

Displaced Workers: America's Unpaid Debt

Edmund F. Byrne

ABSTRACT. The U.S. doctrine of employment-at-will, modified legislatively for protected groups, is being less harshly applied to managerial personnel. Comparable compensation is not otherwise available in the U.S. to workers displaced by technology. Nine pairs of arguments are presented to show how fundamentally management and labor disagree about a company's responsibility for its former employees. These arguments, born of years of labor-management debate, are kaleidoscopic claims about which side has what power. Ultimately, however, not even both together can solve without creative public intervention the emerging problem of massive technological unemployment — the other side of the corporate dream of profit without payrolls.

When America was a young nation it was easier to believe that the frontier really represented opportunity for those who were willing to work. The frontier, however, is forever gone; and willingness to work is no longer any assurance of opportunity. For, while there is certainly no shortage of tasks to perform, performance that is remunerated in our capitalist economy occurs ordinarily on jobs; and there just are not enough jobs to go around. Experts debate why

this is so and whether anything can be done about it. But while the debate goes on, a veritable revolution in the processes of performance is rapidly diminishing the need, once thought so great, for people willing to work. Microelectronic devices, such as robots and word processors, are picking up where scientific management left off; and the humans they are displacing or at least reducing to minimally functioning drones carry the stamp of obsolescence on their badges.¹

Workers in the past were no less vulnerable to management's quest for profits without payrolls. But there was usually more than enough to be done that could only be done by 'hands', however much or little aided by 'brains'. Occasional periods of severe unemployment, however upsetting to the unemployed and those dependent upon them, seldom caused anyone seriously to doubt that it is indeed by the sweat of one's brow, and not otherwise, that one should earn one's bread. Mechanization and Taylorization of one industry after another never seriously challenged the received methodology, for the simple reason that the technological best was not good enough to render human workers superfluous.

Any claim that the technology of our day now changes all that would perhaps be premature. But it is true nonetheless that the corporate dream of profits without payrolls is no longer purely fantasy. Workers of all kinds, with all kinds of different skills, including in fact managerial skills, are being rendered obsolete by the influx of devices spawned by micro-electronics. In Western Europe and Japan, workers whose livelihood is thereby jeopardized have found ways through legislation or bargained agreement to minimize the impact of new technology on their own careers.

*Edmund F. Byrne is Professor and Chair of the Department of Philosophy, Indiana University, Indianapolis since 1969. From 1966 until 1969 he was Assistant Professor at the Michigan State University, and from 1963 until 1966 he was a Fulbright Scholar in Belgium. Important publications: 'Microelectronics and Workers' Rights', in C. Mitcham (ed.), *Philosophy and Technology II*, D. Reidel, Boston/Dordrecht, 1985; 'Robots and the Future of Work', in H. F. Didsbury, Jr. (ed.), *The World of Work*, World Future Society, Bethesda, MD, 1983; 'Technology and Human Existence', *Southwestern Journal of Philosophy* 10.*

And in the United States some middle managers have found sympathy for their displaced condition before juries receptive to their claim of having been unfairly dismissed. But generally speaking the termination of one's employment in the United States is followed soon after by the termination of one's rights as a former employee. In a matter of months compensation comes to an end, and if one is still unemployed at this juncture, liberals and conservatives alike would tend to assume that one probably qualifies as some form of 'lazy and shiftless'.

This game that society plays is but another version of 'blaming the victim'. The only thing that is particularly curious about it is that it is still taken seriously. It certainly was in the past, of course. Even as Depression-era parents frightened their baby-boom offspring into succeeding, so did meritocratic appeals for 'excellence' provide a sort of apocalyptic assurance that the high-achiever on any given level would unfailingly find a comfortable niche in the econo-system of the future.² This promise needed special attention to make believers out of minorities and women; whence the social agenda of the 60s and 70s. But now, as we plunge headlong into the 80's, we find that the rules have changed again. Frederick Taylor lives, in the unlikely form of a microchip that not merely organizes human labor in accordance with mechanical principles but actually replaces them with better performing machines. Unlike Taylor, however, the microchip is no respecter of persons. It cannot discriminate the color of a worker's collar, still less the appropriateness of the worker's education. What it does, and whatever it does, it does regardless of who has been counting on doing it as a means of earning a living. The result is structural or, more to the point, technological unemployment. And the longer this unemployment perdures, the more difficult it becomes to continue believing in the merits of our mythical meritocracy.

