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LABOR POLICY OF THE FEDERAL GOVERNMENT

19 February 1947

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CAPTAIN WORTHINGTON: We are very fortunate in having for our speaker this morning Dr. William M. Leiserson. Dr. Leiserson received his education at the University of Wisconsin and at Columbia University. He is now visiting professor at Johns Hopkins University and an independent labor consultant. He is the author of several books, among which are: "Unemployment in the State of New York"; "Adjusting Immigrant and Industry"; "Right and Wrong in Labor Relations." He has also written numerous articles in various periodicals. I take great pleasure in introducing Dr. Leiserson.

DR. LEISERSON: I think it is a fair statement to make, a fair summary to say that prior to 1935, the federal government had no definite labor policy. The general interpretation of the constitution of the United States had established that such matters as labor relations were to be handled by the states. It was within their functions. The only exception to this statement that I have made is with respect to the railway labor legislation, and about that you will hear tomorrow, I think, so I will not discuss that.

There are two famous cases of the Supreme Court which are the landmarks of the federal government on labor policy. One is known as Adair against the United States, in which the Supreme Court declared unconstitutional a provision in a federal law which said that no man shall be discharged--this was a railroad act--for belonging to a union, nor shall any contract be made by which the individual would say he would not belong to the union as a condition of employment. The Supreme Court held that unconstitutional on the ground that an employer had the right to discharge a man for any or no reason.

A similar statute was passed by the State of Kansas, and that was declared unconstitutional for the same reason, there the Fourteenth Amendment being directed against the State's passing any legislation of that kind.

Now that was the background of the manner in which our labor problems had to be handled and were handled down to about 1930. In 1930, the Norris-LaGuardia Act was passed, about which you hear a great deal now, and it is the one that is involved in this case in which the United Mine Workers were fined \$13,000,000.

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That in itself indicates the negative policy of the government prior to 1935. It merely provides that no injunction shall be issued by any court in labor disputes where the labor dispute has to do with ordinary wages, hours, and such matters, and the court shall not enjoin people from striking for any such reason, except where there were cases of violence or fraud. In the ordinary labor disputes, in other words, the courts were to keep their hands off, again the theory being that the employers and workers, management and union labor shall fight it out rather than have any kind of definite government policy.

Now the Labor Relations Act of 1935 changed that completely. There the federal government definitely took the position of establishing as the labor policy of the nation the method and process of collective bargaining. What the law says is that the right of wage-earners to join or form unions shall not be interfered with by the employer; the worker shall be protected by law, and that the employer shall be compelled to bargain collectively with the union as a representative of his employees whenever a majority of those employees decide they want the union to represent them.

That is the basis of the law. It is administered by a board which has authority to issue a cease and desist order against employers whenever they engage in what the law calls "unfair labor practices," that is, if they discharge a man for belonging to a union, discriminate against him, organize a so-called company union, or if they refuse to bargain collectively.

Now I think it is important in understanding what happened during the war to examine a little the implications of the act, which is still the national policy and which is not likely to be changed by any legislation that is passed. The act may be amended, it may be reformed in various ways, but there will be very little change in the basic principles of the act.

The important thing that is basic to the act is this: Whereas, before the collective bargaining policy was established, the main way of adjusting labor relations was by what is termed "individual bargaining"--the employer made the contract with each of his employees individually--what this law really means is that the government decided that the policy of individual bargaining left the wage-earner at a great disadvantage. It really was not individual bargaining. Great employing companies set down the terms and the individual had to take it or leave it. That meant that the management or employer dictated the terms of employment.

On the other hand, the Government did not want to get into the business of having the Congress or the government fix wages, hours, and other conditions of employment. That would be government officials

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dictating terms of employment. Therefore, they chose the middle ground between the two and said, "Let employees be encouraged to organize unions, and then they will be on a basis of equality and bargaining power with the employer. Then they will be able to have more fair dealings with each other."

They also expected--so the preamble to this act said--certain results of this policy. One of those results was that it would reduce industrial strife and unrest. The second was that it would stabilize competitive wage rates and working conditions. The third was that it would promote friendly adjustments of labor disputes about wages, hours, and working conditions.

Now, of course, if you compare what has happened since this act was passed, you can see that these objectives that the act was supposed to accomplish, these three things that I have just mentioned, were not accomplished. On the contrary, there have been more bitter disputes and greater strikes than there had been before. That is the picture with which we entered the war. On the other hand, the primary purpose of the act was accomplished, which was to encourage and stimulate workmen to organize into unions. But the larger results of obtaining peaceful relations were not accomplished.

