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PRINCIPLES OF LABOR LEGISLATION. By JOHN R. COMMONS, Professor of Political Economy, University of Wisconsin, and JOHN B. ANDREWS, Secretary of the American Association for Labor Legislation.

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PRINCIPLES OF LABOR LEGISLATION

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PREFACE

The growing importance of labor legislation as a subject for careful study is perhaps best illustrated by the revolutionary adoption within five years of workmen's compensation for industrial accidents in two-thirds of the United States. During the same brief period eleven of these states enacted minimum wage laws. There appeared also, for the first time in this country, protective regulations as far-reaching in possibilities as the prohibition of the use of an industrial poison by the federal taxing power; the regulation in several states of seven-day labor; the beginnings of effective prohibition of night work following closely the well-nigh universal spread of laws placing maximum limits upon the length of the working day of women; and, even more significant, the adoption by several states of the industrial commission form of administration.

With its rapid development, the mere extent and multiplicity of labor legislation present to the citizen who would keep informed a task that is truly formidable. At the beginning of 1914 the federal Department of Labor assembled and published the labor laws of the United States in two bulky volumes totaling more than twenty-four hundred closely printed pages. The legislatures of the following two years added to this list no fewer than five hundred new labor laws. The laws, moreover, are growing in complexity as well as in length and number, and to the maze of statutes is added a lengthening list of administrative orders and of judicial decisions. Obviously, only a few specialists can hope to keep pace with all the details of this growth. As in all other sciences, it is necessary, finally, in the science of legislation to formulate fundamental principles which may be generally applied.

This book, therefore, is written from the standpoint of the citizen and the student rather than from that of the lawyer. With regard to each of the main phases of the modern labor

problem—individual and collective bargaining, wages, hours, unemployment, safety and health, social insurance, and administration—it endeavors not so much to expound technical questions of legality as to sketch the historical background of the various labor problems, indicate the nature and extent of each, and describe the legislative remedies which have been applied. Throughout it is the *principles* of labor law, not the details which may change from legislature to legislature, which are emphasized. And this procedure has been followed because in a democracy it is the people themselves whose collective opinion finally determines what the laws shall be and how effectively they shall be enforced.

The work is intended to be both critical and constructive—critical in that it points out the good and bad features of the statutes, constructive in that it shows how, in the light of experience, the good is being strengthened and the bad remedied. Finally, it is in full recognition that a law is really a law only to the extent to which it is enforced that each chapter emphasizes efficient administration and that the closing chapter is entirely devoted to this complex and all-important problem.

In assembling facts and preparing chapters, assistance has been given by many valued co-workers, including E. E. Witte, Olin Ingraham, David J. Saposs, Anna Kalet, Margarett A. Hobbs, and the following students: W. H. Burhop, Mark Greene, Ora Harnish, A. P. Haake, Harry Jerome, Gladys Owen, and Stewart Schrimshaw. For painstaking reading of manuscript and proof, acknowledgment is due to Jean M. Douglas and Solon De Leon. Our further thanks are extended to the following persons, to whom various chapters were submitted and who have given valuable criticisms and suggestions for improvement: Richard T. Ely and H. W. Ballantine of the University of Wisconsin, Ernst Freund of Chicago University, Edwin V. O'Hara of the Oregon Industrial Welfare Commission, Thomas I. Parkinson and Joseph P. Chamberlain of Columbia University, Louis D. Brandeis of Boston, and Arthur N. Holcombe and Frank W. Taussig of Harvard University.

JOHN R. COMMONS
JOHN B. ANDREWS

January, 1916

EDITOR'S INTRODUCTION

The aim of the Harper's Citizen's Series is to supply a series of volumes which will serve both as text-books for college and university class-room use, and as interesting and instructive treatises for the general reader. The criteria of a good text-book are, indeed, not different from those of a satisfactory treatise for the general reader. In both the aim is to present in clear and logical form the essential principles which furnish the basis for, and give scientific consistency and unity to, the subject which is treated.

In this series the publishers, editors, and authors will cooperate in the preparation of a number of volumes which, while not fixed in number, will constitute a unity by reason of their harmony of purpose and their similarity in mode of treatment.

The general purpose of the volumes is indicated by the title "Citizen's Series." They will each discuss a subject, an adequate knowledge of which is indispensable to good citizenship; —a topic, therefore, which needs to be taught in our schools and universities, and which should be interesting to all persons who seek to understand the social, economic, and political phenomena by which they are surrounded and the principles which explain the conditions that so largely determine the welfare of every member of an organized community.

The mode of treatment which these topics will receive is indicated by the employment of the word "Principles" in the title of each volume. That is, the aim of each volume will be to reveal the fundamental principles which lie at the basis of the topic which is treated, and thus to provide the student or general reader with the instruction and information which will enable him not only to understand the facts which the volumes themselves furnish, but to appreciate the further

facts which his other reading and every-day experiences will necessarily present to him. It is further intended that the topics will be so treated that the student or reader will be stimulated to continue his quest for knowledge and understanding beyond the class-room and outside the covers of books. In order that this orientation of each field may be satisfactorily secured, and this indispensable stimulus to further study supplied, care will be taken that the discussion of each subject will be by a scholar eminent in the field within which his subject lies.

W. F. WILLOUGHBY.

PRINCIPLES OF LABOR LEGISLATION

PRINCIPLES OF LABOR LEGISLATION

CHAPTER I

THE BASIS OF LABOR LAW

Modern industry is mainly a matter of buying and selling. Scarcely any person lives on the things which he alone produces with his own property. Formerly the protection of his person and his physical property was the principal part of the law. Now the protection of that intangible property which arises through buying and selling and is defined in the law of contract, occupies the attention of lawmakers, courts, and the administrative authorities.

1. The Labor Contract

The labor contract is one of several kinds of contract, which until recently has differed from the others but little in the eyes of the law. Like the others it originates in an agreement, implies a promise, creates rights and duties, and is enforced, if need be, by the power of the state.

But the labor contract, in course of time, has come to be recognized as something peculiar. When a bushel of wheat is bought and sold, when a factory or farm is transferred, when a banker receives deposits or lends his credit, when a corporation issues stocks or bonds, the rights and duties created thereby can be fulfilled by delivering something external and

unhuman. But when a laborer agrees to work he must deliver himself for a time into the control of another. He earns his living, not by working upon his own property, but by working upon the property of another, and by accepting all the conditions he finds there. And, if he has no property of his own sufficient to fall back upon, he is under an imperious necessity of immediately agreeing with somebody who has. This peculiar relation between a propertyless seller of himself, on the one hand, and a propertied buyer on the other, coupled as it is with equal suffrage of both in the politics of the country, has gradually acquired recognition as something sufficiently important for the government to take notice of. While the courts and law books have dealt with the labor contract as similar to other contracts, legislation goes behind the legal face of things and looks at the bargaining power which precedes the contract. It distinguishes the price bargain, the investment bargain, the real-estate bargain, and others, from the wage bargain. The former are dealings between property-owners. The latter is a bargain which involves not only wages, but also hours of labor, speed and fatigue, safety and health, accident and disease, even life itself. Unemployment is failure to make such a bargain; immigration, child labor, education, prison labor, collective bargaining, and so on, are conditions which determine the bargaining power of the laborer. Every topic in labor legislation is a phase of the wage bargain, and it is because a large class of people have come to depend permanently, not on their property or resources, but on these bargains with property-owners, that labor legislation has significance.

This spectacle of the free laborer, without property but with the ballot, bargaining for his livelihood but electing his rulers, is something new and unaccustomed, measured by the life of nations. It has come about through what may be called industrial, legal, and political changes.

(1) *Industry*

Scarcely a generation has passed since the natural resources of the country were sufficiently free to permit people without

property to acquire ownership merely by labor. The homestead laws, culminating in 1862, may be looked upon as early labor legislation, for they were intended to provide "free land" by preventing the public domain from falling into the hands of capitalists and slave-owners and so to furnish an outlet to laborers from the East. Workmen who could not become farmers or miners could become tradesmen and independent mechanics in the new towns. But since the lands have been closed by occupation, and their values have increased, money or credit is required to purchase them. This means that laborers without capital must seek capitalists to employ them.

In 1869 the first Pacific railway was completed, and immediately Chinese coolies made their appearance in Massachusetts as strike-breakers, and the manufactured products of Massachusetts contributed to unemployment in California. The railway and steamship have made labor almost as movable as capital, and any bargaining advantage which wage-earners have in one section of the country is quickly levelled by migration.

Huge factories and corporations were almost unknown a generation ago, but now the United States Steel Corporation has some 200,000 employees, and single establishments have thousands and ten thousands. The special bargaining power of skilled mechanics is levelled down to that of the lesser skilled.

Thus the three industrial factors of closed land, labor mobility, and large scale production have produced a class permanently dependent on wages.

(2) *Labor Law*

When land and natural resources were free, labor was not always free. Slave labor in the South, indentured labor and apprenticeship in the North and South, contract labor from abroad, were based on legal devices by which the laborer could be kept from running away. Not until the enactment of the thirteenth amendment, following the Civil War, did slavery and involuntary servitude, except as a punishment

for crime, become everywhere illegal.[1] The labor contract henceforth has its peculiar significance. Although in theory it is like other contracts, yet it cannot in fact be enforced. The laborer cannot sell himself into slavery or into involuntary servitude. He retains the right to change his mind, to quit work, to run away. Certain other contracts can, in the absence of any other sufficient remedy, be enforced by the courts by compelling "specific performance." [2] But specific performance of the labor contract is involuntary servitude. Business contracts, if violated, are ground for damages which the court orders paid even to the extent of taking all of the business property of the debtor. The labor contract also, if violated, is ground for damages, but for the court to order damages paid out of labor property would be to order the laborer to work out the debt. This is involuntary servitude. Hence the employer is left with the empty remedy of bringing suit against a propertyless man. He can protect himself by making contracts which he also can terminate at any time by discharging the workman without notice.

Thus the labor contract becomes, in effect, a new contract every day and hour. It is a continuous process of wage bargaining. It carries no effective rights and duties for the future and is as insecure as it is free. After land has ceased to be free the laborer becomes free. Closed resources and freedom with insecurity produce in time a permanent class of wage-earners.

(3) *Politics*

In the northern states the suffrage was granted to all male wage-earners during the years preceding 1845, by removing the property qualifications.[3] This was as much as forty to

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[1] Constitution of the United States, Amendments, Art. XIII:
"SEC. 1. Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.
"Sec. 2. Congress shall have power to enforce this article by appropriate legislation."
The exception in the case of the seaman's contract will be noted later.

[2] See Andrews, *American Law*, 1908, Vol. I, pp. 582, 1586.

[3] Rhode Island was the only northern state that retained the property qualification.

sixty years in advance of other nations, and was, in fact, the first experiment in the world's history of universal admission of the propertyless laborer to an equal share in government with the propertied capitalist or employer. A similar experiment was made in the South after the slaves were freed by war. Henceforth the laborer not only shares in electing the legislature that makes the law, but he shares in selecting the judges who interpret it and the governors, factory inspectors, sheriffs, marshals and constables who enforce it. The labor contract and the wage bargain become as much a question of the control of politics as they are of large-scale industry and the mobility of labor. Wherever property-owners or employers can deprive the laborer of his suffrage or can control his vote, there they can more effectively control his bargaining power. He may be disfranchised, as in the South, or intimidated, as in some towns controlled directly by corporations, or manipulated and bought, as in towns controlled indirectly through the political "machine." So the struggle for the suffrage, begun ninety years ago in the North, renewed in the struggle of twenty years ago for the secret ballot, and kept up in the struggle against political corruption, is both a cause and a consequence of the appearance of wage-earners as a class in modern industry.

2. Individual Rights

Federal and state constitutions contain the fundamental laws and create the authorities of government with the power to interpret, amend, and enforce them. The Declaration of Independence and most of the state constitutions declare that all men are created equal. Prior to the Civil War certain of the southern states declared only that all freemen are equal. Those constitutions were afterward changed to read all men are equal. Some constitutions say that they are "equally free and independent." If they are equal, they have equal rights. Some of these rights are declared to be natural, essential, indefeasible, inalienable. Among the inalienable rights mentioned in different constitutions are life, liberty, the pursuit of happiness, acquiring, possessing and protecting property,

reputation, and enjoyment of the gains or proceeds of a man's own labor.[1]

The federal constitution guarantees certain means for protecting these rights, and prohibits certain measures that violate or impair them. Among the protective measures are the writ of *habeas corpus*, trial by jury, a republican form of government, freedom of speech or of the press, the right peaceably to assemble and to petition the government for a redress of grievances, the right to keep and bear arms, security against unreasonable search and seizure of persons, of houses, papers or effects, indictment by a grand jury, speedy and public trial, compensation for property taken for public use, due process of law, equal protection of the laws. Among the prohibited measures are bills of attainder, *ex post facto* laws and laws impairing the obligation of contracts. Finally, the enunciation of certain rights cannot be construed to deny or disparage others retained by the people. These restrictions, however, with the exception of those insuring equal protection of the laws and the obligation of contracts, are binding on Congress and not on the states. The fourteenth amendment prohibits any state from denying due process of law and equal protection of the laws, but under the decisions of the courts this protection does not extend to other rights guaranteed in the early amendments to the constitution, which, as has just been said, are protected only against infringement by Congress.[2]

---

[1] The Declaration of Independence is "read into" the constitutions, where it says: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable rights, that among these are life, liberty, and the pursuit of happiness." Twenty-eight state constitutions declare that men are naturally equal. Five restricted this to "freemen" before the Civil War and afterward changed the phrase (Kansas, 1858). Three states assert the equality of all men framing a "social compact." Thirty-five states have clauses embodying the doctrine of natural rights. The right of acquiring property, by which contract is understood, is claimed as an inalienable natural right by twenty-six states. Three states include the right to reputation, which may be considered as a kind of property. The enjoyment of the gains of a man's own industry, or of the proceeds of his labor, is an inalienable right in two states. Kansas specifies the right to control over one's own person. Montana, when mentioning the right to seek and obtain safety and happiness, adds the proviso "in all lawful things."

[2] Willoughby, *Constitutional Law of the United States*, 1910, Vol. I, pp. 175 ff.

If certain rights, such as life, liberty, and property, are strictly and literally "inalienable," then they cannot either be given away by any person or taken away by any other person or by government, either by coercion or by persuasion, either by violence or by voluntary sale and compensation. If the owner sells them, they are worthless to the buyer, because he gets no title. Of course, it follows that these rights were never considered strictly "inalienable." Only an impossible anarchist could believe this. The fourteenth amendment partly clears the atmosphere. "Privileges and immunities" are substituted for inalienable rights. Life, liberty and property can be taken provided it be done according to "due process of law." "Equality" becomes "equal protection of the laws." In other words, rights become "relative," not "absolute," *alienable* but *protected.*

But, if rights are relative, then their meanings and definitions are liable to change when the relationships to which they refer happen to change. The rights of property are defined in several constitutions as the right of acquiring, possessing and protecting property. These were the significant points in the definition when people were isolated, as they were in colonial and pioneer times. At that stage, their main concern was in getting and holding physical property, like lands, crops or even human beings, if the definition of property included slaves. But in modern society, based, as it is, mainly on buying and selling, the right to withhold property from others becomes significant. It is this that protects the individual in his power of bargaining—his power, protected by law, to hold back and wait until an agreement can be reached upon the exchange value of the property before permitting others to take it or use it.

This right to withhold property is like the laborer's right to withhold his labor, by refusing to work or by quitting work. But in the case of the laborer this is also "liberty"—a "personal" right rather than a "property" right. It is his right to withhold his services from the use of others until their value can be agreed upon. This is the legal basis of his wage bargain.

Hence property and liberty change places and merge their meanings when industry changes from the agricultural stage

of production for self to the modern stage of bargaining with others. The wage-earner's "property" becomes his right to seek an employer and to acquire property in the form of wages; his property in the sense of liberty is his right to refuse work or to quit work if the conditions are not satisfactory. The employer's "property" is, in part, his right to seek laborers and acquire their services; his property, in the sense of "liberty," is his right to run his business in his own way, that is, in part, to withhold employment or to discharge the laborer if the bargain is unsatisfactory.

These definitions of property rights are evidently quite different from the older ideas of property in physical things, such as lands, buildings, machinery or slaves. They signify rights of buying and selling, of access to a market. They are "intangible" property, and not "tangible." They are like the "good will" of a business. They are defined as "property" because they are necessary to give to things and services that value in exchange which in modern industry depends as much on selling them as it does on "producing" them.

Only within the past half-century have courts and legislatures distinguished and protected such intangible property as good will, trade marks and trade names, based on the right of access to a commodity market, and still more recently has "access to a labor market" been treated in effect as a property right of both the laborer and the employer, in addition to a personal right.[1] Not merely the contract after it is made is property, but the right to be unhindered by others in order to make a labor contract is a property right. It is "intangible" property both of the laborer who seeks employers and of the employer who seeks laborers. It is intangible because it is merely the act of offering and yet withholding services or commodities. It is property and becomes capital in the sense that it is the power of getting value in exchange. Just as the employer's property is both his physical factory and his intangible business, so the laborer's property is both his physical body and his intangible labor. This "intangible" property has come to mean a part of what

[1] See also Willoughby, *Constitutional Law*, Vol. II, p. 872; Hall, *Constitutional Law*, 1914, pp. 134, 135; "Doctrine of Conspiracy," p. 96.

was formerly known as personal liberty. It is that kind of liberty that has money value. It gives value alike to the laborer's labor and the employer's business.

