

## Book Review

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# Book Review

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**Presidential Seizure In Labor Disputes.** By John L. Blackman, Jr. Harvard University Press, Cambridge: 1967. Pp. 351, including appendix and index.

According to Dr. Blackman, his “. . . volume represents a tentative effort to study as a separate phenomenon of industrial relations those disputes in which the presidents have intervened with coercive measures to keep production going over the protest of one or both parties.”<sup>1</sup> Dr. Blackman is too modest. He has not produced a “tentative effort.” He has produced an incredibly comprehensive and detailed study of presidential intervention, examining “. . . not only the 71 cases using seizure but the 23 cases using other means of control.”<sup>2</sup>

Dr. Blackman has collected all the historic incidents of seizure in labor disputes, beginning with the Civil War. His volume is an informational *tour de force*. He has even found cases of seizure previously overlooked by commentators. He has catalogued, collated, compared, cross-indexed and commented on all incidents of seizure in addition to similar extraordinary exercises of presidential power. He did not attempt the impossible task of uncovering and commenting on all cases in which the President was able to settle labor disputes through informal pressure and the threat of coercive action. He did, however, discuss that subject sufficiently to provide an appropriate counterpoint to his main theme.

My only negative criticism of the book pertains to style and technical approach. Dr. Blackman's array of facts is so overwhelming that reading his book is a chore. Further, his collection and analysis of facts leave him very little room for comprehensive overview and suggestion of policy and program. The admissions price is too high for the casual reader. This book will be read only on a need-to-know basis. Yet, the book obviously serves an important function. In fact, it is especially useful and timely.

Dr. Blackman's book serves to call up the question of the proper extension of executive power to meet the challenges of the industrial society we have evolved. The founders of our republic envisioned a tri-partite system of government in which the legislative, executive and judicial powers were carefully separated. This system was to govern for the ages. However, it was drawn from the experiences of a young, predominately agricultural society. Our society no longer bears those characteristics. In the system that evolved, the divisions of governmental power are not nearly as clear as those Montesquieu may have intended; and executive, not legislative, primacy has resulted.

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1. J. BLACKMAN, *PRESIDENTIAL SEIZURE IN LABOR DISPUTES* 16 (1967).

2. *Id.* Actually during the period 1947 to 1968, the emergency strike injunction provisions of the Taft-Hartley Act, §§ 206-10 of the Labor-Management Relations Act, 29 U.S.C. §§ 176-80 (1964), were invoked a total of 29 times. 70 *LAB. REL. REP.* 321 (1969).

The pressures of the twentieth century are causing us consciously to reconsider our formal and informal organization of power, both governmental and private. Much of the pressure arises from dislocations associated with the advent of the atomic or new industrial age. While the pressure exists throughout our society, the configuration of forces does take a peculiarly visible form within the arena of labor-management or industrial relations.

Industrial relations are still ordered according to comparatively free and private systems of collective bargaining. However, continuation of such systems of "private" ordering depends in large part on the parties' sense of responsibility and self-restraint. Such qualities are becoming increasingly rare. All the parties to many recent disputes have been grossly irresponsible. The basic steel industry provides a notable example. Critical services provided by police, fire department, school, sanitation and transportation employees, have been seriously disrupted during labor disputes. Each new round of collective bargaining negotiations causes new shock waves to escalate our inflationary wage-price spiral. In some industries, wages and benefits have already outstripped productivity. In others, producers are fleeing to Mexico where depressed labor costs improve profit pictures.

None of the ordinary techniques of regulation seem capable of altering the picture. The national labor laws do not purport to impose economic solutions on parties to collective bargaining. Neither fiscal-monetary controls nor wage-price guidelines have stopped the inflationary upswing. Special congressional legislation, such as that requiring compulsory arbitration to resolve recent railroad disputes, and existing emergency strike laws do not provide lasting solutions or relief.

Continuation of these conditions will cause us to seek more permanent and drastic solutions.<sup>3</sup> Congress might authorize government review of collective bargaining agreements; disputes might generally be resolved through compulsory arbitration. Congress might delegate general power to the President or he might informally assume such authority. It is unlikely that this new power would be confined to the area of labor relations or that it would be temporary. Throughout our history, ubiquitous executive power has almost constantly increased.

With notable exceptions during the nineteenth century, Congress has freely delegated great power to the President. In addition, the President has exercised inherent and extraordinary powers since the very beginning of the republic. Virtually all Presidents have found it necessary to undertake domestic actions having enormous consequences for the nation, often in advance of consideration or specific authorization by the Congress. In the twentieth century, as social complexities have increased, the rate of accretion of executive power has also accelerated. Franklin Roosevelt ordered that Americans of Japanese descent be detained in concentration camps; Truman ordered the steel mills seized; Eisenhower and Kennedy deployed massive police and military forces to uphold court decisions against racial discrimination; Kennedy terrorized the steel industry into rescinding price increases;

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3. See Address by George P. Schultz, Secretary of Labor, American Arbitration Association dinner, Apr. 9, 1969. 70 *LAB. REL. REP.* 409, 411-12 (1969).