When the national defense program was instituted in about 1940, five years after this act was passed, and great industrial conflicts and strikes had been stimulated, the question was then raised, "What shall we do about the collective bargaining policy?" People were demanding that the Wagner Act or the Labor Relations Act be repealed, drastically amended, or what not.

Actually what was done was this: The National Defense Mediation Board was established as a tripartite board whose business it was to try to adjust disputes. I should have mentioned before that the national government has had, since about 1912 when the Department of Labor was established, a Conciliation Service from which the government sent out agents to try to help settle disputes. When the Defense Mediation Board was set up, it duplicated the work of this Conciliation Service. In fact, in OPM there was also a labor section which did the same kind of mediation work. Gradually, however, most of the functions of mediation became a part of the Defense Mediation Board.

The Board ran into difficulty in making recommended decisions. One of the decisions was made, you may remember, in the Federal Ship Building Company case, in which the Board recommended what is known as "Maintenance of Membership." Under that recommendation anyone who belonged to a union in a plant would have to remain in that union under pain of dismissal. It made other recommendations with respect to wages. When those recommendations were not accepted, it became the policy to enforce

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them by the issuance of a Presidential order which authorized the government to take over the industry and put the recommendations into effect.

Notice what had happened when that policy developed. It was just the contrary of the Labor Relations Act collective bargaining policy, which was that the management and the men were to decide and agree on their own terms, rather than for management alone to dictate the terms--it was to be done by mutual and friendly agreement. Now we had gotten ourselves into a position where the government was fixing the terms of employment.

Then, you remember, the Defense Mediation Board refused to give to John L. Lewis and his miners the closed shop in the captive coal mine case. That blew up the Board. Whereupon the Lower House of Congress passed a drastic bill, amending the Labor Relations Act and putting rather severe restrictions on the union.

Shortly after Pearl Harbor, the War Labor Board was established by mutual agreement of representatives of industry and organized labor, in which they agreed there would be no strikes or lock-outs during the war, and that a War Labor Board would be established to settle the disputes. This method of agreeing on the War Labor policy was substituted for the bill that had passed the Lower House. The Senate agreed not to consider the bill since it was going to be handled under this voluntary method. The Defense Mediation Board was to make decisions.

By 1943, we reached the point where Congress passed the Smith-Connally Act, which established the authority of the Board. It said: "The Board shall have the power and the duty to fix by order the wages, hours, and all those terms of management that are ordinarily included in the union-management agreement." We reached complete compulsory arbitration at that point.

Shortly before that, the wage stabilization policy for holding down prices and wages was adopted; and, while the War Labor Board had been set up as a labor disputes board to settle disputes, the authority to administer the government's stabilization policy was also turned over to the same War Labor Board. Now, that had this peculiar effect.

The War Labor Board was tripartite. There were four employer representatives, four labor representatives, and four public representatives. The wage stabilization policy was a government policy. Every once in a while--there were about a dozen cases--the employer representatives and the union representatives would agree and make up the majority. There would be eight in making a decision that had to do with administering the government's policy and the four public members, government members, would write a dissenting opinion. That came out of the peculiar tripartite arrangement which has its place in labor disputes, but is not sound

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when it comes to administering a policy that is the government's own. As a result of these developments, the government found itself with a compulsory policy when we had started out with voluntary collective bargaining policy.

Now it is true that in any great emergency like the last war some compulsion will be needed. Other countries had more compulsion than we had. They had labor service acts and complete compulsory arbitration, and so on. But it is rather interesting to see that Great Britain, which had a national service act and compulsory arbitration, was able to administer the compulsory policy without practically abolishing the voluntary collective bargaining machinery as we did. Our collective bargaining became a lost art; and practically every important case was not decided by the parties themselves by agreement, but was sent up to the War Labor Board, so that at the end, when it finished, it still had 3,000 cases that were unsettled and had to be sent back to the parties.

Now I point that out, not merely for the purpose of criticising, because nobody was quite wise enough to see what happened until after it was over. Hindsight is always better than foresight, but it is rather important in seeing what Congress is trying to do now, what the present trends are, and what we may have to do in case another emergency arises in the future.

Despite the fact that we had this compulsory arbitration which was provided by the Smith-Connally Act, despite the fact that that act also provided for a secret ballot being taken before there could be any strike, we had in 1944 the greatest number of strikes in any year on record up to that time.