If meanings of property and liberty change with changes in industry, so does the meaning of equality. Equality for the colonist and the pioneer signified mainly equal right to acquire property *through labor*—now it signifies equal right to acquire it *through bargaining*. But where bargaining power on the one side is power to withhold access to physical property and the necessaries of life, and on the other side is only power to withhold labor by doing without those necessaries, then equality of rights may signify inequality of bargaining power. The gradual recognition of inequalities of waiting power has required changes to be made in the legal means of protecting equality, and these changes underlie the history of labor legislation. They occur within limits prescribed by "due process of law."

3. Due Process of Law

The constitutions, which declare private rights inalienable, yet provide methods and standards both to abridge them and to protect them. A right has two sides. It is a *right* of one and a *duty* of another, or of all others. One person signs a note agreeing to pay $20 to another person. The second person has a right to receive $20—the first is under a duty to pay it. One person owns a piece of land. He has a right to use it as he pleases—all other persons are under the duty to keep off and let him alone. To protect the rights of one is to enforce the duties of others. If a right of one is abridged or reduced, the corresponding duty of another or of all others is reduced. If a debt is reduced from $20 to $10, both the right to receive and the duty to pay are reduced. If a person's right to use his land as he pleases is restricted, then the corresponding duties of others are reduced. On the other hand, a person's duties are just so much subtracted from the total of his rights, and so to reduce the amount of his duties is to enlarge the total amount of his rights. To reduce the rights of one is to enlarge the corresponding rights of others.

Here must be noted the distinction already made between

the labor contract and the wage bargain. The two may be diametrically opposed. From the standpoint of the wage bargain, if an employer's right to require a woman to work unlimited hours is reduced, then the woman's duty is consequently reduced and her rights enlarged. But, from the standpoint of the labor contract, she loses the right to contract for unlimited hours. This may be a mere fictitious right for her, existing only in the eyes of the law, whereas it is in reality the right of the employer to compel her to work. From the legal standpoint her rights are abridged—from the economic standpoint they are enlarged. Likewise, from the legal standpoint the employer's duty is reduced when her hours of service are reduced. From the economic standpoint his duty may be increased, if her bargaining power is increased. It is this contradiction between the labor contract and the wage bargain that labor legislation attempts to reconcile.[1]

The state exercises the great and sovereign power of enlarging and abridging rights and duties without consent of the parties. This power is intended, under our constitutions, to be safeguarded most minutely and accurately. The safeguards are developed with reference to an all-inclusive term, "due process of law."

Due process of law, along with the provisions of the constitutions, determines both the substance and the procedure of government in three principal aspects: first, the *public powers*, or the powers of government under which authority is granted to protect, enlarge or abridge rights and duties; second, the *public authorities*, or the powers of officials acting within that authority; and third, the *principles*, standards or "maxims" that determine the limits beyond which public powers and public authorities shall not go. Each of these aspects affects labor legislation.

(1) *Public Powers*

a. Power to Preserve Peace and Execute the Laws. Government exists, first of all, to enforce the duty to keep the peace.

[1] See "Public Benefit," p. 24; "Equal Protection of the Laws," p. 28; "Maximum Daily Hours, Women," pp. 221–224.

To do this it may use force. It is the custodian of physical coercion and the authority that may threaten violence. Only in actual self-defense or in extreme urgency has an individual the right to resort to violence. He must confine himself to persuasion in every other case. Groups of individuals may go on strike, may get together for free discussion, or for agitation and joint action, but they must assemble and act peaceably. Even though they suffer the greatest injustice they must not go beyond the duty of obedience to law and order. The authorization, or "power," of the state to use violence in order to execute the laws, to protect person and property, to punish for crime, is its first and highest justification, without which no other power could exist, and all government would be impossible. This is its exclusive authority, and it cannot compromise the question or permit private violence, except at the peril of its own existence. Under the justification of preserving the peace and executing the laws, the state may deprive individuals of life, liberty, or property without consent or compensation.

b. The Taxing Power. The taxing power is an authorization under which government takes private property for public purposes without compensation. By this authority the state provides for the most fundamental legislation for or against labor. It provides free schools, compulsory education for future workers, and pays the salaries and expenses of all officials who enforce the labor laws. A labor law is defeated as surely by voting against taxes to enforce it as by voting outright against the law itself. But the taxing power is used, not only for revenue, but also for purposes which otherwise are justified under the police power. A tariff on the products of foreign pauper labor is designed to strengthen the bargaining power of American labor. A tax on poisonous phosphorus matches is placed so high that it brings in no revenue at all, and serves only to protect the health of employees. Under our form of government the police power belongs to the states and not to the federal government. But the federal government does, under the justification of the taxing power, what the states might do under the police power.

c. Guardianship. The state is the universal trustee or guardian, and exercises the remnants of the authority which

the monarch had as *parens patriæ*, the "father of his country." In mediæval times the property of a chief tenant reverted at death to the king, and the children became the wards of the king, for the king's benefit. Now the state is trustee for the benefit of the children and the people. This power justifies child labor legislation. In the early law of *patria potestas*, or "power of the father," the natural father was the owner of his child, as he was owner of his wife, lands, slaves and chattels. It was the child's duty to obey. Now, the child has many rights against its parent, and, since it is unable to enforce these rights itself when the parent violates them, the state intervenes as its guardian on behalf of the people of the future.[1] It takes the child away if necessary; it deprives the parent of his right to the child's earnings by prohibiting its employment or by reducing its hours of labor; it enforces the parent's duty of education by compulsory school attendance. *Patria potestas* yields to the authority of *parens patriæ*.

This authority of the state is nowadays treated as a branch of the police power.[2] As such, it is a justification for an extreme use of the police power not permitted in other cases. It deals with children, unable to make bargains for themselves. The police power primarily interferes with the bargains of adults. Restrictions which the courts would not permit under other classifications within the police power are unquestionably approved when the justification of guardianship is merged with that of police.

d. Eminent Domain. The state may be an owner of property and business, like a private person. It may acquire ownership by various methods, all of which rest ultimately on its sovereign power of coercion. Some of its properties are acquired by conquest. Others are purchased by voluntary bargain; others, by compulsory bargain, under the power of eminent domain. In either case the power of taxation may furnish the funds.

Eminent domain is a justification of the state in taking property from its own citizens without their consent. It differs from the other powers in that it applies to an individual rather than to a class, and therefore our constitutions require

[1] See Andrews, *American Law*, pp. 652–654, and cases there cited.
[2] Freund, *Police Power*, 1904, pp. 246–253.

that compensation be made when property is taken. The individual has no inalienable right to withhold his property from the state, if the state desires it for a public purpose. But the constitutions protect the individual against the state by requiring just compensation.

e. Proprietorship. Whether it acquires physical property or not, the state, in its various divisions of town, city, county, state, and nation, becomes an employer of thousands of wage-earners. It fixes their wages, hours and conditions of labor according to its own ideas as determined by its legislatures, executives, or courts. It is not restricted, as it is when exercising the police power, because it is not taking away private property (except perhaps as it falls back on the taxing power to pay the wages). Consequently, the American state, under universal suffrage and the power of proprietorship, or public ownership and operation of public business, supported by the taxing power, has gone far ahead of private owners in raising wages, shortening hours and improving the conditions of its employees. Even contractors, or private employers who work for the state, are required, under laws that provide for "fair wages," as in England, or for the "prevailing rate of wages," as in America, to pay higher wages or observe shorter hours than they might in their work for private capitalists.[1]

f. The Police Power. The police power is an indefinite authorization for the American state to abridge liberty or property without consent or compensation in addition to its other more definite powers. An individual is sick with diphtheria. The state draws the line of quarantine beyond which his family and friends are deprived of their liberty of movement. Valuable animals have the foot and mouth disease. The state may order them to be shot and buried without consent or compensation. A public utility corporation has the valuable bargaining power of fixing its prices for gas, electricity, water, or transportation, and withholding service if the price is not paid. The state reduces the price and compels the company to continue or increase the service. The employer has valuable rights in his defenses of assumption of risk, fellow servant, and contributory negligence in suits

[1] See "Historical Development of the Minimum Wage, United States," p. 176; "Maximum Daily Hours, Men," p. 228.

brought against him for damages caused by accident. The state takes away his defenses and increases by so much the value of the rights belonging to his employees.[1] Other examples might be given. The bulk of labor legislation by the states looks for authorization to the police power.

The police power in the United States differs from other powers in the miscellaneous and indefinite range of subjects that it may cover. It is defined rather by what it does not cover than by what it does. It differs from the taxing power in that it reduces the owner's liberty to use, acquire, or own property, rather than the revenues derived from it. It differs from eminent domain in that it applies to a class rather than to an individual and does not require compensation to be made. While it includes guardianship, it differs from it in that it abridges or enlarges the rights of adults and full citizens instead of those of children. It differs from public ownership and operation, or proprietary power, in that it abridges or enlarges the powers of private persons over their own persons or property instead of the power of the state over its own property or business. It differs from the power to use violence in order to keep the peace and execute the laws, in that it is one of the justifications or reasons advanced according to which the state is authorized to enact the laws themselves, rather than the physical power to enforce them after enactment. It is the police *power*, not the police *man*.

The other powers of the state, previously mentioned, are in theory definitely limited. Either they accomplish only a specific object of government, such as conquest, peace, the execution of laws, the acquisition of revenues, or the purchase of property, or they extend only to a limited class of people, such as children or public employees. But, in addition to these objects and persons, there are those large and indefinite purposes of public safety, health, morals, welfare, and prosperity, and those many but indefinite classes of producers and consumers, buyers and sellers, employers and employees, who often are restrained by government under the police power. Moreover, these purposes and classes are continually changing

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[1] See "Industrial Accident Insurance," p. 372.

as industry changes from agriculture to commerce, or as property changes from physical things to bargaining and contracts, or as population becomes more congested and people interfere with one another, or as public opinion regarding rights and duties, morals and welfare, advances from ignorance to intelligence, from servitude to liberty. It is the police power, for the most part, that affords, in the case of the state governments, that elastic justification by which the state abridges or enlarges liberty or property without compensation, in order to achieve a newly recognized public purpose through a newly recognized class of persons or things.

g. Commerce Power and Federal Powers. The police power is not isolated from the other powers. All of them are but different ways of looking at the single power of sovereignty. But, under our system of government, sovereignty is divided between the federal government and the state governments. The federal government has specific delegated powers of taxation, of regulation of foreign and interstate commerce, while the states have the taxing power, and, in addition, the "police power." But the federal government uses its delegated powers to accomplish the same purposes that the states accomplish with their reserved police power. The taxing power is used by the federal government, not merely to secure revenue, but to protect industry and labor against foreign competition, or to suppress state bank-notes, colored oleomargarine, or poisonous phosphorus matches. The "commerce" power is used to regulate railroad rates and services, to restrict hours of labor and to require the adoption of safety devices by railroad or steamship companies. New lines of legislation protecting labor, such as child labor and workmen's compensation, if adopted by state governments, are justified by the police power —if adopted by the federal government, they are justified by the taxing power or the commerce power. Yet all powers are but the single power of sovereignty split up to fit the constitutional divisions of government.[1]

h. Police Power and the Constitution. From the foregoing,

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[1] For detailed history of the conflict between the commerce and police powers, see Hastings, "The Development of Law as Illustrated by the Decisions Relating to the Police Power of the State," in *Proceedings of the American Philosophical Society*, 1900, Vol. XXXIX, p. 349.

it will be seen how impossible it is accurately to define the police power, the taxing power, or the commerce power. Comparing the police power with the principles of the common law Freund says[1] the state "exercises its compulsory powers for the prevention and anticipation of wrong by narrowing common-law rights through conventional restraints and positive regulations which are not confined to the prohibition of wrongful acts. It is the latter kind of state control which constitutes the essence of the police power. The maxim of this power is that every individual must submit to such restraints in the exercise of his liberty or of his rights of property as may be required to remove or reduce the danger of the abuse of these rights on the part of those who are unskilful, careless, or unscrupulous."

Describing this power as developed under American institutions, Ely says:[2] "It is that power of the courts committed to them by American constitutions whereby they must shape property and contract to existing social conditions by settling the question of how far social regulations may, without compensation, impose burdens on property."

Comparing it with other powers of government, Hastings says:[3] "It is not necessary to adopt Treitschke's oft-repeated declaration, that the state is force, in order to conclude that the 'police power' is a fiction. Every judge whom we have seen attempt to analyze it finds in it Madison's 'indefinite supremacy' of the state. The doctrine of faculties and separate powers of the state may not be as essentially absurd as Treitschke thinks, but in our case the term is certainly a mere abstract and collective one for the state, where regarded as employed in certain functions." Hastings also says that the police power is "a branch of constitutional law peculiar to countries having legislatures with limited power. It is an outgrowth of the American conception of protecting the individual from the state."[4]

We may not say that the police power is a fiction, for it is a necessary part of the reasoning by which, under our federal

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[1] *Police Power*, p. 8.

[2] *Property and Contract in Their Relations to the Distribution of Wealth*, 1914, Vol. I, p. 220.

[3] Hastings, *op. cit.*, p. 349.

[4] *Ibid.*, p. 360.

constitution, the distinction is made by the courts between those powers that belong to the states and those that belong to the federal government. Yet, from another point of view, it is a fallacious distinction if it pretends to assign to the states a different kind of power from that exercised by the federal government. We have just said that the federal government accomplishes, under the name of "taxing power" or "commerce power," what the states accomplish under the name of police power. While the refinements of legal logic may seem to make these powers different, they are identical from the standpoint of the kind of legislation and the public purpose which they justify. The police power has sometimes narrowly been held to be limited to matters of health and morals. But legislatures and Congress refuse to be limited in this way. They regulate the bargaining power of individuals and corporations where no justification can be found in the protection of health and morals. From this standpoint the theory of the police power is used by the courts to determine how far the state legislature may be permitted to go. But they use similar standards or principles to determine how far Congress may go in using the taxing power and the commerce power.

Hereafter, for our purposes, in speaking of the police power, we shall use the term in this broad sense, to imply all the powers of government, whether state or federal, whether of police, taxation, or interstate commerce, in so far as they are used to justify that indefinite extension of power to abridge liberty or property without compensation for some newly recognized public purpose. The practical problem with which we are concerned is not so much the technical legal distinctions between different powers, as the extent to which these powers are increasingly used to determine the bargaining relations between employers and employees. In this way, without formal amendment, the American constitutions are unconsciously amended by the police power through the change of public opinion regarding the rights and duties of labor. This change works its way into the constitutions, partly through the discretion of public authorities, and partly through the application of old principles of justice to new conditions.

(2) *Public Authorities*

Here the issue is between the amount of discretion, or power to enforce one's own opinion, allotted to the executive, legislative, and judicial branches of government. Shall the legislature or Congress use its sovereign power to the extreme limit of equalizing fortunes and giving labor a high preference over capital, or shall it be restricted to narrower limits? In other words, can the legislature, under whatever power of taxation, commerce, or police, put into force its own notions of "general welfare" and "social expediency," or must it be limited to the notions held by the courts?

In monarchical countries, or countries whose executives inherit monarchical powers, executive discretion still remains to the monarch, or president, or the executive council,[1] after legislative powers have been taken away by Parliament. This power of discretion is the executive's power to decide when and where a law applies, and to issue rules, regulations, ordinances, or orders which have the effect of law, which are needed to enforce the law, or even are thought by the executive necessary to fill any gaps which Parliament has left in the scheme of laws. Indeed, in enforcing a law, every executive officer must exercise some discretion, which he does as his own opinion directs. Discretion is the power to act without interference according to one's own opinions, or policy, or theory of things. It is not supposed to be capricious or changeable. It is power to adopt and follow a policy, not power to be arbitrary and unreasonable. Even a policeman must make up his mind whether a man is drunk or not, before applying the law against public intoxication. Policemen may differ in their opinions on this matter, even though the facts do not differ, and their differences are the little germs of what, in the case of a mayor, governor, president, or king, would be called executive policy, or executive discretion.

Under the theory of our constitution, however, the executive officers have no discretion to follow a policy of their own. The legislature is the policy-making branch of government. It has discretion; it can put its opinions into effect; it can

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[1] Switzerland.

adopt a policy, because it is supposed to represent all interests in society and to know all the facts. The effort is therefore made in our country to limit the executive discretion as narrowly as possible, in order that it may be said that the executive merely enforces the law as he finds it. To do otherwise would be to delegate legislative power to an authority that is not legislative under the constitution.

But with us, not even the legislature is the supreme legislative power. The written constitutions are the fundamental laws, enacted directly by the people themselves. Being laws, they also express a policy, based on the opinion of the people who adopted them. And their policy must prevail against the legislative discretion. The policy of the constitutions is extremely individualistic. It asserts inalienable and natural rights of individuals against all others and against the state itself. When a policy of the legislature set forth in a statute comes into conflict with this individualistic policy of the constitutions, some one must be called upon to decide which shall prevail. The supreme courts, at first with hesitation, but afterward with assurance, have made these decisions. If a statute of the legislature fixing the hours of labor conflicts with the constitution, the courts merely refuse to enforce it—they enforce the constitution itself. They declare the law "unconstitutional."[1]

But there is a principle of our courts to the effect that a law is not unconstitutional if a way can be found to sustain it. Hence, if there is an apparent conflict between the constitution and the attempt of the legislature to abridge private rights, and if the court cannot support the legislature under the other limited justifications of taxation, guardianship, proprietorship, eminent domain, or protection of person and property, it may see its way to support it under the elastic justification of the police power. Thus the police power in America may be looked upon as the courts' justification for gradually *amending the constitution by interpretation* so that it may conform to the new objects and new restrictions on prop-

[1] For history of laws declared unconstitutional see Moore, "The Supreme Court and Unconstitutional Legislation," *Columbia University Studies in History, Economics, and Public Law,* Vol. LIV, 1913, No. 2.

erty which the legislature deems important. A similar justification and gradual amending of the constitution takes place when the court permits Congress to extend the taxing power or the commerce power to the regulation of rates, services, wages, hours of labor, safety, health, and compensation for accidents.

