

The Bramble Bush is far from being all literary manifesto or advice to law students on how not to flunk out of school. What comes through best—and what must have got through to the entering class at Columbia in the days when the bull market lay dying—is Llewellyn's own feeling that the law—studying law, practicing law, teaching law—is a vital, creative, exhilarating affair which will reward the best efforts of the best minds that will apply themselves to it. My own thought is that at the end of the first term all law students should be asked one question: those who answer that the law is a dull thing should, after reading *The Bramble Bush*, be given another chance: if they fail a second time they should be expelled forthwith: they are hopeless. There are many easier ways of living, even of making a living, than practicing law: like the aesthete in his garret, any lawyer should expect to work long hours for meagre rewards and no public acclaim. But anyone who cares to know why nothing in the world can be so much fun can do no better than to read these lectures.

After *The Bramble Bush* Llewellyn rode off in all directions. He wrote a classical series of articles on commercial law, taking fliers in constitutional and criminal law as breathers. He drafted the Uniform Trust Receipts Act, whose appalling difficulties of construction are matched only by the Act's essential soundness: the Act has worked, and worked well, although no one knows how or why. In collaboration with an anthropologist, he produced a fascinating study of the law of the Cheyenne Indians. For the past ten years he has been the Chief Reporter for, and the principal architect of, the now completed Uniform Commercial Code.

We may hope that Llewellyn after his twenty years in the brambles will now return to his first love. It is high time for all of us—law professors, lawyers, law students—to get back to first principles. Few are as well equipped to guide us as the author of *The Bramble Bush*.

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COLLECTIVE BARGAINING. By Neil W. Chamberlain. New York: McGraw-Hill Book Company, 1951. Pp. vii, 534. \$6.00.

HERE is a penetrating and analytical exposition of the collective bargaining process. Narrow in scope but intensive in treatment, this volume contains some helpful theoretical apparatus and some original insights. The volume is also significant methodologically, for Professor Chamberlain has taken a long stride toward the integrated inter-disciplinary approach so badly needed in the social sciences.

What is the nature of the bargaining process? Chamberlain delineates three views which, while not mutually exclusive, merit differentiation: a method

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of marketing, a form of industrial government, or a means of management. The *market* approach (derived from a concept of the inferior bargaining power of the individual worker) establishes the terms on which labor will be sold and leads to a collective agreement analogous to a commercial contract. Under the *governmental* view, the agreement bears more resemblance to a constitution because the bargainers recognize their mutual dependence, their respective veto powers, and their continuity of relationship. The *managerial* theory discards the political analogy: "The union joins with company officials in reaching decisions on matters in which both have vital interests." The agreement is regarded as a set of administrative standards for the achievement of jointly conceived objectives.

These contrasting interpretations of the bargaining process provide an analytical underpinning for many of the topics in the book. Chamberlain suggests that they furnish guides to the study of union-management relationships:

" . . . The marketing approach points to a study of the law of contract and principles of a price-oriented economic system. . . . The governmental approach suggests a study of government, political party relationships, and the nature of authority as most pertinent. . . . The managerial theory suggests the study of business processes and industrial organization. . . ." (p. 138).

And they lead to differing conclusions. For example:

"Under the marketing theory, the withholding of data, distortion of fact, or capitalizing on information unknown to the other may be viewed simply as shrewd bargaining or sales techniques. Under the governmental theory, it may be difficult to determine whether particular data should be considered as part of the 'government's' official records, accessible to both parties, or as campaign material, a matter of party politics. Under the management theory, all relevant data become necessary to an informed joint decision." (p. 139).

Chamberlain asserts that these three views broadly represent: (a) stages of development in the nature of the process, (b) stages in the recognition of what collective bargaining is, (c) differing conceptions of what it ought to be, and (d) approaches to concomitant phases of collective bargaining. I would add the observation—readily inferred from Chamberlain's text—that the market orientation has been dominant in social science research in this area, particularly in the realm of theory.

This observation is well illustrated by the theoretical treatment which economists have accorded to the concept of "bargaining power." In a lucid chapter on this topic, the principal contributions of the past few decades are

summarized and appraised. Particular attention is given to Professor Hicks' analysis, which rests on the notion that a union's willingness to strike for a higher wage, and a management's willingness to stand a strike, depend upon their respective expectations of the outcome in light of the costs involved in a stoppage.¹

The Hicksian concept, along with the other bargaining power theories, is criticized for proceeding solely on the narrow basis of price and wage determination. To remedy this deficiency, Chamberlain offers an ingenious and helpful elaboration of Hicks' formulation. The space available here does not permit more than a bare statement of this approach: A's bargaining power can be considered greater than B's only if "the difference to B between the costs of disagreement and agreement on A's terms is proportionately greater than the difference to A between the costs of disagreement and agreement on B's terms. . . ." (p. 221). The term "costs" is used in a broad sense, comparable to "disadvantage." Bargaining power is not viewed as an attribute of a party, but pertains to the capacity of a party to secure given objectives.

The picket line and the secondary boycott, for example, constitute efforts by a union to increase the cost to management of disagreeing with union terms. On the other hand, a union offer to cooperate in the achievement of higher productivity (provided its demands are granted) represents an effort to reduce the cost to management of agreeing with union terms. Likewise, management can increase union costs by enduring a prolonged stoppage or by replacing strikers and undermining the union itself. Chamberlain notes that this approach "reveals the fallacy of attempting to equalize bargaining power by legislation." Specific techniques for making disagreement costly may, however, properly be subjected to public regulation (e.g., the blacklist or the secondary boycott).