But the time lost because of strikes was not so high. What that meant was that, while they would go out on strike, all the pressures of war--of union and government officials, and of public opinion--settled them very much faster, so that the number of days lost was reduced. One reason the number of days lost was kept down was because of that voluntary agreement between the employers and workers, whereby the unions pledged themselves not to strike.

As a matter of fact, a great many of those strikes during the war were strikes against the government and against the officials of the unions. They were strikes of the rank and file who were dissatisfied because wages were being held down, because their cases were delayed before the War Labor Board, or for various reasons of that kind. They were striking against their own union officials and against the government officials. The pressure of the union officials on their people to discourage strikes and to settle them quickly, where they did break out in a wild-cat way, was responsible for the relatively small amount of time lost. The unions really cooperated in that respect, but it was beyond them because the strikes were against the compulsory method.

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Now when the war was over, the President announced by executive order, "We want to restore collective bargaining"--which had necessarily been more or less given up during the war period. "The Government doesn't want to be fixing wages and terms of employment." And the order stated, "Employers and wage-earners will be free to bargain about wages and to agree on anything, provided what they agree on does not result in price increases."

Well, that was an attempt on the part of Government to go back to the original policy of the Labor Relations Act, free bargaining. What did it result in? The great strikes with more time lost than ever in the history of the country during the early part of last year, and when we finished, the government fixed the wages after all.

You remember how it was done. A so-called Fact Finding Board, a government board, discovered somehow in one or two cases that 18 $\frac{1}{2}$ % was right. That 18 $\frac{1}{2}$ % became the government's pattern throughout the country, and every industry had to adopt it. Men went on strike to enforce the government's decision, they said. So we started out to get one result and we got right back where we were before. This last coal strike was the first time since the war began that the government acted on the principle, "We are going to let you bargain it out, or fight it out," and the government didn't fix the terms.

That brings us to the next topic on the outline I was given, the present situation in Congress and the labor legislation. There is not any question that we will get fairly drastic legislation out of this Congress directed against the unions. It won't be nearly as drastic as a lot of people are asking, but it will be a fairly drastic law.

One reason for my thinking so, is that the unions have taken an entirely negative position. They say, "Everything is O. K. We need no law whatever." Yesterday Mr. Green testified to that effect, and when Mr. Murray comes on I haven't any doubt he will take substantially the same position. Organized labor has not come along and said, "Now these methods that you are proposing in the bills are bad and restrictive. They are not good in various ways," in this way or that. "They go on the basis of compulsion. You have to use voluntary methods to get the best results from human beings"--that is the position the unions are taking. But they don't come along and say, "Here is a bill that puts into effect the voluntary methods, and if you do it this way, we think the problems that we have had will be reduced. We will handle it better than you could by your compulsory method." But they don't do that. In other words, the unions have gone back to the old laissez faire philosophy that the employers used to have. When the government wanted to regulate industry, the employers said, "Keep out of it. Let us alone." The unions want all kinds of legislation, social security, social insurance, and various other social provisions, but when it comes to labor relations policies, they say, "Let us alone. We need no legislation."

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That is one of the reasons why, not only among employers where it is to be expected, a large section of the public has developed an anti-labor feeling at the present time. It expressed itself in the last election also.

Now what kind of legislation will they pass? I said it would be less drastic than people generally think. Let us examine one or two proposals. One proposal is to abolish industry-wide bargaining. That is one of the big objectives of this legislation. That means that a national union in a great industry should not be able to bargain with the employers in that industry because if they disagree it ties up the whole industry, which may be fundamental and essential to every other industry in the country, such as steel. So they say, "Let us split the bargaining up somehow."

It is rather interesting that when a top executive of one of the big motor companies testified before the Committee, he said, "We have to get rid of this industry-wide bargaining." He was asked a question something like this: "You and your union have agreed to postpone the wage question for about three months. What are you going to do after that about wages?" He answered, "We will wait and see what the steel industry does and how they settle. Then we will take that and try to put it into effect in our plants."

Well, that is going beyond industry-wide bargaining. That is making bargaining inter-industry, and actually that is the way the business is done and has been done for hundreds of years. Employers talk over in their meetings, in conventions, what the wage situation is and whether they can afford to raise wages or not. Union people, when they have conventions, do the same.

Now, whether they have a bargain with one small plant or whether they do it with hundreds of plants is not material. Take an industry like Printing which bargains with the Typographical Union. All their bargaining is local because it is a local industry. But the national convention decides the minimum demands that each local shall make, and how anybody could stop that by passing a law is beyond me.