Enter at this cue an old metaphysical concern about whether technology is neutral or perhaps something more value-laden in our regard. In this instance, however, as in perhaps very few others, the metaphysics of it all is too serious

to leave to the metaphysicians. Labor unions in particular have had to deal with this question, at least implicitly. In Europe they do so explicitly; and for reasons ideological as well as tactical, they tend to favor the neutralist position, saving their energy to do battle against a coterie of unintended consequences. This is the case, for example, in France, where Marxism is the ideology of preference within the union hierarchy.³ In the United Kingdom, on the other hand, Marxist laborites are on the fringes of power and tend to take the position that those in control of the unions are at fault precisely because they do accept technology as neutral and hence do not fight with sufficient vigor against it.⁴

On the basis of this assumption of neutrality, unions in Europe and Japan as well as the UAW and the CWA in the United States have sought 'data agreements' and 'new technology agreements' as ways of mitigating the impact of robots, word processors and such on the jobs of those presently doing what these devices have been designed to do better. These agreements do on occasion provide substantial benefits to workers displaced by new technology. But they are just as likely to settle for some tangential benefit such as a limitation on the number of hours a day an employee can be required to work in front of a visual display unit. Moreover, the vast majority of these agreements, at least in Europe and the United States, affect primarily white collar workers, e.g., the members of APEX in the United Kingdom. There is as yet no such agreement at any national, not to mention international, level. Rather are these agreements usually at plant or on occasion company level; and they are seldom arrived at without considerable resistance on the part of management.⁵

In addition to bargained agreements that ameliorate somewhat the impact of new technology on workers, some progress has been made through legislation and, to a lesser extent, through litigation. At issue here is the emerging claim of unfair dismissal or, as it is sometimes called, abusive discharge. Some workers have a statutory cause of action if dismissed in retaliation for having exercised rights granted under

the statute in question. Others, mostly managerial or professional, have achieved comparable results through judicial rethinking of traditional concepts of law especially with regard to contracts. The overall effect to date has been a narrowing of the scope of a nineteenth century laissez-faire device known as 'employment at will' (EAW, hereafter), which infers from a mythical mutuality of contract to the right of either party to end the relationship without cause.⁶

Statutory limitations on EAW in the United States include both federal and state provisions. Under federal law there are prohibitions against discharge of an employee for union organizing activity (NLRA); for claiming rights under Title VII of the Civil Rights Act of 1964 or the Fair Labor Standards Act of 1976 or the Occupational Safety and Health Act of 1970 or the Age Discrimination in Employment Act of 1967; or for having one's wages garnished (the Consumer Credit Protection Act of 1976). Various state legislatures have protected employees against discharge for political activity, because of physical handicaps, for serving on a jury, for refusing to take a lie detector test, or, quite commonly, for filing a workers' compensation claim.⁷

Statutory limitations on an employer's freedom to discharge an employee in some foreign countries are, at least in principle, considerably broader. In the United Kingdom, for example, under provisions of The Employment Protection (Consolidation) Act 1978, many employees may seek monetary damages for wrongful dismissal in a court or for unfair dismissal before an industrial tribunal.⁸ Similar statutory protections are available in New Zealand, where, however, any such claims must be processed through the appropriate union of which one must be a member.⁹

Judicial modifications of EAW in the United States have drawn primarily upon some evidence of public policy; but in a smaller number of cases a minority of state courts have found unfair dismissal on the basis of contract law. Public policy exceptions have been found for discharges for (1) refusing to violate a criminal statute, (2) fulfilling a statutory duty, (3)

exercising a statutory right, or (4) where the discharge violates a general public policy.¹⁰ The United States Supreme Court has tended to favor job security for *public* employees, has found that workers have rights to liberty and property under the fourteenth amendment, and has even authorized a tort of wrongful discharge in cases in which filing for workers' compensation triggers the discharge.¹¹ Traditional contract law with regard to terms of an express or implied contract has persuaded courts in some states. But it is especially the emerging doctrines of reliance, estoppel and additional consideration (involving, for example, an employee's sacrifice of a tangible or intangible right), promissory estoppel, or equitable estoppel on the basis of considerations analogous to the equitable theory of quantum meruit.¹²

Although only a minority of state courts has either adopted or considered adopting such a contract law modification of EAW, commentators in the law journals wax eloquent on the long-term implications. For a few, nothing less than the downfall of capitalism is at stake.¹³ For others, this judicial trend provides some long overdue protection to the great bulk of American workers who are not unionized — a consideration, by the way, which has not gone unnoticed by the unions themselves.¹⁴ Still others anticipate nothing more dramatic than a need to word a discharge notice as carefully as one words a divorce action in a jurisdiction that still requires a finding of fault.¹⁵

That the modifications being introduced into the century-old doctrine of EAW are deserving of such careful consideration is perhaps true. That a slippery-slope or camel's-nose-under-the-tent argument is applicable to the kinds of modifications being introduced is, however, highly questionable. Organized labor surely has more serious problems to be concerned about in this age of technological unemployment than whether judge-made rights for some workers is an obstacle to organizing. And the percentage of the workforce that is likely to avail itself of such rights (almost exclusively professional and managerial personnel) is and will probably remain quite small, for reasons both financial and social; so predictions about the demise of free

enterprise would seem to be somewhat premature.

