquement dans le procédé de détermination des salaires et des conditions de travail soit accusé, et ce à tort ou à raison, d'avoir pris parti de l'un des antagonistes? Peut-on attendre de l'intervention de l'Etat qu'elle tombe plus près d'une solution juste et équitable qui soit acceptée par les citoyens en général?

2—Quant à *la théorie gouvernementale,* et au moins dans une certaine me-

sure *la théorie de la participation à la direction,* elles *font appel à d'autres valeurs.* Pour elles, la négociation est un procédé qui introduira les valeurs de la *démocratie* dans le monde industriel, qui favorisera la prise de *confiance en soi,* et qui donnera plus de contenu et de *sens au travail.*

Les philosophes de la politique ont établi depuis longtemps qu'il existe une relation relativement étroite entre la démocratie et la décentralisation. S'il est vrai que démocratie signifie que les règles doivent être faites par ceux qu'elles gouverneront, il faut faire établir les règles dans l'industrie par ceux qui auront à vivre avec elles, c'est-à-dire par les employés et les patrons. C'est ceux que cela concerne le plus étroitement qui doivent déterminer leur propre destinée. C'est, dès lors, le degré d'intérêts que l'on a dans une situation donnée qui détermine si l'on doit être inclus ou non dans la préparation des règles qui régiront ladite situation.

L'idée de détermination par soi-même est étroitement apparentée à l'idée précédente. Les démocraties, et particulièrement les démocratie libérales, ont une préférence pour le systèmes de participation volontaire, plutôt que pour des méthodes de contrainte, partout où c'est possible. La démocratie repose sur l'action des individus ou des groupes, plutôt que sur la coercition par la loi. Elle rejette le paternalisme, même s'il est équitable, en faveur de la décision autonome par les groupes, et ceci même si le résultat est, comme l'ont noté certains observateurs, parfois moins juste.

Finalement, il y a la tendance à rendre plus de sens au travail par le système de négociation collective. La division du travail, la mécanisation, et les progrès de l'automation enlèvent toute signification au processus du travail industriel moderne, pour le participant individuel. L'ouvrier spécialisé, qui constitue la catégorie prépondérante dans l'industrie moderne, n'est guère qu'un robot devant sa machine. Certains penseurs sociaux ont rêvé le retour à une société artisanale, où le travailleur individuel, qui a réalisé un travail, peut dire que c'est là son oeuvre propre, et en faire une expression de sa personnalité. Dans le monde entier, il y a une tendance vers toujours plus d'industrialisation et vers une mécanisation toujours plus poussée, car ce sont là les conditions nécessaires de l'abondance. Que faire, dès lors, pour donner au travailleur un sentiment de participation à sa vie professionnelle? Le retour à l'artisanat médiéval étant exclu, la négociation collective apparaît comme un moyen possible. L'ouvrier pourrait ainsi au moins avoir son mot à dire, en ce qui concerne son salaire et les conditions de son travail.

Pour réaliser toutes ces valeurs, notre accent essentiel doit dès lors être placé sur la liberté de négociation collective. Toute entorse à ce principe doit être interdite, ou au moins exceptionnelle, car elle viole ces valeurs que nous venons de discuter. Mais personne n'a encore découvert un moyen de conserver une libre négociation collective tout en éliminant les grèves, car sans elles, on aurait peu de résultats effectifs.

PROPOSITIONS FONDAMENTALES

1—Une grève n'est pas forcément l'indication d'un manque de santé dans les relations industrielles. Il y a toute sorte de grèves, de la grève-éclair au conflit normal correspondant à une divergence d'intérêts. Et s'il est vrai que certains de ces types de grève sont plus discutables que d'autres, il nous faut cependant apprendre à considérer le grève comme une simple étape du processus de négociation, dont elle fait partie intégrante.