I think that the result would be subterfuge, and subterfuges are always dangerous. They make for disregard for law. We had it during the war when supposedly there was a 15 percent wage increase, and then suddenly there were developed fringe issues. You may have heard about them. That meant the use of various kinds of subterfuges, by bringing up other issues so that you could get more than 15 percent and still say the 15 percent ceiling had not been broken. The result of that is bad labor relations and bad respect for law.

The same is true about trying to abolish the closed shop. A friend of mine was down in Alabama where they have a law against the closed shop

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and have had for several years. He asked an official of one of the craft unions, "What do you do about the closed shop?" The official said, "We write it in our contract." My friend said, "But what do you do about the law here?" The union official said, "Oh, I did hear something about such a law, but it doesn't bother us. All the craft unions that I know of still write closed shop contracts."

The state doesn't make any attempt to enforce the law by sending agents to every place where a contract is written and asking, "Have you written a closed shop clause in the contract or not?" Any of you who have ever worked in a shop know that if the majority of employees are union men inside, they can soon make it uncomfortable enough for the non-union fellows to force them to join or quit. That is the way it is done in European countries generally. They don't write the closed shop contract in Britain. All they say is, "We don't work with blacklegs." If they are the majority and walk out, that is the way the closed shop will be enforced, no matter what kind of law we have.

We have had enough experience with prohibition and with other dead letter laws to know when it affects human beings whose sense of right on these things does not go along with the law, and they are a large portion of the population, you can't do much about enforcing law. Law is what most people feel they ought to obey, and on those vital issues you get into great difficulty if you try to handle them by compulsory legislation.

Well, my time is almost up, and I want merely to suggest that out of all this turmoil about legislation now we are likely to repeat the experience of the Smith-Connally Act. As a matter of fact, that coal strike was a straight violation of the law. The government had the mines. The Smith-Connally Act gives the President authority to take over mines and states that when the government takes them over, there shall be no strike or assistance to any strike. But the interesting thing is that they haven't been prosecuted for violating that law. That was not mentioned. They are talking about an injunction. There have been a number of strikes like that in violation of the Smith-Connally Act.

Many strikes were called without filing the 30-day notice. As a matter of fact, over at the Labor Relations Board where those strike elections are held, they told me that the people who file a 30-day notice to have an election as to whether or not they should strike, don't want to strike. They just want to use it as a threat in almost all cases. They vote for a strike in a vast majority of cases. The fellows that want to strike are striking and do not give any notice. They are striking in violation of the law, and nothing happens to them.

We must not kid ourselves when we get excited that this kind of drastic law or that kind of drastic law will give us the kind of labor policy we want, any more than friendly adjustment came from the Labor

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Relations Act because that is what we thought we would get. That is what I think we will have if the legislation is too drastic.

Some legislation is essential, however. For example, there is no reason why the Labor Relations Act should not have a provision in it that, not only the employers must be compelled to bargain collectively, but the unions also. That is not in the Act because everybody thought that was what the unions wanted. Well, we found by experience that some unions don't want to bargain. They want to say, "Take it or leave it." Or as a friend of mine used to say, "They want to collect first and bargain afterwards."

There is no reason why that couldn't be put in. Working people and union people will feel in their hearts that that is right because that is what they want, collective bargaining. Therefore, that kind of law is obeyed and enforceable.

Similarly, when the Labor Relations Board has an election and a majority swings to one union, and the Board certifies that union, under the law, the Supreme Court has held that such a union is now the statutory representative. Well, the minority or losing union often calls a strike against the other union--and under the present state of our general law, that is not improper--and boycotts its products. There is no sense in that. The unions wanted those elections. They were fighting for that privilege.

If the law is amended to say it shall be an unfair labor practice not to obey the decisions of the majority in the election, and they shall not boycott a statutory representative, they will know in their hearts that is right, and that is the sort of thing that can be enforced because you have public sentiment of the group against whom it is to be enforced in favor of putting it into effect.

I give you those merely as illustrations of a general principle that we need, namely, that when we pass laws about labor relations, we have to follow the customs, practices, and traditions of management and unions in their relations, what they have thrown up in the way of institutional arrangements for handling disputes and governing themselves. The general law has to be built on that to accomplish the public purposes. It can't be built on a notion that these people are bad and we have to hit them over the head with something.

Now, in their agreements--and unions have been making agreements with employers for more than a hundred years--they have set up certain institutions for settling disputes and deciding them in a way that they consider fair. The government needs machinery built on that, which it can use to intervene when collective bargaining ends in disagreement.