This distinction between discretion on the part of the legislature and interpretation on the part of the courts is a distinction not so much between the several powers of government as between the functions peculiar to the several branches of government. It leads us to distinguish the public authorities who share in the exercise of the public powers.

Government can interpret and exercise its powers only through individuals. Each of these individuals takes an oath appropriate to his office, agreeing to support the constitution, to execute the law, to maintain order. For the time being his acts are the acts of the state, provided he keeps within the authority granted to him. To the legislature is granted the authority of deciding on public policy for the future, and, in doing so, it exercises discretion. To the courts belongs the power of deciding particular cases as they arise, and in doing so they interpret the laws. The executive enforces the law. But, to a fourth and new branch of government, unrecognized in the original constitutions, which may be called the administration,[1] is coming to be assigned the function of investigation of those economic and social conditions upon which the several branches of government base their decisions. While these functions cannot be separated in practice, yet they stand out as characteristic of each branch of government. *Execution*, *discretion*, *interpretation*, and *investigation* are the four great divisions in the functions of officials, and the *executive*, the *legislature*, the *judiciary* and the *administration* are the four branches that are specialized for these functions.

a. The Executive. The executive authorities are entitled to use violence if necessary, and to deprive individuals of life, liberty, and property without their consent. Private individuals may not even resist an officer of the law. The army,

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[1] *Die Verwaltung.* The term "administration" has been used by the Supreme Court in this sense, 224 U. S. 474 (1911); 230 U. S. 196, 274 (1912).

navy, and militia may be called upon by the governor or president in time of strike or riot. Sheriffs, marshals, their deputies and policemen, may arrest and imprison individuals in order to prevent violence and to execute the orders of the court in the administration of civil and criminal justice. They belong to the military or "police" force of the state, which, under our theory, is subordinate to the civil authorities. The police force, as already stated, differs from the police power, in that the police power is the authorization, or justification, under which civil authorities are entitled to exercise discretion in enacting laws and issuing orders, while the police force is the agency which exercises coercion as directed by these laws and orders.

While in law the military and police forces have no discretion, but must follow orders, yet, in the urgency of immediate action, they must exercise discretion before their acts can be passed upon by the civil authorities. Only in case of war can executives legally set aside the superior authority of the courts, but war can be declared only by the legislature, a civil authority.[1] The arbitrary discretion of the executive is sought to be held in check by that greatest instrument of freedom, the writ of *habeas corpus*. By means of this writ the court, a civil authority, orders the executive, or military power, to bring out a prisoner for hearing and for release if wrongly imprisoned. If the executive refuses, then the civil authority *ipso facto* becomes subordinate to military force. In so far as the executives and the military and police authorities exercise discretion, their opinion of the rights and duties of employer and employee is sometimes the deciding factor one way or the other in determining the relative power of the two in the wage bargain as affected by strikes, lockouts, public assembly, public speaking, agitation, arrest of leaders, protection of strike-breakers, picketing, the use of the streets, and otherwise.

b. The Legislature. The legislature is the authority which, acting within limits, is entitled to exercise discretion in de-

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[1]This has apparently been denied by the Supreme Court of West Virginia, which sustained the acts of a "military commission" in sentencing strikers to prison, State *ex rel.* Mays *v.* Brown, 71 W. Va. 519, 77 S. E. 243 (1912); *ex parte* Jones, 71 W. Va. 567, 77 S. E. 1029 (1913).

ciding upon public policy and enacting laws to carry the policy into effect. It is the one branch of government where the representatives of conflicting opinions are entitled to express their joint opinion in the form of law that shall be enforced on all persons with or without their consent. Other branches of government are considered to be impartial and limited to the execution of the law as the legislature prescribes. But the legislature may be partisan in politics and partial between employers and employees. It is considered that, if partisans meet and discuss in an orderly way their points of antagonism, the outcome will be a compromise in which the arbitrary power of no individual or class will dominate others. Yet, in fear that the legislature may not act justly, and may override minorities or those not represented, the people have enacted the higher law known as the constitution, with its bill of rights and its limitations on the legislature. This leads to the judiciary.

c. The Judiciary. Under our constitutional system the judicial branch holds a high and unique position. In order that it may be removed from the heat of partisanship and partiality it is made independent of the executive and legislative branches. In order that the federal system of a central government and forty-eight state governments, each supreme in its own field, may operate in harmony, the federal court is made the final authority to determine how far the field of each extends. By the fourteenth amendment to the constitution, all persons born or naturalized in this country enjoy a double citizenship—that of the United States and of the state wherein they reside. By this amendment the federal courts have authority to prevent any state from abridging the rights which the federal constitution and laws grant to them as citizens of the United States, and to prevent any state from depriving any person of life, liberty, or property without due process of law. The federal courts interpret and apply treaties with foreign nations and protect the rights of aliens. Finally, since the acts of the federal Congress or executive may conflict with the constitution, the federal court may declare them unconstitutional and hence refuse to apply them, in order to protect the constitution.

In this many-sided jurisdiction over states, over Congress,

over the executive, over inferior courts, and over private citizens, and in the interpretation of these many laws, the Supreme Court of the United States exercises authority not only judicial, but also, in fact, legislative and executive. So with the supreme courts of the states within their proper jurisdictions. When deciding between a law of the legislature and the law of the constitution, they necessarily decide between the policy of the legislature and their own opinion, based on previous decisions, of the policy contained in the constitution. When nullifying an act of the executive they interpose their opinion of the law and the constitution against the executive's opinion. Yet they are but performing the judicial function of interpreting the laws and making their application to the facts of each particular case, as it arises. Their legislative and executive functions arise because they have authority to apply their interpretation to cases in which the acts of legislatures and executives are called in question, as well as cases where only private citizens are the litigants. In this way is established, as the court has said, "a government of laws and not of men."[1]

But the courts, just as legislatures and executives, are composed of men. They, too, are guided by opinions, and their opinions change with change in experience and change in judges. The difference consists in the procedure, the standards, and the safeguards by which the judges arrive at their opinions, compared with those which restrain the more hasty opinions of lawmakers and executives. It is merely "opinions," after all, rather than written constitutions, that protect, enlarge, and abridge rights and duties.

d. The Administration. But opinions of individuals are so capricious, fluctuating, and uncertain, so liable to be bent by bias, passion, and interest, that our constitutional system of government imposes methods and principles designed to reduce them to an orderly system based on reason. These methods are *investigation* or the accurate discovery of facts and conditions, and in more recent times the administrative branch of government has been devised with investigation as its main purpose. Investigation is so involved in all the

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[1] Marbury *v.* Madison, 1 Cranch 137, at p. 163 (1803).

topics of labor legislation that the treatment of administration is reserved for the concluding chapter.

(3) *Principles*

The other essential to an orderly system of reason in place of capricious opinion is the principles, standards, or "maxims" that underlie due process of law. Under the theory of our courts, the principles of law and justice are immutable and unchanging. Facts and conditions change, and these are revealed by investigation, but the principles remain the same, though their application changes when the facts change. The leading principles that concern us are "public benefit" and "equal protection of the laws."

a. Public Benefit. The effect and purpose of the police power is to impose a duty on some individual which redounds to the benefit of other individuals.[1] In despotic or oligarchic governments these benefited individuals are likely to be the favorites and courtiers of the monarch or the privileged and aristocratic classes. In a democratic or republican government they are likely to be political partisans, monied interests, employers' organizations, trade unions, or other classes who get control of the legislature and enact laws merely for the benefit of their private interest at the expense of other private interests. But if a thing of this kind happens, then the legislature is doing the very thing which revolutions and written constitutions were designed to prevent when despots and aristocrats were the offenders. Hence it is that every act of the legislature must be tested by a standard which shall determine whether the persons or classes of persons to be benefited are so benefited merely because they have power in the legislature to impose burdens on others, or because the benefit to them is also a benefit to that body of the whole people which we call "the public." If the benefit goes only to private persons for their private benefit, then the legislation is unconstitutional, because it employs the sovereign power of government for private purposes. But if those persons who

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[1] See "The Police Power," p. 13.

are benefited are either the entire population or such a significant part of the population that their benefit is also a public benefit, then the powers of government are put to their proper use of performing a public purpose.[1]

Thus we have a series of terms closely related or synonymous, all of them implying public benefit, such as public utility, public interest, public use, public value, public service, public welfare, public purpose. These indicate the most fundamental principle, standard, or maxim, which measures or limits the extent to which the legislature my go in exercising its police power.

But public benefit is not something fixed and unchangeable. The police power particularly is that justification by which the definition of public benefit may be changed or enlarged as time goes on. In the final analysis this enlargement of the definition of public benefit is merely an enlargement of the court's opinion as to what constitutes a public purpose. But, behind the change in the court's opinion is the change in *conditions* and the change in *public opinion*. Among the changes in conditions which lead to changes in opinion are those industrial changes already mentioned, such as the change from free land to closed land, the changes in transportation and mobility of labor, the development of large-scale industry, all of them throwing large masses of labor together into active competition. The increasing congestion of population, whether in towns or factories, has brought a change of opinion as to the need of extending the police power in matters of health, safety, and morals.

Accompanying these changes in outward conditions may be noted significant changes in public opinion and court opinion regarding labor. In the *colonial* or *agricultural* stage of industry the man without property was looked upon as partly shiftless, partly vagabond, partly criminal, and the opinion of the time supported many kinds of coercive laws by which both adults and children might be captured or enslaved or otherwise compelled to work. In this way it was considered that propertyless laborers would be trained in the habits of

[1]The term "public purpose" is usually limited to taxation and eminent domain, but in this book it is also applied to other powers, especially the police power.

industry and thrift by which they could rise to the position of proprietor and could share in the rights and civilization of their superiors.

A *citizenship* stage followed, beginning in the decade of 1820, when the propertyless man was granted the suffrage. This produced at once a revolutionary change in the attitude of labor toward itself, shown in the first series of strikes on a large scale for reduction of hours of labor with the demand for more leisure for the duties of citizenship as well as the demand for free schools, for the abolition of imprisonment for debt, of indentured service, and other remnants of the servile stage.

Immediately following this period and the failure of aggressive methods, after the panic of 1837, came what may be called the *humanitarian* period. Labor, for the time being, lost its power of attack and became incapable of self-help. So the long period of unemployment, until the gold discoveries of 1849, produced a class of eminent men in sympathy with labor, and brought about the beginning of legislation abolishing imprisonment for debt, providing wage and homestead exemptions, free schools, protective tariffs against foreign pauper competition, and generally removing the opinions of servility, dissoluteness, and criminality theretofore held regarding propertyless labor. This remarkable period culminated in the Civil War, which freed the slaves. It was accompanied by similar movements in Europe, and altogether was nothing less than a revolution in public opinion regarding labor.[1]

With the decade of the 'sixties began again an aggressive movement of labor, headed in Europe by the International Workingmen's Association, which later split into socialism, anarchism, and trade-unionism, and in the United States by the National Labor Union, which finally split into greenbackism, socialism, and trade-unionism. This period, extending into the twentieth century, may properly be characterized as a period of *class struggle*, in which new and enormous fortunes derived from industry were pitted against unprecedented organizations of labor in many deadly strug-

[1] See Chapters II, "Individual Bargaining," and III, "Collective Bargaining."

gles, and in which legislatures responded to the demands of labor for legislation, and the courts responded to the demands of capital by declaring such laws "class legislation" and therefore unconstitutional.

This period, to a considerable extent, continues to the present time, but the beginning of another, which may be called the *public benefit* period of labor legislation, dates from 1898, when the Supreme Court decided the case of Holden *v.* Hardy.[1] Hitherto the police power was recognized mainly as an authority to enforce protective restrictions against producers in behalf of consumers. This decision affirmed the power to enforce such restrictions on employers and consumers in behalf of producers. In other words, whereas formerly, for the most part, the health of consumers, but not the health of producers, was a public benefit, now the health of the laborer as a producer is considered to be as much a public benefit as the health of the consumer of his product. If this be so, then the liberty of both the employer and the employee to make a labor contract may be restricted and regulated, if it is found that the contract is injurious to the laborer. The protection of labor becomes a public purpose.[2]

In the Holden *v.* Hardy case the court also stated the principles on which the powers of government are enlarged as conditions change and new facts are brought to the attention of the court through investigation: "This court has not failed to recognize the fact that the law is, to a certain extent, a progressive science; that in some of the states methods of procedure which, at the time the constitution was adopted, were deemed essential to the protection and safety of the people, or to the liberty of the citizen, have been found to be no longer necessary; that restrictions which had formerly been laid upon the conduct of individuals, or of classes of individuals, have proved detrimental to their interests, while, upon the other hand, certain other classes of persons

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[1] 169 U. S. 366 (1898). The decision affirmed the constitutionality of legislation reducing the hours of labor of *men* who work in smelters and underground.

[2] This was, of course, not the first time that this doctrine was asserted. Indeed, it was implied whenever a court sustained a law protecting labor. But it was the first broad statement by the highest court in such a way as to make it "the law of the land."

(particularly those engaged in dangerous or unhealthful employments) have been found to be in need of additional protection. . . . It is impossible to forecast the character or extent of these changes; but in view of the fact that, from the day Magna Charta was signed to the present moment, amendments to the structure of the law have been made with increasing frequency, it is impossible to suppose that they will not continue, and the law be forced to adapt itself to new conditions of society, and particularly to the new relations between employers and employees, as they arise."[1] Two state courts have said, "While the principles of justice are immutable, changing conditions of society and the evolution of employment make a change in the application of principles absolutely necessary to an intelligent administration of government."[2]

Finally a justice of the Supreme Court, in 1911, is able to identify a public benefit with public opinion regarding not only the health of a class of producers, but also regarding the welfare of any class of people, and to declare that the police power is shaped "by the prevailing morality or the strong and preponderant opinion" as to what is "greatly and immediately necessary to the public welfare."[3]

b. Equal Protection of the Laws. Another respect in which the case of Holden *v.* Hardy is the headlight of a new period is found in its opinion regarding the inequality of bargaining power of employer and employee. The opinion declared that a law, such as the one then before the court, limiting the working hours of men, was not class legislation and therefore did not conflict with the constitution which guarantees to each individual the equal protection of the laws. The reason is,

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[1] Holden *v.* Hardy, 169 U. S. 366, at pp. 385–387 (1898).

[2] Ritchie *v.* Wayman, 244 Ill. 509, 91 N. E. 695 (1910); quoted with approval from Washington *v.* Buchanan, 59 L. R. A. 342 (1902).

[3] Noble State Bank *v.* Haskell, 219 U. S. 104 (1911), at p. 111. Also contrary opinion in Ives *v.* South Buffalo R.R. Co., 201 N. Y. 271, 94 N. E. 431 (1911), at p. 448, where the highest court of New York said in part: "As to the cases of Noble State Bank *v.* Haskell and Assaria State Bank *v.* Dolly, we have only to say that if they go so far as to hold that any law, whatever its effect, may be upheld because by the 'prevailing morality' or the 'strong and preponderant opinion' it is deemed 'to be greatly and immediately necessary to the public welfare,' we cannot recognize them as controlling of our construction of our own constitution."

as declared by the court, that the employers and their laborers do not stand upon an equality; that "the proprietors lay down the rules and the operatives are practically constrained to obey them"; that "the latter are often induced by the fear of discharge to conform to regulations which their judgment, fairly exercised, would pronounce to be detrimental to their health and strength," and that, even though "both parties are of full age and competent to contract," yet the legislature may interfere "where the parties do not stand upon an equality, or where the public health demands that one party to the contract shall be protected against himself." [1]

In this opinion the court recognized, what had been dimly seen or implied from the beginning of labor legislation, that inequality of bargaining power is a justification under which the state may come to the protection of the weaker party to the bargain. In earlier periods the courts had often held that capital and labor were equal, that laws favoring labor against capital were class legislation, and, even where certain courts held otherwise, the law books severely criticized them as yielding to the pressure of politics instead of bravely standing by the constitution.[2] But inequality of bargaining power has long been a ground for legislative and judicial protection of the weaker party, even though the courts found other grounds on which to base their opinions. It was early conceded as a justification of usury laws, protecting the weak debtor against the strong creditor; latterly of public utility laws, protecting the weak consumer against the powerful corporation; and now it only needs a recognition of facts to justify labor legislation protecting the weak wage-earner against the more powerful capitalist. Such legislation could

[1] A similar opinion had been stated in 1892 by a state court (Peel Splint Coal Co. *v.* State, 36 W. Va. 802, 15 S. E. 1000 (1892), at p. 1009: "When a few persons are engaged in an extensive business and they have a multitude of customers or dependent employees and it appears that the business is of such a character that the parties do not deal upon an equal footing and that the many are at a disadvantage in their contractual relations with the few, the legislature may regulate these relations, with a view to prevent fraud, oppression, or undue advantage." See also State *v.* Brown & Sharpe Manufacturing Co., 18 R. I. 16, 25 Atl. 246 (1892); Avent Beattyville Coal Co. *v.* State, 96 Ky. 218, 28 S. W. 502 (1894).