In reality, these modifications are minimally responsive to the social and economic problems that worker displacement is already imposing upon our outmoded laissez-faire public policy with regard to work and the lack of work. Considering the scope of technological unemployment that we face in most occupations and up and down the hierarchy of the workforce, mere '*sauve qui peut*' stopgap measures are inadequate. Jobs are not merely being moved from one place to another, from East to West or from North to South or even from home to abroad, as has historically been the case. Jobs are being taken from humans and given to presumably more efficient, reliable and productive machines, in particular those that are driven microelectronically. Workers thus replaced may, as in the case of Western Electric employees being phased out over the next several years, be provided with a better than customary 'transitional' cushion.¹⁶ But in many such instances no new job is likely to be forthcoming.

In a word, we as a society need to decide who should assume what responsibility for the *societal* transition that is already underway. What follows is intended as a contribution to the discussion of this question of responsibility in the form of a series of arguments, none of which is particularly original. ('L' stands loosely for Labor; 'C', for Capital.)

L1. Exploitation of workers

Management is to blame for the current workplace crisis because of its long history of manipulating people into servile dependence by touting the work ethic on the one hand and EAW on the other. The unprincipled ruthlessness that underlies this two-pronged manipulation of workers is evident in management's simultaneous efforts over the years to achieve productivity without payrolls. First they Taylorized brains out of jobs as much as possible, then they started looking for and introducing machines to do the brainless jobs. Now, to their surprise, they have at their disposal even brainier

machines that will allow them (those who are left) to shrink the payroll even more by eliminating even personnel recognized as having some brains.

C1. Advantages of EAW to employee

In the course of the twentieth century, the alleged severity of EAW has been tempered in a variety of ways, as a result of legislation, regulation, and especially contract bargaining with regard to the terms and conditions of employment. This tempering has improved the status of the employee and of both the potential and the former employee. And the other side of the coin, don't forget, is the freedom of the employee to quit the job in question and take skills, often employer-taught, to a better job with another employer. To prohibit such mobility is to require involuntary servitude, which is prohibited in all of the civilized world, including the United States since the Civil War.

L2. Disadvantages of EAW to employee

As a matter of fact, there are still employees in the United States, especially in agriculture, who have been maneuvered by their employers into positions of involuntary servitude. Leaving this problem aside, it is unrealistic to equate the freedom of the employee to end a work relationship with that of the employer. Such an equation may apply in the case of the small proprietary business. But another order of magnitude is involved in the case of a large corporation that has located a plant in a particular community under certain terms and conditions over an extended period of time. This large corporate employer may well have become the only ongoing source of income for its employees and for others economically dependent on them. To justify that kind of employer's dismissal of, typically, thousands of employees on the basis of EAW is comparable to appealing to self-defense to justify grand larceny.

The basic presuppositions of this doctrine, namely, the mutuality (i.e., equal bargaining

position) of the parties, has not been seriously undermined. Regardless of developments abroad, e.g., in Sweden, not even the most powerful unions in the United States have been able to prevent plant closings and massive layoffs. Improved provisions for the time of 'transition' do not change the basic fact that large corporate employers can and do end one-to-many relationships with consequences quite devastating outside the four corners of their ledger sheets.

C2. The profit motive

Problems do arise when an employer is required by business necessity to reduce a workforce or discontinue the operation of a plant or production of a product or even involvement in an industry. But when profitability is insufficient, there is no alternative that is or should be acceptable to investors, including, as often as not, the pension funds of many, even millions of, workers.

Besides, you can hardly blame management for a philosophy of work with which even unions have agreed to a great extent, at least with regard to the idea that the work relationship is dependent upon the availability of work as determined by management. In any event, it is essential to a free enterprise system that an employer not be required to pay someone as an employee regardless of the profitability of the employment in question. Cost-cutting, including plant relocation and workforce reduction must always be available as options if we are to attract the capital that makes employment possible.