The mistake that was made in this Wagner Act is not that the Act itself is bad. I think it is soundly based, and we will always have to have that fundamental policy if we are to remain a free country. But

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the Act ends like the story in most novels. The Act says an employer must not refuse to bargain collectively. So when the Board can get the employer and the union to enter into a vow that they will bargain collectively, then they will live happily ever after. That is the theory of the Act.

Well, now, any of us who are married know that is not the way it happens. The most interesting part of your story is afterwards. It is the same here. Nobody thought, "What kind of machinery do we need in case this collective bargaining ends in disagreement?" And to this day we haven't the machinery. Because we didn't build it at that time, we made all these fumbling attempts with the Defense Mediation Board, the War Labor Board, and various things hurriedly thrown together.

We thought the Conciliation Section of the Department of Labor could handle it all. It couldn't. It has to be planned and designed to accomplish its purposes, and you can't have a machine that is imperfectly designed to accomplish the purpose, and then expect to get the proper results out of it.

That is what we will come to after this more or less drastic legislation is passed. We will find it doesn't work again, just as the Smith-Connally Act didn't work. Then people will say, "Maybe that is the wrong way. We will have to analyze it a little better and see where we are coming out." Ultimately, we usually work out our problems, but it is the hard way instead of planning ahead.

Now, I would like to leave you with this conclusion, as far as a future emergency is concerned. I think it is true that labor relations were handled in this last war much better than in the first war, and I think the strength of the unions through this collective bargaining purpose helped in that direction. People who were in it may not think so. They think if all these people were not in unions we could have done anything we pleased. But things don't happen that way.

Now as far as any future emergency is concerned, I think this is true. If we have all the proper machinery for handling labor disputes in peacetime and have worked out the principles of it so that we can eliminate industrial wars in time of peace, or at least reduce them--we will never abolish them all--to negligible proportions, we won't have to worry about wartime. That machinery will be just as good for wartime purposes. But if we don't start in that direction right away, by setting up adequate mediation machinery to handle labor disputes properly, we shall again have to improvise hastily some new agencies in case another emergency arises.

This last coal strike is about the meaning of the contract between Mr. Krug and Mr. Lewis. There is no sense to it. Any court or any judge

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could decide that meaning, but that is not up before the court. An injunction is up before the court. That is because we haven't the machinery. We should have an adjustment board or an adjustment court for interpreting these contracts. If we build them up in time of peace, and in the process you are training people how to do it, then when the future emergency comes, you won't have to worry about it much.

CAPTAIN WORTHINGTON: Dr. Leiserson will be glad to answer any questions.

A STUDENT: You have indicated some question that legislation could be passed to prevent strikes or boycotts. I believe you said there need not be strikes or interruptions of contracts. You also imply that there has to be devised some penalty if you break the law that is passed. Even saying they are not good laws, what would be a good penalty for management to pay when they do not live up to these laws?

DR. LEISERSON: That is a very good question. You got the implication from what I said that there should be a penalty. I think we want to avoid penalties. You remember in the newspapers a few months ago there was a story about a father who chained his boy to a stake because he stayed out late nights and disobeyed orders of the daddy. Well, that is one way of trying to make a boy behave. That is an eternal problem. I don't know how you have found it, but I have found it better--I had five boys--I have found it better not to try to handle them with penalties. It is the same way with respect to legislation. We don't penalize employers for violating the Labor Relations Act.

Not a single employer has gone to jail in the 12 years that that act has been in effect, not one. Meanwhile workmen have gone to jail for mass picketing and have had fines for various things like that, but not an employer. What do we do under the Labor Relations Act? All the law says is that the board shall issue a cease and desist order, which in plain English means, "Please stop doing that." That is all. Then if the employer still persists, which he has a right to do, the Board has to go to a court, and the court tells them, "Please stop doing this." Now, he has to obey the court order, but not the board's order. But actually most of them obey the board's recommendation. If they should violate the court's order, they might be cited for contempt of court. A few have been so cited, and as soon as that comes up, they obey. But there hasn't been any penalty.

I would not have any penalties. It doesn't do any good. The Smith-Connally Act has a penalty but it is flagrantly violated. People think that the penalty puts teeth in the act, but when great masses of human beings are involved, those teeth don't mean very much.