[2] Eddy, *Law of Combinations*, 1901, Vol. I, pp. 245–247, 277; Vol. II, p. 1023.

be held to deny equal protection of the laws only where the facts showed that both parties were actually equal. But where the parties are unequal (and a public purpose is shown),[1] then the state which refuses to redress the inequality is actually denying to the weaker party the equal protection of the laws.

It is by recognizing this inequality of bargaining power, coupled with a public purpose, that the courts pass over, in any particular case, from the theory of *class legislation* to the theory of *reasonable classification*. The two are identical in one respect; all classification is class legislation, but the kind of class legislation which the courts condemn is that which they consider to be "unreasonable" classification. Class legislation benefits or burdens one class against others where there is no real inequality or no public benefit. "Reasonable" classification benefits or burdens a class where there is real inequality to be overcome and a public benefit to be attained.[2] That which is class legislation at one time may become reasonable classification at a later time, if the court perceives that what it once thought was equality is really inequality, and what it once thought was merely private benefit is also public benefit.

Thus the history of the constitutionality of labor legislation in the United States has been a history of the *theory of classification*. The conflicting opinions of various courts on the extent of the police power over private property are usually conflicting opinions on the equality or inequality of bargaining classes and on the public or private purpose subserved by the legislation. In proportion as certain classes of laborers, such as women or mine-workers, are recognized by the courts as suffering an injury, and in proportion as the injured persons are deemed to be of importance to the public as well as unable to protect themselves, then legislation requiring the employer to remove the injury and prohibiting the

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[1] In the recent case of Coppage *v.* Kansas, 35 Sup. Ct. 240 (1915), the Supreme Court denied the application of the doctrine of inequality of bargaining power, but this was a case where the purpose was to protect trade unions against disruption by employers. What the court in effect decided was that a trade union performed a private and not a public purpose. See "The Law of Conspiracy," p. 113.

[2] See also Freund, *Police Power*, pp. 626–755.

laborer from even voluntarily consenting to the injury ceases to be overruled as "class legislation" and begins to be sustained as "reasonable classification." Even though the individual liberty of both employer and employee to make so-called voluntary contracts is restricted by the law, yet each continues to have "equal protection of the laws" because each individual is treated equally with all other individuals *of his own class*. The bargaining power of the employee is increased while that of the employer is reduced, yet all employers in a given class are treated alike and all employees in their class are similarly treated alike.[1]

This gradual transition from the time when labor was treated as equal to capital to the modern time when labor is given privileges superior to those of capital may be described as a transition from the law of *master and servant* to the law of *employer and employee*. Prior to the decade of the 'thirties the laborer could be imprisoned for debt. In other words, his creditor had rights over his body, which was looked upon as property justly belonging to the creditor as was the laborer's other property sufficient to pay the debt. This reduced the laborer to a servile state while pretending that he was equal and free. No distinction was made between the fraudulent debtor and the unfortunate debtor. Now the laborer is not treated as a criminal unless proved to be so, and his creditor consequently has no remedy which reduces the laborer to the servile state.

Next, in the decade of the 'forties, the law went further and the wage exemption laws prevented the creditor from taking even the minimum wages of the laborer in payment of a debt.

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[1] This principle may be seen in the workmen's compensation laws. Under the former law of employers' liability the laborer carried all the expense incurred by reason of the risk of accident. The employer had certain defenses by which he could throw the cost of accidents on the employee. (See "Rules of Employers' Liability," p. 358.) These defenses were held to be property rights, because they were valuable to the employer. But the legislature abolished these defenses and requires the employer to compensate *all* laborers for *all* disabling accidents. The employers are thus compelled to pay the cost of insurance against all of these risks, where formerly the laborer carried the insurance as best he could. In this way the employer's increased cost of insurance may be said, so far as the law is concerned, to have increased the bargaining power of the employee and reduced the bargaining power of the employer or of the consumer to the same extent.

Finally, the thirteenth amendment to the constitution, by prohibiting involuntary servitude except for crime, confirmed the preceding privileges as well as the privilege of a laborer even to break his contract to labor without being forced to "specific performance." In these respects labor has been given a preference over capital, in that while both the employer and the employee can bring suits for damages on account of breaking a contract, the employer's suit is against the laborer whose small property is exempt from attachment, but the laborer's suit is against an employer whose business property as such has no exemption.[1]

Other laws are mentioned in the following chapters, showing the transition from the master-servant notion of law to the employer-employee notion. The master and servant law, while pretending to treat employer and employee alike, retained marks of that servile status in which the laborer's body was the physical property of employer or creditor. But the law of employer and employee, as it develops, not only gradually removes those vestiges of past servitude, when the master could compel the servant to work, but also gives the latter a preference over capital in bargaining and a privilege to break contracts without effective penalty which the employer does not possess. In other words, the natural inequality of employer and employee reduces the latter to a servile state, reinforced by the law of master and servant, but the legislature, by giving preference to the weaker party, overcomes in part the inequalities of nature and secures a more real equality protected by the law of employer and employee.[2]

Thus it may be affirmed that the equality of bargaining power toward which the law of employer and employee is directed is a principle so important for the public benefit that

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[1] Of course, the bankrupt employer has the same exemptions as the laborer.

[2] This distinction between the law of master and servant and that of employer and employee is not technically correct. The law books include both under "master and servant." But the legislatures have broken away from these terms. In recent legislation of the more industrial states the terms used are employer and employee. This goes along with popular usage and serves to bring out, not so much the legal form of the labor contract, as the underlying purpose of equality in the wage bargain.

it becomes in itself a public purpose. Many decisions of the courts base the justification of the police power, not merely upon the protection of health, safety, and morals, but squarely upon strengthening the bargaining power of laborers. In sustaining a law requiring wages to be paid in cash, the Supreme Court of Tennessee said: "The legislature evidently deemed the laborer at some disadvantage under existing laws and customs, and by this act undertook to ameliorate his condition in some manner by enabling him, . . . at his election and at a proper time, to demand and receive his unpaid wages in money rather than in something less valuable. Its tendency, though slight it may be, is to place the employer and employee upon equal ground in the matter of wages." [1] The court again approved the passage in Holden *v.* Hardy bearing on bargaining equality.

Upon similar grounds was upheld as constitutional an Arkansas law forbidding coal operators "from using screens or other devices to reduce the amount of wages that would be due on the basis of weight of coal actually mined and accepted by the operator." The court said: "We are unable to say, in the light of the conditions shown in the public inquiry referred to, and in the necessity for such laws, evinced in the enactments of the legislatures of various states, that this law had no reasonable relation to the protection of a large class of laborers in the receipt of their just dues and in the promotion of the harmonious relations of capital and labor engaged in a great industry in the state." [2]

The court argued in a like tenor in upholding an Iowa statute denying effect to any contract restricting liability or the acceptance of any insurance benefits as a defense to personal injury actions brought against railroads by their employees. In dealing with the relation of employer and employed the court held that "the legislature has necessarily a wide field of discretion in order that there may be suitable protection of health and safety, and that peace and good order

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[1] Knoxville Iron Co. *v.* Harbison, 183 U. S. 13 (1901). For cases declaring similar laws unconstitutional, see Freund, *Police Power*, pp. 305, 306.

[2] McLean *v.* Arkansas, 211 U. S. 539 (1909), at p. 550, reprinted in Hall, *Cases on Constitutional Law*, 1913, p. 424.

may be promoted through regulations designed to insure wholesome conditions of work and freedom from oppression. What differences as to the extent of this power may exist with respect to particular employments and how far that which may be authorized as to one department of activity may appear to be arbitrary in another must be determined as cases are presented for decision. But it is well established that, so far as its regulations are valid, not being arbitrary or unrelated to a proper purpose, the legislature undoubtedly may prevent them from being nullified by prohibiting contracts which, by modifications or waiver, would alter or impair the obligation imposed."[1] The court here also quotes with approval the passage from Holden *v.* Hardy relating to inequality and conflicting interest.

As summarized by Ernst Freund:[2] "Our whole economic system is based upon a very wide liberty of dealing and contract, and it is deemed perfectly legitimate to use liberty for the purpose of securing special advantage over others. The resulting disparity of conditions is not, on the whole, regarded as inconsistent with the welfare of society. Yet a different view seems to be taken of this liberty of dealing, where economic superiority is used to dictate oppressive terms, or where a degree of economic power is aimed at that is liable to result in such oppression. The theory of legislative interference seems to be in some cases that oppression in itself, like fraud, is immoral and wrong either against the individual affected thereby or against the public at large; in other cases, that the excessive dependence of whole classes of the community threatens, though perhaps only remotely, the social fabric with grave disturbance or ultimate subversion and ruin."

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[1] Chicago, Burlington & Quincy R.R. Co. *v.* McGuire, 219 U. S. 549 (1911), at p. 570, reprinted in Hall, *Cases on Constitutional Law*, p. 518.
[2] *Police Power*, p. 285.

CHAPTER II

INDIVIDUAL BARGAINING

In the broadest sense of the term a debt is that which is due from one person to another, whether money, goods, or services.[1] The laborer as debtor may, therefore, be looked upon as owing either labor or money to another. But modern law does not force a laborer to work out his debt. It converts a labor debt into a money debt, or "damages," and enforces payment of the latter. Furthermore, under "exemption" laws, the law does not always enforce even the total payment of a money debt.

On the other side, the laborer is a creditor to the extent that the employer owes him money for his labor. Here, too, modern legislation gives him certain privileges or protection, not usually given to other creditors.

It is in this twofold relation of debtor and creditor that we trace the history of labor law from the servile stage, through the stage of master and servant, to the modern stage of employer and employee.

1. The Laborer as Debtor

If we classify the legal relations of the laborer as debtor we shall begin with the employment of labor in its elementary form of slavery, where all of the rights were on the side of the owner and all the obligations on that of the laborer. This, and a succeeding or contemporary stage of serfdom, are known as a period of *status*. The laborer is born to the

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[1] Kimpton *v.* Bronson, 45 Barb. 625 (1866).

position and does not enter it by agreement or contract. But status often merges into contract, or the fiction of a contract, and we may therefore speak of a servility stage, or a stage of servile contracts, preceding that of free contracts. Here would be classified slavery, serfdom, and peonage. These conditions of labor, even if based on contract, may be so evidently the outcome of coercion that they may rightly be considered as belonging to a pre-contract or servile stage.

A second stage, which we may designate as that of master and servant, emerges gradually from the more liberal forms of servile contracts, although retaining vestiges of servile relations. Some of the contracts of this stage, especially the seaman's contract, have continued down to the present day, while others, such as apprenticeship, indentured service, and contract labor, can with difficulty be distinguished from those of the servile stage. The ameliorating character of both the servile and master stage is that of paternalism, and both of them are closely connected with the institution of the family, in which the wife and children occupy a position of status, afterward modified by contract, express or implied.

Modern labor legislation, as understood in this book, begins with a conscious effort on the part of the legislature to remove both the servile and paternal vestiges of the master and servant stage and to substitute a stage of real equality, as far as possible. This we designate as the employer and employee stage.

(1) *Servile Labor*

a. Slavery. The worker under primitive slavery is regarded as the property of his master. In Roman law a slave was regarded not as a person, but as a thing.[1] In 1776 Mr. Justice Chase of Maryland said: "Negroes are property, and no more members of the state than cattle." [2]

In England, in 1772, it was held by the court that slavery could not exist in the mother country. The slave trade was abolished by statute there in 1807, and in the colonies in 1833.

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[1] Sohm, *Institutes of Roman Law*, tr. Ledlie, 1901, p. 171.

[2] Wilson, *History of the Rise and Fall of the Slave Power in America*, n. d., Vol. I, p. 15.

The example of Great Britain in regard to her colonies was gradually followed by other European states, by France in 1848, Portugal in 1858, Holland in 1863. Spanish-American states abolished slavery after securing independence. In the United States the slaves were freed in 1865 by the thirteenth amendment to the federal constitution, as an outcome of the Civil War, and Brazil, the South American state which retained slavery longest, abolished it by decree of the Chambers in 1888.

b. Serfdom. Slavery aims at the subjection of the whole man. Another degree of unfreedom, namely, serfdom or villeinage, does not attempt to cover the entire range of human life. It is concerned only with certain relations, generally economic in character. Compulsory labor—compulsion as to the kind of service and the time and place where it is to be rendered—is the essential note of serfdom or villeinage. A serf was bound to the land and bought and sold with it, like cattle. But he might secure freedom by "commutation," that is, by paying to the lord or master who had the title to the soil a sum of money or an annual payment presumably equivalent to the value of the service which he rendered his lord. He substituted a money debt for a labor debt—in other words, he bought his freedom. Serfdom appears as a corollary of feudalism. It grew up as a consequence of customary subjection in an agricultural system and melted away with the advent of the industrial age.

c. Peonage. Peonage has been defined as a "status or condition of compulsory service based upon the indebtedness of the peon to the master." [1] The basic fact is indebtedness. In Mexico, after the Spanish conquest, slaves were used in mines and on roads, while serfs or peons were used for agriculture. The condition of the latter, though differing little from slavery, was theoretically more humane and right-respecting. Together with peonage a system of large estates grew up. The peons got food and clothing from their masters.[2] These Mexican peons are descendants of natives enslaved by the Spaniards, and are often merely bondsmen.[3]

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[1] Clyatt *v.* U. S., 197 U. S. 207 (1904).
[2] United States Bureau of Labor, *Bulletin No. 38*, 1902, p. 23.
[3] W. E. Carson, *Mexico*, 1914, p. 185.

Their wages are so low that they are always without money, and they are compelled to deal at the store of the estate. They are always kept in debt, and, according to Mexican law, an Indian workman owing his employer becomes the property of the latter.[1] Sometimes peons are induced to contract for work to be done in tropical parts, and here they get into debt at once and are prevented by armed guards from escaping.[2]

In the United States, after the abolition of slavery by the thirteenth amendment in 1865 the proprietors, being deprived of their property right in the services of the slave, sought in some cases to effect the same purpose by indirect means, such as enforcing indebtedness and compelling the working out of the debt. These subterfuges gave added impetus to the agitation which led to the adoption, two and a half years later, of the fourteenth amendment, which created a citizenship of the United States in addition to that of the state, and prohibited any state from depriving a citizen of the United States of "life, liberty, or property without due process of law," or denying "to any person within its jurisdiction the equal protection of the laws."[3]

In 1875 the United States Congress passed statutes which have been thought to enforce the meaning of the thirteenth amendment. That they do not entirely accomplish this is pointed out by the Immigration Commission of 1911.[4] One statute provides heavy fines for those who "conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured him by the constitution of the United States";[5] and another for "every person who kidnaps or carries away any other person, with the intent that such person be sold into involuntary servitude, or held as a slave."[6] But, as the Immigration Commission shows, "if a person simply places or holds another in slavery, it is impossible for the federal courts to impose

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[1] W. E. Carson, *Mexico*, 1914, pp. 188, 189.
[2] *Ibid.*, p. 191. See also Ely, *Property and Contract*, 1914, Ch. X.
[3] Constitution of the United States, Fourteenth Amendment, Sec. 1, in force July 28, 1868.
[4] Immigration Commission, *Abstracts of Reports*, 1911, Vol. II, p. 446.
[5] United States Revised Statutes, 1898, Sec. 5508.
[6] *Ibid.*, Sec. 5525.

penalties under statutes at present in vogue (1911), unless the placing or holding be for the purpose of forcing the settlement of a debt, no matter how great may be the abuses perpetrated upon the person held. In the Clyatt case the Supreme Court decided unmistakably that the peonage statute (R. S. 5526) referred only to cases where the return or arrest or holding has been for the purpose of paying a debt."[1]

The chief origins of the enforced indebtedness upon which peonage rests are advances made by the employer to the laborer, misrepresentations made to laborers by unscrupulous employment agents, the payment by an employer of fines and costs in cases of misdemeanor, especially violations of vagrancy laws, and the operation of contract labor laws. Advances to laborers might include payments for transportation, working equipment of various sorts, and any payment in kind, such as food, clothing, or housing, accomplished through company stores and land ownership. An example is found in the state of Maine, where advances are made to laborers sent out by employment agents who "misrepresent conditions in the woods, and frequently tell the laborers that the camps will be but a few miles from some town where they can go from time to time for recreation and enjoyment. Arriving at the outskirts of civilization, the laborers are driven in wagons a short distance into the forests, and then have to walk sometimes sixty or seventy miles into the interior, the roads being impassable for vehicles. The men will be kept in the heart of the forest for months throughout the winter, living in the most rugged fashion and with no recreation whatever."[2] Similar practices of deceit were exercised by the agencies which send labor from New York to the South.

Abuses of the vagrancy laws were found to occur in the South, involving both negro and white laborers.[3] In Florida, for instance, "common pipers and fiddlers, common railers and brawlers" may be arrested under the vagrancy law of

[1] Immigration Commission, *Abstracts of Reports*, Vol. II, p. 446. See also Clyatt *v.* U. S., 197 U. S. 207 (1904).

[2] Immigration Commission, *Abstracts of Reports*, Vol. II, p. 447.

[3] United States Department of Justice, *Annual Report of the Attorney-General*, 1907, Exhibit 17, pp. 207–213.