L3. Bad management

An employer should in principle have the right to be free of an unproductive worker (and/or machine or plant or division), but only on condition that he/she/it is in no way *responsible* for that worker's lack of productivity. In particular, persons (employees) have rights not granted to mere equipment, Frederick Taylor notwithstanding. If the failure of my watch to 'work' any more is due entirely to my own negligence,

e.g., by having worn it into the swimming pool knowing it not to be waterproof, I still retain the right to dispose of it without pausing to contemplate its future. I do not, however, *own* another person as I might own a watch by virtue of my being that person's employer. So to the extent that I am responsible for that person's becoming less productive or unproductive, I continue to have obligations *viz-à-viz* that person. If I failed to provide tools and equipment in a timely way, if I failed to seek customers (e.g., as a contractor), if I failed to modernize to stay competitive in my business environment (e.g., as in the case of West German watchmaking or U.S. steel production), if I failed to manage prudently,¹⁷ then am I not for any of these reasons responsible for the financial/social misfortune of the person who has come to work for me? The other side of 'management rights', in other words, is management responsibility. Claim the one and you must accept the other, as some judges are now finding when they consider the terms of the employment contract. To say otherwise is to raise the crassest kind of exploitation to the level of public policy.

C3. Risk control

A negligent employer may indeed be held responsible for *some* misfortunes of an employee, e.g., with regard to the employee's health and safety on the job. Hence the need for appropriate insurance and, at least for the sake of argument, some form of governmental oversight. Such responsibility must be circumscribed, however, or the employer will remain forever uncertain of its financial status, as would be the case with Johns Manville absent the availability of bankruptcy. Take away these limits on an employer's responsibility, expose the employer to open-ended liability, and you create a monster that will devour management and labor in one big bite. As witness the numerous business failures in recent years, management is no less at risk in the face of technological change than are workers. So if business is to be encouraged to the benefit of all concerned it ought not to be exposed unduly to interference on the part of courts

with regard to terms of employment. Leave that to the parties immediately involved, either one-on-one or by means of collective bargaining to terms understood and acceptable on both sides.

L4. Unequal parties

Contrary to the traditional mythology still canonized by most courts, contracting parties in the employment situation are seldom bargaining at arm's length. The typical work relationship today is between comparatively vulnerable workers and a large corporation. It is accordingly quite appropriate for society, through its courts and otherwise, to base its work policies on the realities of the working world today rather than on the alleged need for entrepreneurial autonomy that characterized the pioneering days of the nineteenth century. There is precedent for just this sort of rethinking the realities in the recent U.S. Supreme Court decision in *Container Corp. of America vs. (California) Franchise Tax Board*, which frees states to develop tax formulas that take into account the global profits of a corporation operating within its borders.¹⁸

C4. Union power

The heavily one-sided employment relationship just described is more typical of the previous century than it is today. In the interim the labor movement has organized much of the workplace, thereby giving workers power co-equal to that of management. And even if the majority of workers, at least in the United States, are not organized, the legal structures are there to make such organization available to them if they feel a need to bargain with their employer collectively, especially with regard to job security.

L5. Constraints on unions

The previous argument must be tongue-in-cheek

in view of management's dedicated efforts over the years to see to it that as small a percentage of workers organize as possible. In particular, it conveniently disregards all the legal constraints that have been imposed on union organizing since the end of World War II. Anti-union statutes such as the Labor Management Relations Act of 1947 (Taft-Hartley) and the Labor-Management Reporting and Disclosure Act of 1959 (Landrum-Griffin), as well as anti-union interpretations of statutes, e.g., with regard to antitrust and, more recently, bankruptcy laws, severely hamper the growth of unions in the United States.¹⁹ In 1978, labor movement efforts to have Congress put teeth into the statutory prohibition of employer obstruction of organizing met with heavy and ultimately successful opposition from business interests. Thus even an umbrella organization such as the AFL-CIO can do little in the face of plant closings, outsourcing, change of product and/or process (automation). These law-embodied constraints on the labor movement represent as much as anything else in our society what is in fact our society's policy with regard to the rights of workers in the face of corporate changes that cost jobs and, in many instances, undermine the economies of entire communities. So it is rather hypocritical to appeal now to the right to organize as an answer to technological unemployment.

C5. Democratic process

The position of unions in the United States has deteriorated in recent years because of the competition-engendered decline of the most highly organized industries. But this deterioration is neither inevitable nor irremediable. If we as a society so choose, we can still change our public policy with regard to job security, as has been done in Sweden, or our approach to industrial policy below the level of government, as has been done in Japan, West Germany, and the United Kingdom. We as a people need only be persuaded that it is in our long-term best interest to be more solicitous of workers necessarily left by the wayside as we move on to new technologies. As evidence of this, con-

sider how EAW has been modified over the years to accommodate the legitimate demands of employees who challenge their dismissal.