With respect to violation of contracts, I wouldn't have any penalties because either party is now subject to a damage suit in the courts under

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these contracts. They are enforceable contracts in the court. Neither of them goes into court much to enforce them, but they are enforceable contracts. I would merely have machinery for the quick settlement of those disputes. You don't have to hire lawyers or get into a lawsuit and all that rigmarole. If you have machinery for quick settlement, those disputes will not break into strikes except perhaps in a negligible number of cases. That is the theory of it.

A STUDENT: Just one thought, Doctor. We have 140 million people in the United States, of which some 13 or 14 million are in unions. In my mind that makes them a good sized minority.

DR. LEISERSON: They are bigger than that. You are counting families. You will have to say some 15 million are in unions plus their families.

A STUDENT: All right, go on up to 60 million. You still have a minority. You have one for every four. I think we can make laws in this country that are applicable to the majority. If we want those laws, let us have them. You say we shouldn't have any penalties because we won't have any enforcement of our labor laws. I don't think we can cover this thing up, like a harrow does seeds on each side all the time. Something has to be put down in black and white.

DR. LEISERSON: Do you think the majority of the people of the United States enforce the Eighteenth Constitutional Amendment?

A STUDENT: There is a big question there. There are a lot more people who like to drink whiskey than there are who like to see John L. Lewis run around with his coal strikes.

DR. LEISERSON: That may well be, and you may be right in thinking that a mere majority or a good majority can make a very large minority obey a law that that large minority thinks should not be obeyed. Do you think that the vast majority of people in the United States that want the Negroes in the South to vote have been able to enforce that?

A STUDENT: I don't think you could get it to a point of issue as to how many do or how many do not.

DR. LEISERSON: That is my answer.

A STUDENT: I still don't think you have answered the question.

CAPTAIN WORTHINGTON: The next question, please.

A STUDENT: In Britain since the year 1825, there has been virtually no legislation on these labor relations at all. Can you explain why it

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has been necessary for the government to have interfered in this country when things seem to have worked more smoothly in Britain without government interference at all. I am unable to identify in my mind what basic thing caused the government in this country to put its finger in this pie.

DR. LEISERSON: I would question your statement that since 1825, the British Government hasn't had to legislate. They freed the unions from the compulsion laws at that time just as we did in this country, only we did it by court decisions at about that time. But they had a succession of Royal Commissions that made recommendations. And there were laws. There were laws in the '70's; there were laws in the '90's.

After the last war there were Whitley Council reports. You remember there was a commission that recommended those reports. In 1926, they had a general strike, which we didn't have yet in this country. They passed drastic laws then abolishing sympathetic strikes. They also tried to keep workmen in the unions from making political contributions. They didn't absolutely prohibit it, but each individual union member had to sign a little card saying that he wanted so much of his dues to go for political purposes. They outlawed sympathetic strikes and they also prohibited certain kinds of public employment unions from belonging to the Trade Union Congress.

A STUDENT: I quite agree with you about the Whitley Councils and that those statutes were not laws restricting unions. The 1926 act, which has since been repealed, was the only one which clearly mentioned unions.

DR. LEISERSON: I agree with you.

A STUDENT: But in this country there have been a succession of laws restricting and treating in one way or another with employers and employees. What started it off originally?

DR. LEISERSON: Well, I don't know that I know the answer to that. What you are referring to is actually, "Why did we need a Labor Relations Act which forced the employer to bargain collectively?" Most countries didn't need it, although in Sweden, where they also didn't need it for wage-earners, when it came to clerical employees, white collar workers, they passed such a law. That gives you a suggestion of why you need it in this country.

The employers felt that, while they could organize trade associations for their business, they had a right to destroy trade unions, and they were strong enough to do it. For that reason they solidified all labor to get this law, and they couldn't get it until after the depression. In Sweden it was the same way. Swedish employers didn't think that a manual worker shouldn't belong to a union--they are all over that--but they were

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interfering with the white collar worker in exactly the same way it was done here. I think it was very bad that it was necessary, but that may be the explanation. I wouldn't say it is the final answer.

A STUDENT: Do you think the Wagner Act should be amended to prohibit strikes such as coal, gas, electricity, and water?

DR. LEISERSON: If you prohibit them, you will merely make the same strikes illegal. You won't abolish the strike. If I thought that when you declared the strike illegal, the men would all say, "No, we can't strike," I might say such an Act in some cases would be helpful. In Australia they have compulsory arbitration, and while we had our big strikes here, their shipping industry, longshoremens, their steel and mining industries, all of which take in 60 percent of all their employees, were shut down in spite of the law. I asked someone here from the Australian Embassy, "How could that be? What do you do about that?" He said, "Why, we try to settle the strikes."