1905, and fined not more than $250 or imprisoned not more than six months. Other states of the South make it quite easy for arrests to be made under these statutes. The victim is usually a negro who, for a trivial offense, or no offense at all except being unemployed, will be arrested and charged with vagrancy. He gets little consideration from the local justices, and his fines are so high that he is unable to pay them. An employer appears and advances the fine on the condition that the laborer will work out his debt. When the debt is worked out, and the negro is again unemployed, he will, perhaps, be rearrested on similar charges, and in such manner becomes virtually a peon. Occasionally a victim is not allowed to pay the fine when he has the money; he will be imprisoned and word sent to a planter, who comes in and pays his fine and then takes possession of the unfortunate criminal, who is obliged to work off his debt. In most cases this is as hopeful a proceeding as borrowing from a mediæval usurer, for at the end of months of toil the laborer may find himself as deeply in debt as ever.[1]

Although the Immigration Commission reported that in every state except Connecticut and Oklahoma there had occurred sporadic cases which, if supported by legal evidence, would constitute peonage as the Supreme Court has defined it, nevertheless no general system of peonage, and no sentiment supporting it, were found. In the South, where such practices were most frequent, prosecution by United States district attorneys was vigorous and usually successful.[2]

(2) *From Master and Servant to Employer and Employee*

In the master and servant stage we have the beginnings of the contract. In some cases the contract is very elementary in form, while in others it approximates closely the free labor contract. It is the first expression of the idea of equality between the laborer and his employer. The master was at liberty to hire whomsoever he wished, and, on the other

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[1] M. C. Terrell, "Peonage in the United States," *Nineteenth Century and After*, Vol. LXII, 1907, pp. 312, 313.

[2] Immigration Commission, *Abstracts of Reports*, Vol. II, p. 445.

hand, the servant could work for any master he chose. The master was not free to discharge his servant during the term of the contract, nor the servant free to quit his master and to work for another. The laborer was to serve the master faithfully, keep his secrets, obey his lawful commands, and guard his interests. On the other hand, the master was to give his servant a living, to protect him and look after his welfare.

a. Indentured Service. The slave, the serf, and the peon perform their labor under a fixed status, and the individual has little or nothing to say about it. The indentured servant had in some particulars the right of a servant in making a contract, and in other respects he was little more than a slave, except that his chances for ultimate freedom were more real. Indentured labor is peculiar to new countries where labor is scarce, and where opportunity for individual enterprise is great. To the American colonies people were shipped from the old world to supply the need for young, healthy, energetic laborers for the development of the new. Children were sometimes shipped under the Elizabethan statute of apprentices.[1] White indentured service is mentioned in laws of all the thirteen colonies.[2] The dates 1619 to 1819 may be taken as indicating roughly the beginning and end of the system. Competition with slavery destroyed it in the South before the end of the eighteenth century, but it continued to exist in the northern states into the nineteenth century. White servitude was hampered by too many considerations in favor of the laborer; above all, the white servant's labor belonged to his master only for a term of years, after which he was as free as any one else, while the slave's services were property during the term of his life.

b. Apprenticeship. Apprenticeship proper differs from indentured service in that the master obligates himself to teach the apprentice a trade. If this obligation does not appear in the contract, or is not enforced, the apprentice becomes in fact an indentured servant.[3] Thus many who came to America under what purported to be apprenticeship contracts

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[1] 5 Eliz., C. 3 and 4 (1563).
[2] Hurd, *Law of Freedom and Bondage in the United States*, 1858, Ch. VI.
[3] Abbott, *Women in Industry*, 1910, p. 331.

were in reality indentured servants. The two merged into each other in another direction, in that an apprentice could be bound for seven years to learn a trade which could be learned as well in three. Four years' enforcement of such a contract would be really indentured service and only three years' would be true apprenticeship.[1]

c. Contract Labor. Midway between indentured service, on one hand, and the padrone system on the other, is contract labor. This form of labor, although apparently built on freedom of contract, results in compulsory service or in peonage practices. It is the kind of labor contract whose performance can be enforced at law, and has been quite common where large numbers of natives of backward races have been employed, as in the Hawaiian Islands, the Philippines, the West Indies, and in South Africa, where Chinese coolies were employed in the mines.

In many respects contract labor closely resembles peonage, as we have previously suggested, for it places the laborer in the position of a debtor owing services, yet there is a difference between the two. Peonage involves continuous or indefinite service, as long as a balance of debt continues, which may be permanent. But contract labor pertains to a term of years only, after which the laborer cannot be compelled to work. Furthermore, should the laborer renew his contract because of economic pressure, still it is only for another term of years. Contract labor results in servitude for a definite period only, while it leaves the way open to freedom. It is possible, however, that abuses of the system may lead very easily to a state almost as bad as peonage, and it is this possibility that has made contract labor unpopular in freedom-loving countries and has led to legislation aiming at its restriction and abolition.

In the Hawaiian Islands a condition of contract labor existed for fifty years. In order to solve the problem raised by the scarcity of labor combined with the opportunity for industrial development, the employing class got a law enacted in 1850 by which laborers over twenty years of age could

[1] See chapter on governmental regulation of apprentices in J. M. Motley, *Apprenticeship in American Trade Unions*, Johns Hopkins University Studies, Vol. XXV, 1907, p. 494.

contract themselves to service for not more than five years. Refusal to work on the part of such a person was punished by imprisonment with hard labor. The man who tried to escape and was caught could be bound to double the original term of service. A later amendment added to the punishment for a second desertion three months' hard labor for the state.[1] This condition of contract labor was abolished in 1900 by a clause in the organic act settling the conditions of annexation to the United States.

While the performance of labor cannot be compelled by direct means, except where life and property are endangered, or public necessity and convenience demand it, yet indirect devices are invented to effect the same thing. Statutes which deal with "employers' advances" make it a misdemeanor for the employee to fail in the performance of his contract to work off a debt. As imprisonment for debt has been prohibited by law, the only means by which these contract labor laws can be made effective is to couch them in such terms as to make the laborer breaking his contract appear to be guilty of getting money or provisions under false pretenses. Intent to defraud must be shown, since a mere breach of the labor contract is not a crime.[2]

The law of Alabama provides that "the refusal of any person who enters into such contract to perform such act or service, or refund such money, or pay for such property without just cause, shall be *prima facie* evidence of the intent to injure his employer, or to defraud him." [3] The statute of Maine, enacted in 1907,[4] treating of contract labor, does not state that failure to perform the debt is *prima facie* evidence of intent to defraud, but judicial interpretation has had the same result.[5]

Prosecutions under such statutes, however, have been invalidated by a sweeping decision of the United States Supreme Court in a leading case.[6] Here the court stated: "The fact

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[1] Katherine Coman, "Contract Labor in the Hawaiian Islands," *American Economic Association Publications*, 3d Series, Vol. IV, 1903, pp. 492–493, 531.
[2] *Ex parte* Riley, 94 Ala. 82 (1891).
[3] Alabama, Code 1896, Sec. 4730, as amended 1903 and 1907.
[4] Maine, Laws 1907, C. 7.
[5] Immigration Commission, *Abstracts of Reports*, Vol. II, p. 448.
[6] Bailey *v.* Alabama, 219 U. S. 219 (1910), at p. 242.

that the debtor contracted to perform the labor which is sought to be compelled does not withdraw the attempted enforcement from the condemnation of the statute (prohibiting peonage). The full intent of the constitutional provision could be defeated with obvious facility if, through the guise of contracts under which advances had been made, debtors could be held to compulsory service. It is the compulsion of the service that the statute inhibits, for when that occurs the condition of servitude is created, which would be not less involuntary because of the original agreement to work out the indebtedness. The contract exposes the debtor to liability for the loss due to the breach, but not to enforced labor. . . . The act of Congress (Act of 1875) deprives of effect all legislative measures of any state through which, directly or indirectly, the prohibited thing, to wit, compulsory service to secure the payment of a debt, may be established or maintained." This decision delivered in 1910 invalidated laws of like nature in other states,[1] for the court observed: "No question of a sectional character is presented and we may view the legislation in the same manner as if it had been enacted in New York or Idaho. Opportunities for coercion and oppression in varying circumstances exist in all parts of the union, and the citizens of all these states are interested in the maintenance of the constitutional guarantees the consideration of which is here involved." [2]

Until very recently seamen have generally stood on a different footing from other employees, for with them enforced contracts were permitted and the law as to involuntary servitude has not been applicable. In the case of Robertson *v.* Baldwin[3] the court stated: "Seamen are treated by Congress as well as by the Parliament of Great Britain as deficient in that full and intelligent responsibility for their acts which is accredited to ordinary adults, and as needing the protection of the law in the same sense in which minors and wards are entitled to the protection of their parents and guardians." How-

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[1] Arkansas, Florida, Georgia, Louisiana, Michigan, Minnesota, New Mexico, North Dakota, and South Carolina. See United States Bureau of Labor, *Bulletin No. 148*, 1914, "Labor Laws of the United States."

[2] Bailey *v.* Alabama, 219 U. S. 219 (1910), at p. 231.

[3] Robertson *v.* Baldwin, 165 U. S. 287, 17 Sup. Ct. 326 (1897).

ever, since the date of that case the law of the United States affecting seamen has been changed and more freedom has been granted. A law[1] of the 63d Congress abolishes arrest and imprisonment as a penalty for desertion. It goes so far as to stipulate that it shall be unlawful in any case to pay any seaman wages in advance of the time when he has actually earned the same, or to pay any person for the shipment of seamen when payment is deducted or to be deducted from seamen's wages. This is a clear effort to prevent the obligation of indebtedness on which involuntary servitude is based.

The law goes further and provides that for quitting the vessel without leave after her arrival at the port of her delivery and before she is placed in security a seaman forfeits from his wages not more than one month's pay. This approaches the free contract perhaps as far as the conditions of seafaring will permit. Congress regulates the nature of the contract, the term of service, the payment and assignment of wages, advance payments and credits, the regulation of sailors' lodging-houses, of shipping-masters, quarters on board ship, rations, and many other details.

Railroad employees also come within the power of Congress, and it was a federal court which, while reiterating the general right of employees to quit work, suggested by way of dicta that "his quitting would not be of right and he would be liable for any danger resulting from a breach of his agreement and perhaps in some cases subject to criminal prosecution for loss of life and limb, by passengers or others, directly resulting from his abandoning his post at a time when care and watchfulness were required upon his part in the discharge of a duty he had undertaken to perform."[2] Laws on this subject, excepting that of Connecticut, connect the cessation of work with combinations and strikes,[3] and forbid engineers and railroad employees to abandon locomotives under

[1] United States Laws 1914–1915, C. 153; Revised Statutes, Secs. 4529, 4530, 4596, 4610, 4611. Title: An act to promote the welfare of American seamen in the merchant marine of the United States; to abolish arrest and imprisonment as a penalty for desertion, and to secure the abrogation of treaty provisions in relation thereto; and to promote safety at sea.

[2] Arthur *v.* Oakes, 63 Fed. Rep. 317 (1894).

[3] Delaware, Illinois, Kansas, Maine, Minnesota, New Jersey, Pennsylvania.

circumstances of this nature, under penalty of fine and imprisonment.

d. Padrone System. The padrone system is one step removed from contract labor. Those who work under this system permit a leader, the padrone, to make their contracts, yet the agreement is not enforceable at law. It is enforced only by their own necessities. The system started first with Italian laborers. The padrone brought over laborers from Italy, advancing the cost of their transportation, and hired them out to a contractor. He rented to them the shanties in which they lived while at work, and sold them supplies of food.

Italian laborers formerly made contracts with their padrone to serve him for one to three years, and occasionally for a longer period.[1] The report of the Immigration Investigating Commission of 1895 shows that Italians and other foreigners had been imported "by the cargo" into the Michigan iron-mines and worked on the padrone system in the early 'nineties.[2] This was probably the time when the padroni were the most numerous and flourishing.

Formal agreements among the laborers and the padroni are being discontinued, and for this there are perhaps three reasons. First, because the alien contract labor laws make their agreements not only unenforceable at law, but actually punishable if discovered by the government. Secondly, spontaneous immigration from Italy has now become so great that it is not worth the padrone's while to risk a conviction under the contract labor laws, so that he is now merely a middleman. Thirdly, there is the condition of dependence on one side and assistance on the other. The padrone does not establish his control over a man, strictly speaking, either by force or fraud. Dr. Rossi calls the padrone system "the forced tribute which the newly arrived pays to those who are acquainted with the ways and language of the country."[3] The system is founded on an inequality more deeply rooted than the usual inequality between the employer and the laborer. The races which work under this method are ignorant and

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[1] Industrial Commission, *Report*, Vol. XV, 1901, pp. 430–432.
[2] Immigration Investigating Commission, *Report*, 1895, p. 26.
[3] Industrial Commission, *Report*, Vol. XV., 1901, p. 432.

accustomed to be commanded, and it is on their dependence and lack of knowledge that the power of the padrone rests. Seen from the standpoint of the immigrant, a remedy is to be found not so much in legal rights, as in better education, American habits of thought, efficient employment bureaus, and more adequate administration of existing laws.

e. Imprisonment for Debt. Not only as a debtor-laborer, but also as a debtor-consumer, the laborer receives consideration. Imprisonment for debt originally had no particular bearing on the labor contract or its history. The fundamental idea in the ancient German imprisonment for debt is the indirect compulsion to pay. The debtor was to be encouraged to pay what he owed by being made uncomfortable until he did so. Compulsion to work had given place to compulsion to pay.[1]

The abolition of imprisonment for debt was one of the issues raised by the early workingmen's parties in 1827. Kentucky, the first state to abolish imprisonment for debt, had already done so in 1821. New York followed ten years later, and a series of legislative and constitutional provisions followed at intervals throughout the country. Inability to pay one's debts, if not accompanied by embezzlement or other fraudulent conduct, is now no longer a reason for imprisonment in civilized countries.[2]

f. Wage Exemption. Following the abolition of imprisonment for debt is the wage exemption legislation which took on large proportions in the United States in the 'forties. At the present time every state in the union has legislation exempting wages from attachment and execution for debt. In other words, the authority given to the sheriff or other administrative officer to seize from the property of the defendant (debtor) a sufficient amount to satisfy the judgment in favor of the creditor, is invalid when applied to wages under the exempt amount. The persons covered by these laws are differently specified in different states. Several provide for exemption of "all laborers, mechanics, and day labor-

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[1] Th. Niemeyer, "Schuldhaft," *Handwörterbuch der Staatswissenschaften*, Vol. V, 1911, p. 593.

[2] An important discussion of existing imprisonment for debt in England is found in E. A. Parry, *The Law and the Poor*.

ers," as in Georgia; "residents of the state," as in Idaho; "resident debtor," as in Iowa; all "householders," as in Indiana; "judgment debtor," as in New York; and "all who support themselves and their families by the labor of their hands," as in Wisconsin.

The amount of wages exempted varies somewhat from state to state. Some exempt sixty days' wages, others thirty days', while still others stipulate a certain percentage of wages due as exempt, or state how large a per cent. may be collected for a given period. The exempted amount runs from $20, as in Massachusetts, to not more than $100, as in the District of Columbia. The usual period of exemptions, in so far as the time is specified at all, is the two months preceding attachment. In all cases it is clear that the purport of the laws is to protect the minimum earnings of the workingman who has nothing to depend upon except his wages.

Wage exemption applies not only against execution or attachment, but also against garnishment.[1] This is a proceeding by which the plaintiff in an action seeks to reach the rights and effects (wages in this case) of the defendant by calling into court some third party (employer) who has such effects (wages) in his possession or who is indebted to the defendant.[2] Should the employer unwarrantedly make payments from his employee's wages, he will still be left liable to the employee himself for a second payment of the wages.[3]

g. Homestead Exemption. All American states have provided that the means of earning a livelihood, that is, the tools of one's trade or profession, shall be exempt from execution. Along with the exemption of personal property goes homestead exemption. This legislation is designed to keep intact the family unit in society, to prevent entire destruction, and to encourage a debtor who has been reduced to the last term to try again. However, these laws are not for laborers alone, but for any person. In most states a man must be a householder or the head of a family in order to get

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[1] Clark, *Law of the Employment of Labor*, 1911, p. 56.

[2] *Cyclopædia of Law and Procedure*, Vol. XX, 1901–1914, p. 978. "While a garnishment proceeding accomplishes the same purpose as an attachment or execution, it is in no sense a levy on property, but a judicial proceeding by which a new judgment is obtained."

[3] See Clark, *Ibid.*, p. 55, and cases cited.

the exemption, but in a few states any person may be entitled to the exemption. The limitations on the homestead exemption are in both acreage and value. Rural homesteads may vary in acres from forty to 100, and city homesteads from one lot to one acre (five acres in one state). Maximum monetary limits are $500 to $5,000.

In 1848 English statutes provided only that tools and actual necessaries of judgment debtors were not to be seized in execution. In 1883 a statute carried the exemption a little further, so as to include "the tools (if any) of his trade and the necessary wearing-apparel and bedding of himself, his wife and children, to a value, inclusive of tools and apparel and bedding, not exceeding twenty pounds ($100) in the whole."[1] These provisions have parallels in most of the British colonies, and the exempted property amounts to about the same. Nowhere, however, is the exemption as liberal as in the United States. Homestead exemptions are peculiar to the United States, but the tools of a debtor's trade, at least, are exempted in most English-speaking countries.

h. Assignment of Wages. Assignment of wages grows out of the legal act of transferring or making over to another of the whole or part of any property, real or personal, in possession or in action, or of any estate or right therein. But if the wage-earner is to have effective exemption of wages from attachment and garnishment, it is consistent that he be prevented from making an assignment of his future wages. Assignments of unearned wages are safeguarded in various ways, as by requirement that they must be recorded, that copies must be filed with the employer, or even that the employer's consent must be obtained, or that the wife must join in the husband's assignment, or *vice versa*. Missouri affords a good example of effort to modify this evil. An act of 1911 provides that "all amounts of wages, salaries, or earnings must be in writing with the correct date of the assignment and the amount assigned, and the name or names of the party or parties owing the wages, salaries, and earnings so assigned, and all assignments of wages, salaries, and earnings

[1] 46 and 47 Vict., C. 31, Pt. IV, Sec. 44.

not earned at the time the assignment is made shall be null and void." Assignments to secure loans or future advances are invalid in Georgia and Massachusetts, and all assignments of future earnings are prohibited in Indiana.