L6. Power of MNC's

Nation-states themselves, even one as powerful as the United States of America, are inadequate instruments of effective industrial policy in this age of massive multinational corporations (MNC's, hereafter), some of which have annual budgets larger than those of most national governments combined. Salvador Allende (and his British industrial policy adviser, Stafford Beer) learned this harsh lesson at the hands of U.S.-based corporate enterprise, whose views were subsequently expressed in Chile by conservative economist Milton Friedman.²⁰ Others, such as Simon Nora in his report to then President of France Giscard d'Estaing, also see what the United States Supreme Court has now seen, that the MNC can shift its assets and liabilities around by paper (or, rather, microelectronic) transfers that most effectively immunize the company's proceeds. Neither our government nor any other is capable by itself of formulating a policy that will effectively solve the problem of technological unemployment.

C6. International law

Pessimism is not a justification for inactivity. Even granting the seriousness of these complaints about the impotence of nation-states in the age of the MNC, one is reminded all the more forcefully of the need for a world government that is capable of rising beyond the provincial limits of the past. This sort of supranational structure already exists in limited form in such world-oriented agencies as the United Nations and its subsidiaries, such as the WHO and the FEO, and the IMF, the EEC, GATT, and various other structures developed under principles of international law. These international arrangements are admittedly inadequate; but by their very existence they attest to the possibility of building broader-based agencies as these are

perceived as being necessary to the survival and advancement of the human family.

L7. Corporate responsibility

World government, even if possible, may not be desirable. But the question is moot, since no world government presently exists. Even if there were a world government, empowered to determine somehow the rights of workers around the world, it would need some basis on which to make such an important determination. The establishment of this basis for determination of rights should precede any actual set of laws in any particular governmental unit, however advanced. What is needed for this purpose, however, is an emerging sense of *human* rights with regard to work prior to and independently of any particular politico-economic arrangements, be they in a developed or a developing country. The most widely honored statement of human rights, however, namely, the Declaration of Human Rights, speaks only of the right to work, not of any rights in the absence of available work. And merely expanding the traditional notion of a work ethic beyond national borders is hardly an adequate way to deal with a problem that is brought on precisely by the diminishing availability of economically rewardable work. So leave world-building to a future generation. There are issues enough before us just with regard to the legal environment of work in particular locales, such as the United States. Here, as already noted, there are good reasons for laying responsibility for technological unemployment at management's door.

C7. Social responsibility

There is almost always a simple solution to every problem; but, unfortunately, it is almost always wrong. If you want to make the employer responsible for technological unemployment, then what you mean is that you want the public, via higher prices for the employer's products, to pay for the employee's historically inevitable misfortune. To every action there is an

equal and opposite reaction. In the context of systems thinking, this comes down to saying that you can't do just one thing. A system by definition is a set of components so interrelated that a change in one effects changes in all. With this in mind, there is a need today to develop a global system the components of which are known, anticipated, and taken into account in planning for the future so as to keep the shifting MNC under control. So be it. But this cannot be achieved overnight. In the meantime, employers, wherever based, must compete in the world marketplace.

In the case of American-based companies, however responsible they may have been historically for the policies that worked well enough within our national borders, they did not formulate those policies in a vacuum. Government (whether responsibly or not is beside the point) went along with, even canonized those policies, which even in retrospect served us all well enough through the years of nation building. If a new consensus is in fact required for the coming era of world building, then let us get on with it. But let us do so not in an adversarial relationship of 'the people' against 'business'. Let us rather recognize the universal myopia that characterized our past even as we were building a base for our future. And having acknowledged this myopia for what it was, let us now, *as a society*, take *collective* responsibility for the victims of our shortsightedness. And for this project we might well accept as a basic maxim that any group or institution should be held responsible, or liable, for worker displacement no more or less than it has been involved in the decisionmaking that has led to the present crisis.

L8. Corporate bias

This plea for diffusing responsibility beyond corporate headquarters under the guise of 'collective responsibility' has the support of history inasmuch as corporate decision-making has over the years enjoyed benign neglect at the hands of government in the United States, e.g., with regard to plant closings. And some

would have it so now and forever. In particular, it is now being contended that 'foreign competition' requires leaving business even more unhampered than before so that it can find new and better ways of competing, e.g., by the introduction of robots. What is left off this agenda, however, is any consideration of the scope of interests that will in fact be served by such flexibility and that will not. Business left to itself will consider only the interests of its investors, not those of its workers. So if workers cannot protect themselves on their own, e.g., by winning some guarantee of job security, then government ought to help them. For after all, if there are great benefits allegedly to be derived from displacing workers, then why not let some of those benefits redound to the workers being asked to sacrifice themselves to that end?