An historical survey is provided in opening chapters, which document the transition in *representative* union-management relationships from a unilateral imposition of terms (by either party on the other) to a systematic, continuous and widely accepted process. Essentially, this is a transition from a market to a governmental approach to bargaining. The closing chapters are devoted to a detailed analysis of union-management cooperation and its implications for our society. Successful cooperation marks, of course, the adoption of the managerial approach.

Chamberlain is an advocate of cooperation, perhaps an optimistic one. While aware of the existing impediments to such a relationship, he stresses that the extent to which both parties can attain their objectives is evidently dependent on business performance. There will always be divergent interests, and their settlement is a pre-condition to joint action on matters of common interest. But if, as Chamberlain believes and cogently argues, both parties stand to gain

1. HICKS, THEORY OF WAGES c. 7 (1934). Most students will recall Hicks' graphic presentation, in which an "employer concession curve" and a "union resistance curve" are sketched on axes labeled "Expected Duration of Strike" and "Wage-Rate".

substantially from cooperation, the result of cooperative efforts may be to facilitate the settlement of divergent interests: "The cost of disagreeing on the other's terms increases when it involves the loss of the benefits of cooperation, while the cost of agreeing on the other's terms is reduced when it is (at least partly) offset by the benefits of cooperation." (p. 462).

Two chapters are devoted to conference techniques and procedures. They treat such topics as the composition of negotiating committees, authority to bargain, and conference organization. Particular attention is given to the role of economic data. As to this Chamberlain regretfully observes: "With few exceptions they have been injected into negotiations by one of the parties as an argument to bolster its position, and have seldom been introduced by both parties as the basis for arriving at an agreement." (p. 90). Another chapter deals simply and adequately with the nature and role of grievance machinery.

The factors which have determined the scope of bargaining units and public policy in this area are carefully examined. Two chapters appraise the political pressures which bear, respectively, on unions and on managements. One chapter summarizes the subject matter of collective bargaining in competent but overly brief fashion. Chamberlain's preoccupation, however, throughout the book, is with the collective bargaining *process* rather than with its content; and since one volume (even a textbook) ought not to cover everything, I will not register a formal complaint because such aspects as welfare bargaining and seniority are given rather short shrift.

The central judgment of a thoughtful chapter on the law of collective bargaining is that early legal curbs on labor organization reflected the concern of the courts rather for individual freedom and community welfare than for the employer as such. "It is because in present-day society we accord the group a greater role than formerly that we find labor law and legislation now more hospitable to the unions." (pp. 284-5). Again:

"... To regard changes in labor legislation as revealing simply whether unions or managements have the upper hand at the moment is to miss the central theme of changing concepts of social relationships. . . . Even 'dominant' groups must recognize and employ social sentiments if they are to retain their favorable position." (p. 310).

Finally, there are three chapters devoted to the economics of bargaining. The marginal productivity theory of wages, as an explanation of actual behavior or a criterion of desirable policy, is vigorously condemned as inappropriate to a dynamic society "composed of interdependent economic groups possessing important elements of discretionary control." After an appraisal of recent theoretical debate, Chamberlain concludes that "no acceptable wage theory is now available on the strength of which the economic effects of the bargaining process may be evaluated." (p. 347). Most economists will probably agree with this conclusion. Unfortunately, however, this price-oriented competitive equilibrium theory remains the only analytical crutch

available for long-run partial analysis. More stress might have been placed on the limited usefulness it does possess. The economics chapters also provide helpful treatment of the impact of wage movements on national income levels and the "labor monopoly" issue, as well as a recapitulation of research in the field of worker motivation and morale and the inferences to be drawn therefrom for labor market theory.

Some of the dangers arising out of the bargaining process and against which society should be on guard are noted in the volume's closing pages. It is observed that our society requires a proper admixture of competition and cooperation:

"... Where important groups are functionally dependent on each other, and society is dependent upon them jointly . . . there are two dangers to be avoided. One is competition between them, without cooperation. The other is cooperation between them, without competition." (p. 477).

Should competition between union and management lead to the disintegration of relationships vital to community welfare, then "authoritative decision [*i.e.*, compulsory arbitration] must resolve the divergent interests." (p. 481).

This conclusion is offered rather patly. No explicit attention is given either to the problem of defining vital relationship or to the debilitating effect of authoritative intervention on the viability of the bargaining process. Our capacity to tolerate disruptive stoppages is greater than many have feared (in peacetime, at any rate); and there is much to be said for the virtues of uncertainty, persuasion and procrastination as the principal ingredients of public intervention. Chamberlain hopes that the need for authoritative determination will be minimized as collective bargaining and cooperation come to be better understood and more effectively practiced. I hope we can minimize authoritative determination now, in order to render it largely unnecessary later. Otherwise, the means we use to secure industrial peace may contravene the ends.

Chamberlain has sought, and with much success, to generalize concerning a process notable for its diversity. Whether a teacher of collective bargaining will find this valuable book appropriate as a text will depend upon the background of his students and the purpose of the course. An elementary labor problems course should clearly precede the use of this volume. If the intent is to prepare the student for eventual participation in the bargaining process, then the concurrent use of supplementary materials will probably appear desirable.

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