2. The Laborer as Creditor

Modern industry is conducted mainly "on credit." The employer is the middleman, whose creditors are those who advance the capital he uses, and whose debtors are those who buy his product. When the laborer starts to work for him, he also becomes, for a time, a creditor. He contributes his services in advance of compensation. He is a temporary investor in the business. While he works he passes over to the employer the title to his product, and retains a claim for wages. When his wages are paid his investment is liquidated.

Other investors advance money or "credit." Their contracts are secured by notes, bonds, mortgages, giving to them a preferred claim on the property and earnings of the business. They invest "capital"—the laborer invests "labor." Laws regulating the time, place, and medium of payment, laws providing for mechanics' liens, wage preference, and so on, are intended to guarantee to the laborer as creditor, regardless of contract, that certainty of payment which the capitalist as creditor secures in the ordinary enforcement of contracts.

(1) *Time of Payment*

Legislation has not until recently[1] ventured to interfere directly and set the amount of wages, but it makes the amount of wages greater or less by indirect methods. Whatever the nominal amount may be, the frequency of the time of payment is a matter of concern to the laborer. The longer he must wait for his wages the greater is the extent of his need for credit, and, accordingly, the higher will be his cost of living and the lower his real wages. The advantages of fewer

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[1] See Chapter IV, "The Minimum Wage."

pay days are obvious to the employer. His cost of bookkeeping is less, and his required circulating capital will be less.

Over the entire world in industrial states there are statutes requiring a regular pay day, which may be once a month, semi-weekly, or weekly. Many of the European laws are so phrased that modifications may be introduced according to local custom.[1] The Swiss government makes it incumbent upon the master to pay wages at any time according to work done, so as to enable the servant to meet any special need, and the interpretation of the law is left to administrative officers.[2]

Two-thirds of the states of the United States, and Hawaii, have laws dealing with time and mode of payment of wages. Most of these laws provide for semi-monthly payment, and most of them stand without being contested in the courts to determine their constitutionality. Some cases have reached the courts, and different decisions have been rendered.

In favor of the validity of such laws, it has been argued that semi-monthly payment of wages is required by the actual necessities of employees, and that regular payment of wages at short intervals is much more a matter of life and death to a workingman with a family dependent on him than to the employing corporation.[3] The purpose of the Rhode Island weekly payment law was laid down by the court as being protection of the worker from "the greed of corporate capital." Poverty and weakness, it was said, "can wage but an unequal contest with corporate wealth and power"; and the act was considered to be for the prosperity and comfort of the workingmen, who depend entirely on their weekly wages, and are, like other people, obliged to pay for credit.[4]

The cases in which laws relating to time of wage payment have been held unconstitutional show, as might be expected, that less consideration was given to the practical economic facts of the situation. In these cases appears the usual argument that the liberty of contract of the workingman is en-

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[1] For example, the Netherlands, *Bulletin of the International Labor Office*, Vol. II, 1907, p. 411.

[2] Federal act to supplement the Swiss federal code, March, 1911, *Bulletin of the International Labor Office*, Vol. VI, 1911, p. 96.

[3] Arkansas Stave Co. *v.* State, 94 Ark. 27 (1910).

[4] State *v.* Brown & Sharpe Mfg. Co., 18 R. I. 16, 25 Atl. 286 (1892), at p. 252.

croached upon by legislation. In the case of Johnson *v.* Goodyear Mining Co.[1] an indignant protest was raised by the court against any interference with the liberty of contract. "The workingman of intelligence," it was said, "is treated as an imbecile. Being over twenty-one years of age, and not a lunatic or insane, he is deprived of the right to make a contract as to the time when his wages shall fall due."

There are several states which legislate to the effect that wages shall be paid during working hours. This accomplishes two things: it saves the time of the employee and precludes payment in bar-rooms. In Austria the time for payment of wages to mine workers is reckoned within the duration of the shift.[2] In Massachusetts, where there are 100 or more persons employed in any establishment, wages are to be paid during working hours. In France payment of wages must not be made on days kept as rest days for employees.[3] The law of Greece is fairly representative of those of some other countries: it provides that wages shall be paid not later than the time when daily work is concluded, and that in undertakings with more than 200 workers the manner of paying wages may be regulated by administrative order.[4]

Most of the states and countries provide that an employee shall be paid immediately upon discharge, and for delay thereafter is entitled to interest charges—in the case of Iowa $1 a day penalty up to twice the amount of the wages due. In some cases this penalty is 5 per cent. a year to be added for the cost of the delay, and the attorney's fee if his services are necessary to procure wages withheld from an employee. When an employee quits, the law generally stipulates that he shall be paid at the next regular pay day.

(2) *Place of Payment*

The evil attached to the payment of men in saloons needs no elaboration, and it is to be noticed that this evil is partly

[1] Johnson *v.* Goodyear Mining Co., 127 Cal. 4, 59 Pac. 304 (1899).
[2] *Bulletin of the International Labor Office*, Vol. VII, 1912, p. 246.
[3] *Lois, Décrets, Arrêtés concernant la Réglementation du Travail*, Bk. I, Ch. II, Sec. II, Art. 46.
[4] *Bulletin of the International Labor Office*, Vol. VII, 1912, p. 290.

taken care of in some places by providing that wages shall be paid upon the premises, as in Servia and Berne. This coincides with most of the legislation of the American states on the subject. California and Nevada, however, specifically provide that payment of wages shall be made to no one in bar-rooms except it be those employed therein. Austria, Belgium, France, Germany,[1] and Great Britain [2] have all legislated against payment of wages in public houses and taverns.

(3) *Basis of Payment*

In the United States there are some statutes that prohibit the screening of coal before it is weighed, the loss of coal through the screen being regarded as causing an unjust loss to the miner, whose contract calls for payment by the weight of coal mined. The validity of such laws has been both upheld and denied by different state courts, but in the case of McLean *v.* State of Arkansas [3] the Supreme Court held the law to be within the police power of the states.

(4) *Medium of Payment*

Carlyle declaimed against a modern civilization whose only bond of union is the cash nexus. Yet, from a different point of view, it may be said that liberty depends on cash. Indeed, the transition from slavery to freedom is a transition from payment in lodging, board, and goods, or "truck," to payment in legal tender or in a medium convertible into money on demand at its face value. Cash means freedom. It permits the wage-earner to buy what and where he wants. It also means earnings, for it exposes and corrects unwarranted deductions, such as high prices, through bookkeeping accounts.

a. "*Living In.*" Under systems of slavery, serfdom, in-

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[1] Great Britain, Departmental Committee on Truck Acts, *Report*, 1908, pp. 96, 97.

[2] 46 and 47 Vict., C. 31 (1883).

[3] McLean *v.* Arkansas, 211 U. S. 535 (1906).

dentured service, and apprenticeship the laborer lived on the premises of his master. The most complete survival of these systems in modern industry is known in England as "living in," where the employee receives part payment in board and lodging at his place of employment. The system is encountered in all countries, and is characteristic of domestic service. Very often "living in" is made a condition of employment, either express or implied, and the board and lodging accommodations provided are often inferior and inadequate. The system may rob the employees of their sense of personal responsibility and check individuality and independence of character. There is frequently no freedom of complaint, for, if the workers venture to remonstrate about food or lodging, they render themselves liable to dismissal and "spoiling" their references. In Great Britain the committee on the truck acts in 1908 recommended regulations as to accommodations provided in "living in" establishments, but did not seem to have a clear case for the abolition of the system. However, a minority report advocated its entire abolition.[1]

In Berne the law of 1908[2] requires that food provided for the employees must be sufficient and wholesome and that the accommodation must satisfy all sanitary requirements. In Austria the administrative authority may determine by order that, in the case of undertakings of a certain kind or situation in certain districts it shall be unlawful to provide board or lodging for the employees as a part of their remuneration.[3] In South Australia the occupier of an establishment and the members of his family are prohibited from lodging and boarding adult persons in his service, in the case of those whose wages are fixed by wage boards, exception being made in the case of hotels, clubs, restaurants, and the like.[4]

In the United States the subject of "living in" has not yet come into the realm of legislation, but it exists in hotels, restaurants, bakeries, and clubs.

b. Company Houses and Labor Camps. The employer may

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[1] Great Britain, Departmental Committee on the Truck Acts, *Report*, 1908, Vol. I, p. 78; *Minority Report*, Vol. I, p. 84.
[2] *Bulletin of the International Labor Office*, Vol. III, 1908, p. 122.
[3] *Ibid.*, Vol. V, 1910, p. 203.
[4] *Ibid.*, Vol. VII, 1912, p. 20.

build "company houses" for his workmen which they must occupy, and the rent is then deducted from wages. Frequently these houses are better than those which the employees would provide, but they have counteracting disadvantages in contractual ties of dependence. In New York, where factory operatives are given living quarters, these may be regulated by the industrial commission, which has power to enter and inspect.[1] Labor camps for certain kinds of work have received attention in California,[2] New York,[3] and Hawaii.[4] In the case of California the state board of health is ordered to condemn any camps which are dangerous to public health.

c. Company Stores. The "truck" system, or "truck" in English usage, is the term which denotes payment in kind, or otherwise than in cash.[5] In the United States this is generally treated under such terms as "store orders," "payment in scrip," or "company stores." Payment in alcoholic drinks would scarcely be tolerated in the United States. This is not because of laws directly forbidding it, for there are none, but American industries are united in keeping liquor from their employees and many of them refuse to hire workmen who use liquor. However, payment in such a manner is indirectly prevented by statutes which call for payment in cash and payment on the premises. Laws regulating or prohibiting company stores, and disallowing coercion as to employees' trading, have the same effect.

Legislation respecting the truck system falls into three classes: (1) laws that would eliminate it altogether, at least in business establishments where it is a real evil, such as mining, manufacturing, and railroad corporations; (2) laws which permit the system, but which regulate the prices charged and the quality offered; (3) laws which allow the institution to exist, but which endeavor to eliminate coercion of employees to make use of the system.

Among the first class would come the laws of Colorado,

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[1] New York, Laws 1913, C. 195.
[2] California, Laws 1913, C. 182.
[3] New York, Laws 1913, C. 195.
[4] Hawaii, Laws 1911, No. 123.
[5] Great Britain, Departmental Committee on the Truck Acts, *Report*, 1908, p. 4.

Maryland, Massachusetts, New Jersey, New York, and Pennsylvania, and France of the European countries—the latter having, perhaps, the most complete law aiming at the abolition of the entire system.[1]

The second class includes Connecticut, Indiana, and Virginia. Here prices must not be unreasonable, or higher to the employees than to others who are not employees. Of course, if the town should be owned by the corporation, the law could not have much effect, and, for that matter, no anti-truck legislation can accomplish much for the laborer in a town where the land and buildings are all owned by the employing corporation.

In the third class would fall the laws of Iowa, Kentucky, Montana, Nevada, New Mexico, Ohio, Oregon, the Philippines, Porto Rico, Texas, Utah, Washington, West Virginia, and the laws of practically all the foreign countries, omitting Holland and Italy, which have no such general laws.

The last two groups have this in common, that both regulate prices. Although penalties provided seem to be ample, yet in the United States the administrative features are weak, as typified by the case of Colorado,[2] where, if the attorney-general should fail, neglect, or refuse to act after a demand by a responsible party, any citizen has a right to institute proceedings upon giving bonds for cost of suit. Obviously, the workman is in no position to give bonds or to bring suit, for he can neither afford the expense nor the loss of the job which such a procedure would entail.[3]

(5) *Deductions*

The problem of deductions from wages involves (1) deductions in respect to fines, (2) deductions as payment for

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[1] *Bulletin of the International Labor Office*, Vol. V, 1910, p. 377; Act suppressing truck shops and prohibiting employers from selling, directly or indirectly, to their workmen and employees supplies and goods of any kind, March 25, 1910.

[2] Colorado, Revised Statutes, 1908, Sec. 6995.

[3] Respecting the variety of decisions on the constitutionality of this class of legislation, see Freund, *Police Power*, 1904, pp. 305–308; Clark, *Law of the Employment of Labor*, pp. 65–72; Stimson, *Handbook to the Labor Laws of the United States*, 1896, pp. 104–110.

damages, (3) deductions for use of material and tools, (4) deductions for benefits.

Fines are imposed, presumably, for disciplinary reasons, and vary in application and amount in different establishments and with the caprice of the individual employer. They may not always be a real deterrent, but may on the other hand lead to carelessness, suggesting to the worker that he has paid for what he has done. They may be unfairly imposed, creating a sense of injustice and irritating the workers, and they may even prove to be a source of petty profits to the unscrupulous employer. At all events, they decrease the income of the wage-earner.

Deductions as payment for damages may be for bad or negligent work, injury to materials and to other property of the employer. Abuses are very general, for the employer determines the amount of damage done and puts the price on materials spoiled. It is humanly impossible to do perfect work, and no matter how good a worker may be at his trade, faults will occur at times. Such faults are part of the manufacturers' risk and should be dealt with as such. The employer is himself often to blame for setting an inexperienced hand to do work for which he is not competent.

The case of charges for materials and tools used by employees involves the same principle as in the previous case. This system is intended to secure economy in the use of material by making the worker responsible. However, from the point of view of the worker the system is objectionable because of the possibility of overcharge, which no regulation, however strict, can altogether prevent.

Deductions for benefits received, such as medical attention, hospital care, and sickness insurance, are allowed by all states and countries, but some provide (as, for instance, New South Wales and Western Australia) that the deduction must not exceed the value of the thing supplied, and, when not stated, this is generally implied by all countries. Usually, also, these deductions from wages are in pursuance of a previous contract. Of the United States, Indiana, Iowa, Maryland, Michigan, New Jersey, Nevada, and Ohio specifically legislate against forced contributions for certain enumerated benefits as a condition of employment. With the

possible exception of Ohio, the administration of these laws is left to the courts.

A corporation may furnish insurance, lessening many hardships of life for the workingman and his family; but this insurance is enjoyed only as a result of continuous employment, which in turn often involves oppressive dependence. Especially is this true when after a number of years the workingman has acquired rights which may be lost by change of employment. Thus the burden may become great with increasing years, as new employment with insurance becomes more and more difficult to secure.[1]

Provisions are found in some laws, in connection with employers' liability, and sometimes confined to railroads, which regulate or prevent the payment of benefits to injured employees as a means of escaping from such liability. About half the states, the Philippine Islands, and the federal government have enacted that no contract of insurance or relief benefit shall constitute a bar to action by an employee for damages in case of injury or death.[2] Florida directly says that the existence of a relief department, by which the employer pays benefits to the workers, shall not relieve such employer from responsibility in case of death.[3] It is sometimes added, however, that the employer may set off against such a claim any sums he has contributed as benefit.[4] In Georgia the payment of wages up to $100 on the death of an employee is a sufficient release on the employer's part.[5]

In the act of 1896[6] the first attempt was made in England to protect the worker from harsh and unreasonable fines. This act provided that there must be formal agreement for the fines; that the fine must be for something which causes, or is likely to cause, damage or loss to the employer or inter-

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[1] Ely, *Property and Contract*, 1914, Vol. II, p. 714.

[2] Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Indiana, Iowa, Maine, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Philippine Islands, South Carolina, Texas, Virginia, Wisconsin, Wyoming, United States.

[3] Florida, Laws 1914, C. 6520.

[4] Alabama, Georgia, Indiana, Michigan, Montana, Nebraska, Nevada, North Carolina, North Dakota, Ohio, Texas, Wisconsin, United States.

[5] Georgia, Code 1910, Secs. 3134–3136.

[6] 59 and 60 Vict., C. 44.

ruption or hindrance to his business; that it must be fair and reasonable, having regard to all the circumstances of the case; that written particulars must be given to the worker each time a fine is exacted; and, finally, that there shall be a register of fines open to inspection.[1]

In the United States there is little legislation dealing with deductions as fines—a dozen states in all.[2] Michigan prohibits fines altogether, while Massachusetts says fines shall not be levied except for imperfect work,[3] and Louisiana prohibits them except when employees wilfully or negligently damage goods or property of the employer. Arkansas and Connecticut regulate discount of wages because of early payment. The rest of the states permit no deductions unless in accordance with certain procedure and with full consent of workers. The Australasian countries have no legislation on fines. In Austria, Belgium, Germany, and Holland fines are regulated in pursuance of a previous contract or published rules. In France fines cannot exceed one-fourth,[4] and in parts of Switzerland not more than one-half, of the daily wage.[5] In both these cases as well as in Holland the fines must go toward a workers' benefit fund.

A clause dealing with deductions, not levied for inferior work or for destruction of property, appears in Massachusetts,[6] where no deductions are to be made from the wages of women and minors when there is a stoppage of work owing

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[1] Great Britain, Departmental Committee on the Truck Acts, *Report*, 1908, Vol. I, p. 6.

[2] Arkansas, Connecticut, Hawaii, Indiana, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, New Jersey, Nevada, Ohio, and Texas.