C8. Worker control

If the cause of concern here is management's inability to represent workers fairly and objectively in these crisis situations, this can be remedied by expanding the role of workers in decision-making, not only on the shop floor but on executive boards as well. To the shared responsibility of management and workers on a board of directors can also be added appropriate governmental input. The broader the representation, the better the input and the better the resulting output in the form of policy. In this way, management would retain responsibility but would share it with representatives of both workers and government. Quality circles, profit-sharing plans, ESOP's, worker ownership, and various other arrangements, as appropriate can be utilized to increase worker involvement in and appreciation of challenges to the survival and growth of the company by which they are employed. With some modification of the legal constraints on unions, referred to above, unions could even take responsibility for some of these new approaches to management, so long as they would not thereby enter into unfair competition in the very industry one is trying to salvage.²¹

L9. Economic policy planning²²

Even management can sound pro-labor if the situation is desperate enough. Worker ownership is a good example. How often do you hear of employees being offered ownership of a thriving business? Rather are employees turned to as a convenient way to bail out of a plant or business with minimum damage to the corporate image before community and/or customers. The ultimate proponent of this ploy may even turn out to be the Reagan Administration as it looks for a way to get Conrail (Consolidated Rail Corp.) off the public ledger.²³ As this example illustrates, deregulation is about as close as the U.S. government has come to any coordinated, consistent industrial plan. The marketplace is even being counted on, it seems, to assure this country a supply of oil in the event of another cut-off. But not even an economy as large as that of the United States can function effectively in the face of world competition without serious broad-based planning combined with research and development. Nor can we rely any more on incidental civilian applications of military R & D.²⁴ The Japanese, among others, study world markets on a national level, locate areas of business decline, stagnation, and growth, then focus R & D accordingly. Companies collaborate on R & D (no need for domestic industrial spying) and do their competing with products in the marketplace.²⁵ Similarly, the West German government controls industrial plant relocation by assessing the total cost of any proposed move, including the cost to workers, on the infrastructure.²⁶

By comparison, America's industrial policy is practically non-existent, to the point that the out-of-power Democrats would have a claim on the White House if only they could come up with such a policy after years of relying in vain on fiscal manipulation.²⁷ Instead, Washington deregulates, talks about local content for products to be consumed domestically, and peddles a strong dollar that puts export-dependent jobs in mothballs. There is even some reason to fear that our government is counting on a Depression-generated idea that even in a nuclear age war can cure economic woes, including unemployment.

Hopefully, costs and benefits of such an approach will be assessed fully enough to show forth its obviously fatal fallacy. But such brinkmanship thinking does suggest the need for more than merely a band-aid approach to curing employment.

Band-aids are needed, as are tourniquets and even transfusions. But beyond all this there is need for us to go beyond concern just for the transition of the worker (adequate, if at all, only for cyclical, or frictional, unemployment) to concern about moving from an obsolete industrial base to one with a very different mix of skill requirements and resulting employment needs.²⁸ Just because it will be difficult is no reason not to take seriously the titular goal of the Humphrey-Hawkins Full Employment Act of 1978, which at least requires a coherent process for coordinating government policies with regard to unemployment and a recorded Congressional vote on the subject. The goal is little changed from a similar bill passed in 1946 without inclusion of the ideologically unacceptable word 'full', and light years behind the kind of commitment to such a policy that will be found, for example, in Sweden. But now, at least, the goal is before us. We are on record as saying, in the face of yet another love affair with *laissez-faire*, that we do care about the impact of our policies on people.

C9. Growth through autonomy

Disregarding the rhetorical excess of the preceding statement, it is unobjectionable except for its implicit assumption that government can solve any problem through the magic of its burdensome bureaucracy. Anyone who believes this needs to explain why welfare programs developed in West European countries in decades past are being cut back by survival-bent governments at both ends of the political spectrum.²⁹ As companies such as Peoplexpress are proving, deregulation of an industry can lead to many jobs with a provider of affordable goods or services. Granted there is need for better planning. Any business that has to meet the competition knows very well indeed that profitability, not

to mention survival, depends upon a well laid out plan of attack on the market. So why ask government to do at great cost what competition does for free?

So much for arguments in behalf of Labor and Capital regarding responsibility for displaced workers. The winner is hardly apparent. But Labor does have strong evidence for a claim that it is being treated very badly in this country; and random judicial victories over EAW will not suffice to balance the scales of justice. On the other hand, random expansion of workers' defenses against EAW would unduly hamper management's ability to meet unquestionably serious competition from abroad. But we are all of us losers if we as a nation continue to abandon displaced workers like tools no longer needed. We do not cut off benefits to veterans of yesterday's wars just because they served with now obsolete means of destruction. Still less should workers be forgotten simply because they served with now obsolete means of production. Yet full employment however defined is probably an unattainable goal at least for the foreseeable future. What, then, is to be done and how ought we to do it?