2—Le conflit industriel a bien d'autres formes d'expression que la grève. L'anxiété et la tension chez l'individu, l'absentéisme, les retards, les ralentissements de production, le sabotage et un taux de renouvellement du personnel anormalement élevé sont quelques-unes des formes possibles d'expression du conflit industriel. L'avantage semble douteux si, pour supprimer une de ces formes, on doit aggraver les autres.

3—Toute l'expérience des nations industrielles modernes semble indiquer qu'avec le développement de systèmes de négociation collective d'une plus grande maturité, la fréquence des grèves tend à diminuer. Mais ceci n'arrive que si la négociation collective peut mûrir, c'est-à-dire si les deux parties peuvent discuter sans crainte d'une intervention systématique de l'extérieur.

LÉGITIMITÉ DE L'INTERVENTION DE L'ETAT DANS DE RARES CAS

S'il est vrai qu'en démocratie les règles doivent être faites par ceux que cela concerne le plus directement, il est indéniable que dans certains cas, le public peut avoir aussi son mot à dire au sujet d'un conflit industriel. Et s'il est vrai que la suppression d'une forme de conflit industriel en intensifie d'autres, il faut encore admettre que du point de vue du public, certaines formes de ce conflit sont préférables à d'autres. En d'autres termes, certaines grèves affectent le public dans une mesure que l'on ne saurait négliger. Il se peut bien que le public préfère à une grève importante la guerre des nerfs entre patrons et ouvriers, au sein de l'entreprise. Mais il est bien évident que ces cas doivent demeurer exceptionnels, si nous désirons préserver les valeurs démocratiques, c'est-à-dire un système de négociation collective libre. L'intervention extérieure dans le processus de négociation doit être l'exception qui nécessite justification chaque fois qu'elle se produit. Si elle est régulière et fréquente, cela créera un état d'attente de l'intervention. Le résultat sera que, si l'une des parties espère tirer un bénéfice de l'intervention extérieure, elle ne s'engagera pas dans la négociation normale.

Un examen plus attentif révèle que bien peu de conflits économiques dans une société moderne sont de nature à justifier une intervention étatique. Certes, beaucoup de grèves gênent le public et nuisent au pays; mais s'il fallait chaque fois faire intervenir l'Etat, nous aurions aboli le libre système des conventions collectives.

En effet, une grève qui ne gêne personne a peu de chances de réussir. Et s'il n'espère pas affecter le fonctionnement d'une ou plusieurs entreprises, et par là même, le bien-être public, aucun syndicat n'entreprendra une grève. Il nous faut donc accepter ces quelques atteintes à notre bien-être comme étant le prix à payer

pour de libres négociations collectives. Ce n'est que dans le petit nombre de cas où nous rencontrons plus qu'une gêne passagère, et où la santé et la sécurité du public sont en danger, plutôt que son seul bien-être, que des limitations extérieures à cette liberté semblent se justifier.

Autrement dit, un système démocratique doit choisir ces valeurs de décentralisation, détermination par soi-même et participation des travailleurs à la direction de leurs propres vies, du moins tant que la situation est normale. Et ceux qui désireraient limiter ces droits démocratiques auront la charge de la preuve. Pour exprimer le problème différemment, la paix industrielle est un objectif souhaitable. mais est-ce le plus souhaitable? Elle peut être obtenue au prix de la collusion employeurs-employés contre le public. Ce n'est pas le genre de paix que la plupart souhaiteraient. La paix industrielle peut aussi être obtenue par la suppression du conflit. C'est un système essentiellement autoritaire; c'est la paix du tombeau. Si une telle paix est le bien le plus souhaitable, ce sont les systèmes sociaux de l'Allemagne nazie et de l'Union Soviétique qui semblent les plus proches d'un tel idéal.

Le texte complet qui correspond à ce résumé se trouve dans l'ouvrage REGLEMENT DES CONFLITS D'INTERETS DANS LES RAPPORTS COLLECTIFS DU TRAVAIL qui sera prochainement publié par Les Presses Universitaires Laval, Québec.