Johnson deployed military forces to control large scale riots and then established a Civil Disorder War Room in the Pentagon.

Dr. Blackman's efforts reveal that almost invariably presidential intervention in domestic labor relations is related to critical issues of international order and economy. Usually martial or international considerations have prompted the President to take extraordinary steps on his own or have compelled Congress to authorize his actions, both in labor and in other domestic crises. This lesson was made unmistakable in the 1952 steel seizure dispute. President Truman justified his action on the ground that it was necessary for successful prosecution of the Korean War. The Supreme Court found the justification unavailing in the face of Congress's clear decision that the President should not be authorized to use the seizure power as Truman had used it.<sup>4</sup> However, the Court left Congress free to authorize such action.

Study of the Supreme Court decisions passing on Congress's power to regulate interstate commerce reveals the manner in which we have come to view our domestic economy as an integrated whole, rather than a free and atomized market. The recent congressional and judicial decisions concerning the federal commerce power disclose that we have come to view our total domestic society as an integrated whole.<sup>5</sup> Furthermore, it is increasingly obvious that our domestic and international affairs are similarly interwoven. Many fear that this close relationship is being used to bind all our actions and interests to the overwhelming expediency of national security.<sup>6</sup>

After reading Dr. Blackman's book, I wonder whether, when, and to what extent, Congress might issue a *carte blanche* delegation to the President to control economic and other dislocation because of the relation between all domestic activity and interstate commerce and the interests of national security and international affairs.<sup>7</sup> Of course, the Supreme Court's prohibition of "unconfined and vagrant" delegation<sup>8</sup> may save us. But, if some future President, like Julius Caesar, chooses to cross the Rubicon, will Congress refuse him a crown, and will the Supreme Court say them nay?

Even if my allusion to Julius Caesar is hyperbole, it is no exaggeration to suggest that crisis is becoming commonplace in our complex society. Domestic and international affairs are becoming inseparable. The operation of power in the ordinary conditions of the future may well resemble the operation of power in the emergency conditions of the past. Consequently, we may be better equipped to address questions of organizing power for the present and the future if we possess adequate background information concerning the use of power during moments of crisis in the past.

4. See *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952).

5. See, e.g., *Katzenbach v. McClung*, 379 U.S. 294 (1964); *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241 (1964); Fair Housing Law, 42 U.S.C.A. §§ 3601-36 (1969); Civil Rights Act of 1964, tit. II, 42 U.S.C. 2000a to a-6 (1964).

6. See, e.g., Miller, *The Constitutional Law of the "Security State,"* 10 STAN. L. REV. 620 (1958).

7. Cf. Bay of Tonkin Resolution, 78 Stat. 384 (1964).

8. *Panama Refining Co. v. Ryan*, 293 U.S. 388, 440 (1935) (Cardozo, J., dissenting); accord, *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935).

Substantial studies of the extraordinary use of presidential power are rare.<sup>9</sup> Fortunately, Dr. Blackman has produced his comprehensive volume on the labor relations facet of the subject. The information he gathered can help us to re-evaluate some of our basic postulates or myths concerning the organization of power. He has spread the historic and factual record on presidential seizure in labor disputes. He has also provided some helpful analysis of the record by addressing the questions: "How extensive was presidential control over the labor and other economic activities of the disputing parties in each case? What standards of labor and of public administration were observed during the period of control?"<sup>10</sup> His survey reveals our overriding needs for flexibility and yet for stern enforcement of governmental decisions once they are made.<sup>11</sup> Rigidity leads to unnecessary confrontation and intervention in private decision making. Failure of enforcement, however, tends to reinforce any tendencies toward civil disobedience or manipulation.<sup>12</sup>

By recounting past practices, Dr. Blackman has provided the backdrop for developing new approaches to all the emergency and ordinary conditions of modern industrial society, and not merely those concerning labor relations. Study of his book should reveal an historic and factual basis upon which we can draw to plan action necessary to maintain a viable democratic order in which we maximize private decision making and freedom, consistent with the realities of a technological society.

*Sanford Jay Rosen\**

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9. I cannot speak for the political science departments of our colleges and universities, but extraordinary use of presidential power receives little attention in law school. Some comes up in constitutional law, and some in labor law. Usually one or two cases, and perhaps a statute, are studied. Instructors and students alike never gain significant understanding of the subject, and never really know the facts. Occasionally a seminar is offered, but only occasionally. In 1961-62, the Yale Law School's major public law seminar was concerned entirely with the question of presidential power to advance civil rights in the absence of additional federal legislation.

10. J. BLACKMAN, *PRESIDENTIAL SEIZURE IN LABOR DISPUTES* 16-17 (1967).

11. See generally Rosen, *Civil Disobedience and Other Such Techniques: Law Making Through Law Breaking*, 37 *GEO. WASH. L. REV.* 435 (1969).

12. See, e.g., J. BLACKMAN, *PRESIDENTIAL SEIZURE IN LABOR DISPUTES* 44-48 (1967).

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