For one thing, we should be developing a national work policy that would in effect expand considerably the scope of protective legislation. For, at the very time we are being urged to start planning for leisure on a massive scale,³⁰ those who are employed are likely to be working inordinate overtime hours or at a second job. So there is already a need to distribute available work more rationally and equitably; and this could be accomplished, at least in part, through a combination of laws setting a minimum level of income and a maximum level of hours of employment (without regard to self-created jobs). Additional steps into the age of leisure should include not just a new national holiday every decade or so, but an orderly plan for distributing reduced manpower needs by means of shorter work weeks, longer vacations (as in Western Europe) and even sabbaticals for all workers. Whatever our approach to the declining need for work in our society, we have an excellent opportunity to reconsider what, after all, we really value in our lives. For, workers of the

previous generation, whatever they may have contributed to society, are now at the mercy of their progeny. Hopefully, the latter will find a way to pay their forebears the debt they clearly owe.

Notes

- ¹ See Edmund F. Byrne, 'Robots and the Future of Work', in *The World of Work: Careers and the Future*, ed. Howard F. Didsbury, Jr., World Future Society, Bethesda, Md. 1983, pp. 30-38.
- ² Samuel Bowles and Herbert Gintis, *Schooling in Capitalist America*, Basic Books, New York, 1976.
- ³ Personal communication, Daniel Cerezuelle, University of Bourdeaux, Bourdeaux, France.
- ⁴ Ian Benson and John Lloyd, *New Technology and Industrial Change: The Impact of the Scientific-Technical Revolution on Labour and Industry*, Kogan Page, London, 1983, pp. 165-84.
- ⁵ Edmund F. Byrne, 'Microelectronics and Workers' Rights', in *Research in Philosophy and Technology*, Vol. VIII, ed. Carl Mitcham, Greenwich, Conn.: JAI Press, forthcoming.
- ⁶ Gary E. Murg and Clifford Scharman, 'Employment at Will: Do the Exceptions Overwhelm the Rule?' *Boston College L. Rev.* 23 (March 1982) 329-30, nn. 1-2; 337, nn. 48-50.
- ⁷ Charles A. Brake, Jr., 'Limiting the Right to Terminate at Will - Have the Courts Forgotten the Employer?' *Vanderbilt L. Rev.* 35 (1982) 203, n. 10; Murg and Scharman, *op. cit.*, 343-344, nn. 87-88.
- ⁸ Paul O'Higgins, *Workers' Rights*, Arrow Books, London, 1976, pp. 62-78; Jeremy McMullen, *Rights at Work: A Workers' Guide to Employment Law*, 2nd impression (with supplement), Pluto Press, London, 1979, pp. 144-208, 324-334, Supplement.
- ⁹ G. J. Anderson, 'Limits on the Right to Claim for Unjustified Dismissal', 1982 *New Zealand L. J.* 59-64. See also *Cessation de la relation de travail à l'initiative de l'employeur*, Bureau International du Travail, Geneva.
- ¹⁰ Faye L. Calvey, 'Termination of the At Will Employee: The General Rule and the Wisconsin Rule', *Marquette L. Rev.* 65 (Summer 1982) 652; Brake, *op. cit.*, 204.
- ¹¹ Murg and Scharman, *op. cit.*, 340 n. 67, 343ff.
- ¹² *Ibid.*, 357; Comment, 'Employment at Will and the Law of Contracts', *Buffalo L. Rev.* 23 (1973) 212-216.
- ¹³ Brake, *op. cit.*, 204-205.
- ¹⁴ Murg and Scharman, *op. cit.*, 339 n. 63, 355, 369; Calvey, *op. cit.*, 652. See also Eric Isbell-Sirotkin,

'Defending the Abusively Discharged Employee: In Search of a Judicial Solution', *New Mexico L. Rev.* 12 (Spring 1982) 711-745.

¹⁵ J. Ronald Petrikin, 'In Defense of Employment at Will', *Oklahoma Bar J.* 53 (1982) 2209-2214.

¹⁶ *The Indianapolis Star*, Sept. 12-16, 1983, *passim*.