Now, if you think the mere passage of a law will stop a strike, that is one thing. I happen to think that you can get fewer strikes in public utilities by adopting constructive measures for settling the disputes before they break out in strikes than you can afterwards. That is why I do not favor that kind of legislation--I don't know a place where it was effective in accomplishing its purpose. Before 1825, all strikes were illegal; they were conspiracies, but we had them.

A STUDENT: You have told us that you feel proper legislation is the type of legislation that would be accepted by all the populace as being a normal and good one to pursue in maintaining labor relations.

DR. LEISERSON: Not all, but there has to be a majority sentiment.

A STUDENT: Now, it seems to me that, in connection with the NLRB as created in 1935, where we made it mandatory for the management to bargain with the unions but failed to state that the unions must likewise bargain with the management, we had a law which in effect could have been recognized by the majority as being the type of law that everyone would like to follow. I would like to ask this question: To what extent did labor leaders break that law for their own purposes, not for the purposes of the nation as a whole?

DR. LEISERSON: Well, the number of cases in which the union refused to bargain collectively is small, negligible. Also the unions have a desire, a demand for that and want to bargain. There is no question about that. I don't think the unions have tended to break down that law, if that is your question. They want it. They have tried to use it for their own purposes, and when there have been disagreements among them, some unions have struck against other unions, and so on. But the total

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number of those cases are not what created great public problems for the country. Here and there they were rather serious, and in the electrical industry now they are rather serious, but in the main, I would say they are not breaking it down. They are using their rights under the law, which both leave them the right to strike as well as the right to have to vote. So I wouldn't say that they broke it down.

This question occurred to me. You may have intended it this way: "If the employers didn't want this law, how was it enforceable against them?" That is a serious question. They didn't want the law, but few employers took the position that they wouldn't bargain with their employees. All of them said, "We believe in bargaining."

I don't know whether I have answered your question. I try to answer them, but I don't promise that it will be a good answer in all cases.

A STUDENT: My question may spring from a misunderstanding of your speech, but I understood from you that we don't have complete coverage in the 1935 enactment, in that we stated that industry must bargain but we didn't state that unions must bargain. On that basis I raise the point that although you have in effect a law that should be accepted by everyone, you do have in effect strong minority rule, but in order not to get acceptance of it, there must be some external force that keeps it from coming into play.

DR. LEISERSON: But they do have acceptance of it. Neither Mr. Green, Mr. Murray, nor any of the people that are to go before this committee will say they refuse to bargain. They want it and they say they are for it. Now, there have been cases where a union here and there, when it finds itself in a strong position, says, "Take it or leave it." That you will have under any law. When I said that I did not mean all the people have to be for it in order to enforce it. We don't abolish crime by passing a law against crime. There are plenty of murders, and so on, but where the majority feels that that is the wrong way to do it, the majority is for collective bargaining, they can and will help enforce a law against the union. For instance, only in yesterday's paper, the Labor Relations Board ruled that the typographical union in a St. Petersburg, Florida, case, had refused to bargain collectively, rather than the employer. There would be no trouble in getting that kind of a decision obeyed because the vast majority of union people believe that it is wrong not to bargain collectively.

A STUDENT: What is the external influence--I have given union leadership perhaps--to bring about those refusals of minorities when there is a general majority acceptance?

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DR. LEISERSON: All I would say about that is that stupidity and arrogance on the part of individuals you will find everywhere, and those crop out. When unions were weak, the employers abused their powers. There is no question about that. When unions got into the position where they could dominate, they were just as arrogant as the other fellows were. You have to expect that. Therefore the public policy has to be to keep them about equal, to keep anybody from being in the position of being able to dictate to other people. That is the policy that we must seek for. So among unions you will find, as among managers, arrogant crooks, people who abuse their power. There are a lot of stupid people, too, and those we will always have.

A STUDENT: Doctor, will it be necessary for the federal government to take over or set up machinery for adjusting jurisdictional disputes between craft unions, such as carpenters, lathers, plumbers?

DR. LEISERSON: That is a very good question. I think a law directed to force the settlement of such disputes without strike is desirable and probably would work effectively. The difficulty in it is, first, that it would have to be state legislation because most of that work comes in the building industry rather than interstate commerce. But quite aside from that we have a peculiar psychology in American labor that a union feels it has a vested right in a kind of work. If they have that jurisdiction, whether it is from the AFL or the CIO, if anybody else wants to have a union in the same territory, that is dual unionism, as they call it, and that they consider very wicked. That is the source of the trouble.