[3] Massachusetts, Laws 1909, C. 514, Sec. 114. Under the terms of this act fines for imperfect weaving may be levied only after the imperfections have been pointed out and the amount agreed upon by both parties. Apparently these provisions did not sufficiently protect the weavers, for in 1911 another act was passed stating that "No employer shall impose a fine upon an employee engaged at weaving for imperfections that may arise during the process of weaving" (Laws 1911, C. 584). The court, however, rendered the new law nugatory by its limited interpretation of the word "fine." (Commonwealth *v.* Lancaster Mills, 212 Mass. 315, 98 N. E. 364 [1912].)

[4] Great Britain, Departmental Committee on the Truck Acts, *Report*, 1908, Vol. I, p. 95.

[5] *Bulletin of the International Labor Office*, Vol. III, 1908, p. 125.

[6] Massachusetts, Laws 1909, C. 514, Sec. 119.

to a breakdown of machinery, and the workers are not allowed to leave the mill. Foreign countries, while they sometimes limit the extent of deductions for materials used, still do not prohibit them. Although the labor codes generally state that prices shall not be excessive, this is a goal reached only by effective administration.

(6) *Mechanics' Liens and Wage Preference*

The idea that wages are to receive special treatment, that they are to be paid before other claims, that security is to be given for their payment, and that they shall be exempt up to a certain amount from execution, underlies legislation on mechanics' liens, on wages as preferred claims, and on wage exemption. The last of these subjects is treated elsewhere;[1] here we consider the preferential treatment of the laborer as creditor.

Mechanics' lien laws represent a stage in the progress toward wage preference, but they should not be confused with it. They are founded on the still older practice of giving contractors and builders a claim for payment on houses they built and the land that these were built on.

In 1830 the first mechanics' lien law was passed by the New York legislature[2] and was based on the following considerations, set forth in a committee report:

"The committee are credibly informed that the severe and heavy losses sustained by the laboring interests have arisen far more frequently from insufficient, reckless contractors, having nothing to lose, than from contractees. . . . They would be distinctly understood, declaring it as their undivided opinion that a mortgage given to secure the payment of money lawfully borrowed, the justice of which no one will presume to dispute, is not a more equitable claim than that of the mechanic and laborer on the dwelling-house and other buildings, and ground on which the same are erected, so far as their claim and demand can be correctly ascertained."[3]

Mechanics' lien legislation seeks to give the laborer a claim for the payment of what is due to him, backed by the security

[1] See "Wage Exemption," p. 47.
[2] New York, Laws 1830, C. 330.
[3] New York Assembly, *Documents*, 1830, No. 24.

of the structure or land on which he has been employed. It exists in all the states, and extends to labor performed on public works, railroads, in mines, and on the land, as well as to lumbering, construction and repair of vessels, sawmilling, and other occupations. Such liens are generally ranked as coming before other payments; and in many cases where contractors and subcontractors are entitled to benefit in a similar way, the wage-earner's claim is put first.[1]

The next step was the provision that wages should be considered as preferred claims. Nearly all the states and the federal government have laws providing that in cases of assignments, administrations, and receiverships due to death or bankruptcy, the wages of servants and employees, up to a definite sum and for work done within a limited time, shall be paid next after fees, costs, and taxes.[2] France has a law giving preference to wage payments.[3] Great Britain and her colonies include in their bankruptcy laws preferential payment claims, providing usually that salaries of clerks not exceeding $500 and wages of laborers not exceeding $125 shall have equal claim to payment with taxes and expenses. The British bankruptcy law[4] now includes national insurance contributions and amounts due for workmen's compensation in this category. New Zealand has a *bona fide* contractors' and workmen's lien act resembling the American legislation.[5]

3. The Laborer as Tenant

(1) *Classes of Agricultural Workers*

Of the 30,000,000 males over ten years of age engaged in gainful occupations in 1910, 10,700,000, or more than one-

[1] California, Colorado, Idaho, Illinois, Louisiana, Nevada, New Jersey, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Washington, West Virginia.

[2] Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maryland, Maine, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Rhode Island, South Dakota, Pennsylvania, Texas, Utah, Washington, Wisconsin, the Philippine Islands, and the United States.

[3] *Lois, Décrets, Arrêtés concernant la Réglementation du Travail*, Bk. I, Ch. II, Sec. II, Art. 46, 47.

[4] 4 and 5 Geo. 5, C. 59, 1914.

[5] New Zealand, Statutes 1892, No. 25.

third, were employed in agriculture. Of this number something less than 4,000,000 were owners operating their farms. More than 2,000,000 were tenants,[1] and 4,700,000 were laborers working for owners and tenants. But these figures do not represent the actual proportions of wage-earners and employers in the sense of the wage bargain as understood in manufactures and other industries. Of the 4,700,000 laborers, 2,100,000 were members of the family of the owner or tenant, and, therefore, their labor contracts do not exhibit the strictly business relation of employer and employee in the modern wage bargain. Such labor problems as they present, from the standpoint of legislation, are mainly those of child labor.

a. Hired Laborers. The remaining 2,600,000 are hired laborers, and to them would be applicable labor laws similar to those enacted to protect laborers in other industries. However, as a matter of fact, labor legislation in the United States has had very little to do with farm labor. Laws like those regarding workmen's compensation, safety, health, or hours of labor sometimes either specifically exclude agricultural labor from their operation or are not applicable. Other laws, such as laborers' liens, wage exemption, prohibition of involuntary servitude, and the like, are so general or fundamental that they apply to farm labor.

Hired laborers are of two classes, considerably different in their condition. About 200,000 of those enumerated appear to be "casual" laborers, hired usually by the day, and 2,400,000 are hired by the month or year. The number of casual laborers is doubtless greatly underestimated, for the Census enumeration is made in April, whereas the largest number of this class of laborers is employed during the harvest seasons from July to November. They are enumerated in April in other industries, and are the migratory laborers who appear in the logging-camps and ice harvests, as well as temporary laborers in other occupations.

The number of 2,400,000 farm hands regularly employed is also understated, because an uncertain number of tenants

[1] Thirteenth Census of the United States, Vol. IV, 1910, p. 302. This figure is obtained by combining the estimates for agriculture and animal husbandry. The Census distinguishes the number of *farms* operated by owners and tenants, not the number of *owners and tenants;* hence these numbers are estimated.

are really hired laborers under a special form of tenant contract and should be classed as employees rather than tenants.

b. Tenants. The Census gives the numbers of two kinds of tenants, 712,000 "cash" tenants and 1,528,000 "share" tenants.[1] By cash tenant is meant not one who pays rent in actual cash, but one whose rent is definitely fixed and certain and is stipulated in advance in the contract either in dollars, in labor, or in products. It may be $7, ten bushels of wheat, or 100 pounds of cotton per acre. Evidently the "cash" tenant is a small capitalist, a contractor, or an employer, since he invests his own money or labor and takes all of the risks of the business. His gains are profits rather than wages; his bargain with the landlord is a price bargain, not a wage bargain.

The share tenants are more difficult to classify. They may be either small capitalists or simply farm laborers, and the Census does not distinguish between the two. A share tenant pays the landlord as rental a certain share of the product, as one-half, one-third, or one-quarter. In making such a contract the tenant would appear to be a contractor or capitalist, who takes, not indeed the whole risk of the business, but a part of the risk. Such is the case if he actually invests his own capital, such as horses, cattle, implements, and so on, and runs the risk of losing his capital on the chance of increasing it. He would figure the outcome as profit or loss.

c. "Croppers." But if, on the other hand, the tenant "invests" nothing but his own labor, and the landlord furnishes all of the working capital, then the landlord is the capitalist-employer, the tenant is a laborer, and the bargain is a wage bargain. His wages, however, are not the stipulated daily or monthly wages received by a "hired man," but they are contingent wages, similar to those paid to a piece-worker, or, rather, to a sailor on a whaling-ship who receives a share of the product at the end of the voyage. This system of wage payment is spoken of as "product sharing," to distinguish it from "profit sharing." [2]

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[1] Thirteenth Census of the United States, Vol. V, 1913, p. 97. This includes among "share" tenants those given in the "leases" as "share-cash"—an intermediate class.

[2] D. F. Schloss, *Methods of Industrial Remuneration*, 1891, p. 249.

The terms "cropper" and "cropping contract" will be used herein to designate this kind of labor-tenant under the system of share tenancy. The terms originated in the southern states, where share contracts are most prevalent and where they account for the high percentage of tenancy. In 1910, 66.8 per cent. of the tenancy in the South was share tenancy, including both farmers and laborers on shares, while only 31.6 per cent. of northern and 1.6 per cent. of western farms were operated on a system of share tenancy.[1] In popular usage, the term "cropper" includes both the share farmer, or small capitalist, and the share laborer. Both are croppers. The courts, however, have settled upon the term "cropper" to indicate the laborer,[2] and, adopting this usage, we can distinguish the cropper, as a laborer whose wages are measured by a share of the product under the guise of a lease, from the share tenant, as a small capitalist paying rent.

No reliable estimate can be made of the number of croppers. Indeed, the amount of capital owned by the farmer may be so small that he would be looked upon in other industries as scarcely more than a mechanic furnishing his tools and taking out work on a contract. The distinction is made in the laws of Alabama[3] which define a share tenant as one who owns his team, and the cropper as one whose landlord owns the team. The law of Texas, enacted in 1915,[4] is the first American law designed to regulate the rents of share tenants. It attempts to prevent the landlord from charging more than one-half of the value of the product if he furnishes everything except labor, and more than one-third of the grain and one-fourth of the cotton if the tenant furnishes all of the operating capital. Thus it distinguishes and regulates both the rent of the farmer and the wages of the cropper.

In other states, where the legislature has not attempted to standardize or regulate the share contracts, the courts have been compelled to decide in each case as it arises whether the laborer is a cropper working for wages under a labor contract,

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[1] Thirteenth Census of the United States, Vol. V, 1913, p. 113.

[2] Steel *v.* Frick, 56 Pa. St. 172 (1867); Harrison *v.* Ricks, 71 N. C. 7 (1874); Almand *v.* Scott, 80 Ga. 95, 4 S. E. 892 (1888); Hammock *v.* Creekmore, 48 Ark. 264 (1886).

[3] Alabama, Code 1907, Secs. 4742, 4743.

[4] Texas, Laws 1915, Article 5475 (3225).

or a tenant-farmer paying rent under a lease. If he is a cropper, then, in case of dispute, he would be awarded what similar laborers in the locality receive as wages, regardless of the value of the crop. If he is a tenant-farmer he is awarded his share of the crop, regardless of what he might earn as wages.

In order to decide the point, the courts look into the contract to discover which party has the control and direction of the farming operations and the legal possession of the crop at the end of the season. In brief, if the landlord gives orders as to cultivation, and has legal possession and the right to divide the crop and give the tenant his share, the contract is a labor contract.[1] But if the tenant is "his own boss" and has legal possession of the crop, and gives the landlord his share, the contract is a lease.[2] Generally it turns out that, in proportion as the tenant advances a larger and larger share of the working capital, the contract which he is able to make is a lease and gives him not only a larger share of the product, but also a chance to make a profit in addition to wages; while the smaller the proportion of capital which he advances, the less is his share and the more nearly the contract becomes a labor contract.

If the contract is a lease, the landlord has a preference lien on the crop for his rent.[3] If it is a labor contract, the laborer has a laborers' lien on it for his wages.[4]

(2) *Agricultural Labor Legislation*

The foregoing distinctions indicate differences in the kind of legislation needed to protect agricultural labor compared with that protecting industrial labor. The one modifies mainly the law of landlord and tenant, the other that of employer

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[1] Shoemaker *v.* Crawford, 82 Mo. App. 487 (1900); Kelly *v.* Rummerfield, 117 Wis. 620 (1903); Bowman *v.* Bradley, 151 Pa. St. 351 (1892); Chase *v.* McDonnell, 24 Ill. 237 (1860); Cutting *v.* Cox, 19 Vt. 517 (1847).

[2] Taylor *v.* Bradley, 39 N. Y. 129 (1868); Neal *v.* Brandon, 70 Ark. 79, 66 S. W. 200 (1902); Almand *v.* Scott, 80 Ga. 95, 4 S. E. 892 (1888).

[3] Randall *v.* Ditch, 123 Ia. 582, 99 N. W. 190 (1904); Hooper *v.* Haines, 71 Md. 64, 18 Atl. 29, 20 Atl. 159 (1889); Keoleg *v.* Phelps, 80 Mich. 466, 45 N. W. 350 (1890); Wilson *v.* Stewart, 69 Ala. 302 (1881); Noe *v.* Layton, 69 Ark. 551, 64 S. W. 880 (1910).

[4] Grisson *v.* Pickett, 98 N. C. 54, 3 S. E. 921 (1887).

and employee. Farming is, for the most part, a small-scale industry, and there is opportunity for individuals to rise into the position of independent owners. Beginning, perhaps, as a casual laborer, the next step is that of the farm laborer hired by the month or by the year, and living with the family of the owner. Next, with a family of his own, the steps upward are cropper, share tenant, cash tenant, owner with mortgage, and, finally, ownership unencumbered. Legislation may aid or obstruct this upward movement.

If the share tenant, whether cropper or farmer, is not permitted to acquire any title to such permanent improvements as he adds to the land, his condition is practically the same as that of the wage-earner, who has no title to his own product. Like the laborer, he tends to be kept permanently in that class. This is the condition of croppers and share tenants in the United States, and the result is seen in their frequent movement from farm to farm. Such tenants, without title to their "savings" in the form of improvements, can do but little in the way of accumulating the capital necessary to rise to the higher steps, and their instability and lack of incentive are equally serious factors in their own deterioration and in that of the soil.

This condition received legislative attention first in England. There had been a strong agitation favoring the enactment of legislative measures to compensate tenants for improvements made on the landlord's estate, but not until 1850 was a bill introduced into Parliament favoring a reasonable allowance for such improvements. The bill did not pass, but similar measures were brought before that body several times, and in 1875 an act was obtained stipulating the conditions under which an outgoing tenant was to be paid for improvements. However, no provision was made compelling landlords to contract under the law, and as a consequence the statute was ineffective.

In 1883, a new bill, known as the agricultural holdings act, was passed, compelling all landlords to make their leases with tenants subject to compensation for improvements.

Even with compensation for improvements it requires time and trials for the tenant or purchaser to find a suitable farm. Finding the tenant a farm has a direct relationship with the

finding the laborer his job.[1] The importance of this problem is keenly felt, as is shown in an investigation made by the United States Department of Agriculture.[2] In accordance with a statute enacted in 1905, New York state[3] established a bureau of information regarding farms for rent and sale and positions for agricultural laborers. It was claimed that this bureau had secured work for about 15,000 men on farms during the first three and a half years of its existence.[4] The bureau also issues a bulletin dealing with the farms to be disposed of throughout the state.

Legislation of various countries also provides credit agencies to enable the tenant or farmer to acquire advances of capital necessary to secure permanency in his position. The Schultze Delitsch and Raiffeisen banks in Germany and Austria, the Crédit Foncier in France, the cooperative banks in Italy and Russia, are private cooperative credit systems operating under government supervision.[5] New Zealand, Australia, Ireland, and the provinces of Nova Scotia and New Brunswick in Canada make loans to farmers, as do also Idaho, Indiana, Iowa, North Dakota, Oklahoma, Oregon, South Dakota, and Utah.[6]

In New Zealand the "advances to settlers" system is administered by the New Zealand State-guaranteed Advances Office. Loans are repaid to the advances office in semiannual instalments of principal and interest. Interest is charged at the rate of 5 per cent. a year, but this rate is reduced to 4½ per cent. if payments of interest and principal are promptly made.[7]

In regulating the contract of landlord and tenant the problem of administration is similar to that of regulating the contract of employer and employee. At first the matter is left to the courts as is the case with the Alabama and Texas

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[1] See "Public Employment Exchanges," pp. 270–278.

[2] United States Bureau of Labor, *Bulletin No. 94*, 1912, "Supply of Farm Labor," George K. Holmes.

[3] New York, Laws 1905, C. 243.

[4] New York State Commissioner of Agriculture, *Seventeenth Annual Report*, 1910, p. 164.

[5] American Commission on Agricultural Cooperation and Rural Credit in Europe, *Report*, Part I, 1913, pp. 24, 181, 182, 237, 438, 63d Congress, 1st Session, Senate Document No. 214.

[6] Wisconsin State Board of Public Affairs, Bulletin on *State Loans to Farmers*, 1913, p. 4.