¹⁷ See 'Shortcomings of Management', in *More Construction for the Money: Summary Report of The Construction Industry Cost Effectiveness Project*, The Business Roundtable, New York, 1983, pp. 21-30. Compare 'Union Workers May Really Be More Productive', *Business Week*, Aug. 22, 1983, 22; Charles Brown and James Medoff, 'Trade Unions in the Production Process', *Journal of Political Economy* 86 (1978) 355-378; William F. Maloney, 'Productivity Bargaining in Contract Construction', 1977 *Labor L. J.* 532-538.

¹⁸ 'Now States Can Really Put the Bite on Business', *Business Week*, July 11, 1983.

¹⁹ See Deborah Groban Olson, 'Union Experiences with Worker Ownership: Legal and Practical Issues Raised by ESOP's, TRASOP's, Stock Purchases and Co-Operatives', 1982 *Wisconsin L. Rev.* 732-823; Zachary D. Fasman, 'Legal Obstacles to Alternative WorkForce Designs', 8 *Employee Rel. J.* (1982) 256-281; 'Worker Ownership and Section 8(a)(2) of the National Labor Relations Act', *Yale L. J.* 91 (1982) pp. 615-33; Harold J. Krent, 'Collective Authority and Technical Expertise: Reexamining the Managerial Employee Exclusion', *New York University L. Rev.* 56 (1981) pp. 694-741; Jan Stiglitz, 'Union Representation in Construction: Who Makes the Choice?' *San Diego L. Rev.* 18 (1981) pp. 583-632; Lizanne Thomas, 'Predatory Intent is an Essential Element of a Union's Antitrust Violation', *Washington and Lee L. Rev.* 38 (1981) 450-459; 'Determining Breach of Fiduciary Duty under the Labor-Management Reporting and Disclosure Act: *Gabauer v. Woodcock*', *Harvard L. Rev.* 93 (1980) pp. 608-117; Baker A. Smith, 'Landrum-Griffin after Twenty-One Years: Mature Legislation or Childish Fantasy?' 1980 *Labor L. J.* pp. 273-81; Barry A. Macey, 'Does Employer Implementation of Employee Production Teams Violate Section 8(a)(2) of the National Labor Relations Act?' *Indiana L. J.* 8 (1974) 516-537; 'New Standards for Domination and Support under Section 8(a)(2)', *Yale L. J.* 82 (1973) 510-532; Ralph K. Winter, Jr., 'Collective Bargaining and Competition: The Application of Antitrust Standards to Union Activities', *Yale L. J.* 73 (1963), p. 14.

²⁰ Benson and Lloyd, *op. cit.*, p. 200; Andrew Levison, *The Full Employment Alternative*, Coward, McCann & Geoghegan, New York, 1980, pp. 66-67.

²¹ See above, n. 19, especially Fasman, *op. cit.*, and Olson, *op. cit.*

²² This expression is taken from Levison, *op. cit.*, pp. 159, 204.

²³ 'The Unions Balk at a Quick Sale of Conrail', *Business Week*, Feb. 27, 1984; 'On Track for Conrail: Union Ownership', *Business Week*, June 20, 1983, 184. See also *ibid.*, 194; April 5, 1982, 72-79; and testimony of Thomas A. Till, Deputy Administrator, Federal Railroad Administration, before U.S. Senate Finance Committee, April 13, 1983.

²⁴ Levison, *op. cit.*, pp. 134-135.

²⁵ Benson and Lloyd, *op. cit.*, pp. 124-127; Ira C. Magaziner and Robert B. Reich, *Minding America's Business*, Vintage, New York, 1983, pp. 261-327. At this writing, it should be noted, there are a number of bills before the 98th U.S. Congress, 1st session, that would modify century-old antitrust law to permit companies to enter into joint ventures for purposes of R & D without exposing themselves to treble damages for restraint of trade. On July 12, 1983, the House Committee on Science and Technology began hearings on H.R. 1952 and H.R. 3393, also assigned to the House Judiciary Committee. Other bills include Democrat-sponsored S.B. 1383 and its counterpart H.B. 108, also S.B. 568, 737, and 1561.

²⁶ Levison, *op. cit.*, pp. 110-111.

²⁷ *Ibid.*, pp. 207-209.

²⁸ Magaziner and Reich, *op. cit.*, pp. 210-215. See Levison, *op. cit.*, pp. 83-87, regarding impact of mechanization on workforce in industries such as meat-packing after World War II.

²⁹ 'A Risky Operation in the Bloated Welfare State', *Business Week*, Oct. 17, 1983, 56-57.

³⁰ See Clive Jenkins and Barrie Sherman, *The Leisure Shock*, Eyre Methuen, London, 1981; Robert Theobald, 'Toward Full Unemployment', in *The World of Work*, *op. cit.*, pp. 49-58.