In Great Britain, for instance, they have many inter-union disputes--they call them demarcation disputes--but they don't strike against each other. Their Trade Union Congress, which is like the AFL, has set up committees for the purpose of trying to settle such differences. They have practically no strikes of one union against another in that respect. Here it has become customary and habitual that there is some kind of vested right in this work.

We have tried to set up machinery for that. Elihu Root was chairman of a Jurisdictional Awards Committee once to try to settle those disputes by a judicial method, that is, their own court. It worked for a few years and then blew up, because some of the unions wouldn't obey the decisions. Several similar attempts have been made.

I would favor government action in the form of saying, "You can't strike on that issue because here is machinery--if you don't want to set up your own--that will settle it." Whether that would bring the results, I don't know. I am inclined to think that there is a good chance of its being effective because working people themselves are intolerant of that type of strike, but it is one of our most troublesome problems.

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A STUDENT: On this point that you brought up about the policy prior to 1935 being largely left up to the states, at the present time do the states enter into the establishment of labor policies or the enforcement of them to any extent? If they don't, do you think they could play a large part in that in order to dispose of the disputes or localize them, things of that kind?

DR. LEISERSON: About four or five states have what they call "Little Wagner Acts" which are similar to the Labor Relations Law. The same states also have mediation boards. Some states abolished the closed shop. The industrial states, Massachusetts, for example, and Connecticut, have legislation paralleling a good deal the federal legislation. The non-industrial states, which express the feelings of the farmers, such as Dakota, have abolished by constitutional amendment the closed shop. They don't have many unions in the state.

I think it is desirable that our states, as far as possible, should develop machinery, in harmony with federal machinery, so that disputes that are only local in nature or regional can be handled there instead of being brought to Washington.

A STUDENT: We have heard a number of times that management doesn't like the Congress fooling with their things; we have heard that labor doesn't like it. What would happen if we went back to 1930 and just repealed all the labor laws--or some arbitrary period?

DR. LEISERSON: What would happen? You would repeal the laws, but you wouldn't repeal 15 million people organized into strong unions. Once working people have the feel of unionism, from which they have obtained benefits, and they know it, they won't leave the union. That is why they stand so much from their leaders. They may not like their leaders, but they say, "He brings home the bacon." He gets them security on the job, and seniority, so that the boss can't put in his favorites. Now, that will remain. That means if you repeal the laws, the unions will enforce by their own power this recognition that the employer must give them, or the closed shop. It means we will have more and more strikes.

That is what happened to foremen, for instance. The Labor Relations Board a few years ago in the Maryland Dry Dock Company case ruled that it couldn't hold elections for foremen and certify them. Then the Foremen's Association of America, which is not affiliated with the AFL or the CIO, tied up all the motor plants in Detroit. They had gone to the NLRB and said, "Hold an election and certify us and we will continue to work on the job." The Board said, "No, we can't do that." What the Board in effect told them was, "If you are going to get employers to recognize you, make them employ you, you will have to lick them in a strike and make them." That is what they had to do. That is what workers did to build up unions before you had the law, and that is what they would do if you took it back.

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A STUDENT: I wonder if you would care to comment on the social implications in the case of David Stern. If we believe the papers, Mr. Stern said, "They exceeded their rights so I will take the cow home with me." In a similar situation, take the Ford Empire, to mention one, could he close up and say, "I am through?"

DR. LEISERSON: That is a very good question. What it really amounts to is, "What are the social implications of stupidity?" Now, a lot of people in unions, as in other organizations, just think because they have a little power--it is true of government also--some guy gets a job in the government where he has some authority, and he does all sorts of stupid things because he thinks he is the government. Occasionally that happens. And here is a union that defeated its own purposes. Other cases like that have happened. We are likely to have more of them. The same has been true on the employers' side. Rather than deal with the union, they have closed down their business. They were stupid, because these men have some rights in the country, too.

Now, we have no protection against unwise conduct. We elect Congressmen, and some of them do all sorts of foolish things. But we think that freedom includes the right to make a darn fool of yourself every once in a while, and you can't put a man in jail for being a fool or stupid. In Russia, maybe they know better. If they think a guy is foolish, they send him off to a concentration camp or shoot him. We don't do it that way. We have to accept the consequences of freedom, and freedom to be foolish is one of those.

CAPTAIN WORTHINGTON: Thank you very much, Dr. Leiserson, for your very interesting lecture.

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