[7] *Ibid.*, pp. 14 ff.

laws and the British legislation above mentioned. Afterward it is found that the tenant, like the wage-earner, is unable to avail himself of the aid of the courts. Then, an administrative body or commission is created to deal with each contract as it arises. In the case of the tenant contract, it is the highly inflated value of land that offers the chief obstacle to the laborer or cropper in advancing to the position of owner. This obstacle was attacked in Ireland, in 1881, by the creation of a land commission to fix rents. The commission reduced rents 15 to 20 per cent. Later, when the government began to make loans at low rates of interest, in order to encourage farm ownership, and then began to compel the landlords to sell to their tenants, the land commission fixed the fair value of the land. Otherwise, the government loans, at 3 per cent. interest, would have served only to inflate land values further, and the landlord would have absorbed the benefit intended for the tenant. Thus the Irish Land Commission does for landlord and tenant what a public utility commission does for corporation and consumer, or a minimum wage commission for employer and employee.[1]

4. The Laborer as Competitor

From one point of view all labor legislation has as its object the protection of the laborer as a competitor. The wage-bargaining power of men is weakened by the competition of women and children, hence a law restricting the hours of women and children may also be looked upon as a law to protect men in their bargaining power. The same is true in a different way of industrial education and free schools, for they tend to reduce the competition for the poorly paid jobs by increasing the efficiency and the wage-earning power of laborers who otherwise would be serious competitors. But for these classes of legislation the protection of the laborer as a competitor is not the main object. There are two classes of

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[1] See Irish land acts of 1881, 1885, 1903, and 1909 in the English statutes; Cant-Wall, *Ireland under the Land Acts;* American Commission on Agricultural Cooperation and Rural Credit, *Report*, 1913, p. 865, 63d Congress, 1st Session, Senate Document No. 214.

legislation, however, of which it may be said that the main purpose has been to protect the American workman from competition of poorly paid laborers: (1) legislation on immigration, especially the laws against induced immigration and the Chinese exclusion laws; (2) legislation as to the sale of goods manufactured by convicts.

(1) *Protection against Immigrants*

Immigration legislation tends more and more to develop along protective lines. At first a country encourages people to come, in order to develop its resources; later means have to be found to safeguard the interests of the existing population.

There are four protective purposes which are served by immigration legislation. The first is the social protection of the community generally. It is obvious that every state will regard certain classes as objectionable; hence the prohibitions that the United States puts on the landing of prostitutes (since 1875), criminals (1875), professional beggars (1903). Polygamists (1891) and anarchists (1903) are excluded, partly on social and partly on political grounds. The exclusion of Orientals (1882), again, may be justified on the principle that they are unlikely to live successfully together with the other races in America. Since political offenders are on a different level from ordinary offenders against the law, they have always been exempt from such exclusion (1875).

A second kind of protection, that of the national health, is afforded by the laws which attempt to keep out those immigrants suffering from contagious disease (1891), especially from tuberculosis (1907).

A third type of excluded class is made up of those persons who are looked upon as constituting a danger to the taxpaying classes. Legislation designed to keep out persons likely to become a public charge (1882) aims at protecting the taxpayer from having to support such individuals. The fear that lunatics, idiots, or epileptics may also become charges on the community is chiefly accountable for the prohibition (1891) against their coming into the country. Again, the repeated efforts which have been made to introduce a literacy test may

have been inspired partly by a feeling that the illiterate are more likely to become destitute than others. A head tax, generally used for revenue alone, may at times become a sort of property qualification. In the United States it was at first 50 cents (1882) and has been gradually raised to $4 (1907), which is not exactly a prohibitive figure; but in Canada, it is fixed at $500 for Chinese who do not belong to one of several enumerated professional classes.[1] Finally, persons traveling on assisted passages who cannot prove that they do not belong to any of the excluded classes are not allowed to land (1891); after being dependent on others such persons might easily come to be dependent on the state.

The fourth kind of protection put forth by the law over the people of this country is, from the standpoint of labor legislation, the most important. The contrast between the protection afforded to American goods in the commodity market and the lack of any such effort to lessen the competition of labor in the labor market was early noticed, and efforts have been made since 1868 to control immigration after the example of the tariff. In that year the act of 1864 encouraging immigration was repealed[2] and a start was given to a new, negative, policy with regard to immigration. This new policy had particular reference to what is commonly but inaccurately called "contract labor," or induced immigration.

a. Induced Immigration. The eighteenth century type of immigration had been very largely due to inducement, sometimes, indeed, to compulsion. After the first quarter of the nineteenth century indentured labor[3] had practically ceased to exist; but in 1864 a stimulus was given (owing to the wartime scarcity of labor) to a similar system of bringing numbers of Europeans here to work under contract, by a law[4] which provided that such contracts should be valid and enforceable in the United States courts. This, it must be remembered, was before the passage of the thirteenth amendment. Employers took advantage of the law in order to bring over foreign laborers. Companies were formed for the same pur-

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[1] Immigration Commission, *Reports*, Vol. XL, 1911, p. 62.
[2] United States, Laws 1868, C. 38, Sec. 4.
[3] See "Indentured Service," p. 41.
[4] United States, Laws 1864, C. 246.

pose; and the American labor market was threatened with a huge oversupply of cheap foreign labor. In spite of agitation in Congress and feeling in the country, it was not until 1868 that this act was repealed, nor until 1885 that the inducement of immigration was formally forbidden by law.

The contract labor law of 1885[1] forbade the assistance or encouragement of immigrants coming here under contract to work. The act applied solely to laborers, for those professions which send representatives abroad were expressly exempted, as were also domestic servants and skilled workmen in new industries, provided labor of the same kind could not be obtained otherwise. Individuals were allowed to assist friends and relatives to come to America. This successful reversal of policy from the act of 1864 was due in a large measure to the efforts of the Knights of Labor and the trade unions. It answered the demand of the working class as a whole, and especially that part of it which was organized, for effective protection against the competition of the masses of immigrants who were now entering the country. The number of immigrants, which had decreased during the 'seventies, rose to 457,257 in 1880, 669,431 in 1881, and 788,992 in 1882.[2] Another immigration act was passed in 1891, which had as one of its objects the prevention of induced immigration.[3] The government was beginning to make it more difficult for a man who had previously obtained work to come into the United States. Transportation companies were now forbidden to solicit or encourage immigration, and the practice of issuing advertisements in foreign countries promising employment here was prohibited. At the same time the efforts of Congress to make the contract labor law a real deterrent were met by a silent opposition from the courts, which continued to construe the law strictly and to treat it as of limited application until 1907, when the terms of the law itself were changed.

But during the 'eighties and 'nineties the change from the "old immigration" to the "new immigration" was taking place; that is, the great bulk of the people no longer came from Germany, the United Kingdom, and Scandinavia, but

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[1] United States, Laws 1885, C. 164.
[2] Immigration Commission, *Reports*, Vol. III, 1911, p. 4.
[3] United States, Laws 1891, C. 551.

from southern Italy, Austria-Hungary, Russia, and latterly Greece. These people had, in general, a lower standard of life than the Americans and the earlier immigrants. While it is true that in many cases where they replaced native labor this adjustment was favorable to the Americans, in that these were raised thereby to more responsible and better paid positions, or else went farther west or southwest, as did the coal miners, attracted by better wages, still it cannot be denied that the newer immigrants were as a rule willing to work for less wages, to endure harder conditions, and to lower the general plane of living of unskilled laborers. It is on account of this displacement of American labor by immigrant labor, a phenomenon which has been at times emphasized to the point of exaggeration, that the working class has so eagerly desired the restriction of immigration;[1] and the contract labor laws were the first attempt to do this. It was not necessary to enforce the law against farm laborers, because from them no such competition was feared.

The last revision of the contract labor law was made in 1907, when a general immigration act[2] was passed. This time the scope of the words "contract laborer" was enlarged to include any one induced to immigrate by any kind of promise or agreement, express or implied, to find employment. The Immigration Commission of 1911 said that "it is difficult to conceive how the letter of the law respecting the importation of contract laborers could be more stringent than at present"; and in consequence of this alteration in the law the courts have been obliged to give up their attitude of considering as prohibited by the law only those transactions in which a contract could be proved.

The cases on the subject bring out the increasing strictness of the law. In United States *v.* Edgar,[3] decided under the law of 1885, the prosecution of an employer who had imported labor from abroad failed, because no contract could be proved. In United States *v.* Gay [4] it was held that the

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[1] For a discussion of the economic effects of immigration from opposite points of view, see J. W. Jenks and W. J. Lauck, *The Immigration Problem*, and I. A. Hourwich, *Immigration and Labor*.

[2] United States, Laws 1907, C. 1134.

[3] United States *v.* Edgar, 48 Fed. Rep. 91 (1891).

[4] United States *v.* Gay, 95 Fed. Rep. 226 (1899).

law of 1891 was intended to exclude only unskilled manual laborers. After the act of 1907, as already pointed out, these doctrines could no longer be held, and in 1914 we have a case in which a fine of $1,000 was exacted for each of forty-five contract laborers brought across the Mexican border for the purpose of helping to construct a railway.[1]

That laws against induced immigration, although in force for thirty years, have done very little to protect the American laboring man from the competition of immigrants is evident from two facts: the enormous numbers of unskilled laborers who have since entered the United States, and the efforts that are constantly being made to secure other means, notably a literacy test, for creating a "labor protective tariff."[2] With regard to the first point, it may be mentioned that during the fiscal year from June 1913 to June 1914 the number of unskilled workmen who entered the United States was 226,407, and the number of skilled workmen was 172,208.[3]

In Australia a law[4] similar to the American, but less rigid, excludes persons seeking to enter the country on a contract of employment. The minister for external affairs may, however, admit such an immigrant (a) if the contract is not made in contemplation of affecting an industrial dispute; (b) if the remuneration and other conditions of employment are as advantageous as those current for workers of the same class at the place where the contract is to be performed. A further clause, which applies only to persons not British subjects or their descendants, and therefore to very few emigrants to Australia, provides that there must be difficulty in the employer's obtaining within the Commonwealth a worker of equal skill and efficiency. The states belonging to the Commonwealth offer assisted passages to agricultural workers and to domestic servants, whose ranks are by no means overcrowded.[5]

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[1] Grant Bros. Construction Co. *v.* U. S., 232 U. S. 647 (1914).

[2] In the effort to secure the desired protection by another method, the people of Arizona in 1914 enacted by initiative and referendum a law requiring employers of more than five persons to engage at least 80 per cent. qualified electors or citizens. This statute was declared unconstitutional by the United States Supreme Court as denying the equal protection of the laws. (Truax *v.* Reach, 239 U. S., 33 (1915).)

[3] Commissioner General of Immigration, *Report*, 1914, pp. 40, 41.

[4] Act No. 19 of 1905.

[5] Commonwealth of Australia, *Official Yearbook*, 1914, p. 1027.

In the Union of South Africa, the government endeavors to maintain good conditions in the labor market by preventing unemployment and directly assuring itself that the competition of every immigrant is "fair." Every immigrant of European descent belonging to the working class is obliged to have a certificate, stating that he has been engaged to serve, immediately upon his arrival, an employer of repute at adequate wages, for a period of time to be fixed in said conditions, but not to be less than one year.[1] The terms of this law are exactly the opposite of the American provisions against induced labor; yet the idea of protecting the laborer from competition with an immigrant of lower standards is common to both.

b. Exclusion of Orientals. The danger to the laborer from the competition of European immigrants may be lessened and gradually done away with as these become Americanized. Trade unionism, especially, is a force which is giving the immigrant the same standards as the American. In the case of the Oriental races, however, this "happy ending" to the story is not to be expected. Individual Chinese, Japanese, and Hindus may settle down to lead western lives and adopt western ideas; but the great mass of their countrymen who emigrate do so without any desire to change their ways of living. It is a well-known fact that these ways are much more economical than those of an American or European, and that therefore an Oriental can accept wages which to a white man would mean starvation. No doubt race feeling enters to some extent into the composition of laws excluding Chinese, Japanese, and Hindus; but more deep-lying is the fear of the competitive worker. This is shown by the fact that the employing classes welcome Orientals, whom they find efficient, polite, and contented. Miss Eaves says of the early Californian opposition to the Chinese:

> The legislation on Oriental labor sprang from the people. . . . The laws . . . were the product of the actual experiences—sometimes of the race prejudices—of those in the humblest ranks of society. For thirty years the working people persistently made known their needs, winning at last a practically unanimous support in the state, so that all classes united to urge the tardy federal legislation for exclusion.[2]

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[1] South Africa, Laws 1913, No. 22 (immigrants' regulation act).
[2] Lucile Eaves, *History of California Labor Legislation*, 1910, p. 115.

The report of the federal Joint Special Committee to Investigate Chinese Immigration, which was published in 1877, is filled with complaints against the Chinese on the part of American workingmen who asserted that they could not compete with Chinese. A point very often made was that the average American workman is a married man with a family, while Chinamen would come to California alone and expect to earn only what would keep a single man. Others said that Chinese labor was less efficient than white labor.[1] One witness asserted that he used to earn from $20 to $21 a week at broom making, but that in competition with the Chinese he could make only $14.89.[2]

It was this agitation by the people on the Pacific coast, who had learned to fear the industrial competition of the Chinese, that led to federal legislation and finally to the exclusion of the Chinese laborers. The Burlingame Treaty of 1868 had settled nothing, for it merely proclaimed the right of the Chinese to settle where they would, while denying them the right of naturalization.[3] Another treaty, concluded in 1880, gave the American government the right "to regulate, limit, or suspend" Chinese immigration, but not absolutely to prohibit it. Two years later the exclusion of Chinese laborers went into effect, when an act was passed forbidding them to enter the country for the next ten years.[4] This policy has been kept up ever since in laws and treaties which have gradually grown more strict. On the same principle Japanese laborers who are not coming to the United States in order "to resume a formerly acquired domicile, to join a parent, wife, or children residing there, or to assume active control of an already possessed interest in a farming enterprise in this country," are refused passports by the Japanese government, in accordance with a treaty agreement of 1907.[5]

The British self-governing colonies have had a similar experience to that of the United States, and have met it by practically the same means. Canada excludes the Chinese

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[1] Joint Special Committee to Investigate Chinese Immigration, *Report*, pp. 346, 347, 44th Congress, 2d Session, Senate Report No. 689, 1877.
[2] *Ibid.*, p. 360.
[3] Immigration Commission, *Report*, Vol. XXXIX, 1911, p. 69.
[4] United States, Laws 1882, C. 126.
[5] United States, Laws 1907, C. 1134.

laborers by making them pay a head tax of $500; the Japanese, by an agreement with the government of that country, that not more than 400 Japanese are to enter Canada annually; and the Hindus, by a head tax of $200 and the requirement that they shall come by a "continuous journey" from India, which cannot be done by the existing routes.[1] Australia and New Zealand use a literacy test to keep out Chinese, who must write fifty words (Australia) or a signed application for admission (New Zealand) in a European language.[2]

c. The Literacy Test. The British self-governing colonies have found in the literacy test a weapon against Asiatic immigration. In this country a long struggle has been made to apply to all immigrants a test of this kind, but so far without success. Three times it has come very near to being put on the statute-book.

First introduced unsuccessfully in Congress in 1892, the principle of the literacy test was embodied in a bill of 1895 and survived through numerous modifications until two years later it had passed the House and Senate. Persons physically capable of reading and over sixteen years of age were excluded if they could not read and write some language, with the exception of near relatives of admissible immigrants.[3] The intention of the bill was to keep out not only the criminal and pauper classes, but also the southern and eastern Europeans, very many of whom were illiterate. President Cleveland, however, vetoed it as being un-American and illiberal, and also as unlikely to have any good effect on the prevailing depression or on violence in labor troubles and racial degeneration. The House passed the bill over the President's veto by a majority of 193 to 37, but no action was taken in the Senate and the bill was consequently not enacted into law.

The next attempt to secure a literacy test was made under the Taft administration. A bill was introduced into the Senate in 1911, containing a clause which was practically copied from the bill mentioned before.[4] It was passed by the House and Senate but President Taft vetoed it, February 14,

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[1] Immigration Commission, *Reports*, Vol. XL, p. 75.
[2] *Ibid.*, *Abstracts of Reports*, Vol. II, pp. 633, 637.
[3] *Ibid.*, *Report*, Vol. XXXIX, p. 47.
[4] *Congressional Record*, Vol. XLVII, 1911, p. 3669.

1913. The Senate thereupon passed the bill again, but in the House the vote fell short of the required two-thirds majority and the bill therefore had to drop.[1]

The latest bill including a literacy test of the usual type was introduced in the House in 1913.[2] The House and Senate voted favorably on this bill and it went to President Wilson on January 16, 1915. He returned the bill with his veto, giving, as his reason, that this bill embodied a radical departure from the traditional policy of the country, in almost entirely removing the right of political asylum and in excluding those who have missed the opportunity of education, without regard to their character or capacity. Moreover, he did not believe that the bill represented the will of the people, and for these reasons he refused to sign it.[3] The House again could not raise a two-thirds majority in favor of the bill, and so, like its predecessors, it came to nothing.[4]

(2) *Protection against Convict Labor*

Varying estimates have been made at different times of the number of convicts engaged in productive industry in the United States. Perhaps one of the best estimates was that of 51,000, made by the Commissioner of Labor in 1905.[5] The value of goods sold within and outside the state in which the labor was performed amounted to $27,000,000 in the same year.[6] The industries mainly affected by the competition of convict labor are the manufacture of boots and shoes, clothing, especially workmen's shirts and overalls, furniture, brooms and brushes, stove hollow ware and stoves, harness and whips, binder twine, cooperage (in Chicago), farm wagons, and stone work. The wages paid to convicts are, of course, nothing more than pocket money; the maximum amount reached is 75 cents a day.

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[1] *Congressional Record*, Vol. XLIX, 1913, p. 3429.
[2] *Ibid.*, Vol. L, 1913, p. 2013.
[3] 63d Congress, 3d Session, H. R. Document No. 1527.
[4] *Congressional Record*, Vol. LII, 1915, p. 3078.
[5] United States Commissioner of Labor, *Twentieth Annual Report*, 1904, p. 14.
[6] *Ibid.*, pp. 474, 475.

The problem raised by permitting convicts' work to be sold in the open market in competition with the product of free labor has been expressed as follows:

> The two investigations (of the Bureau of Labor, 1885 and 1895) showed that the convict product as a whole was very small when compared with the entire product of free labor in the United States. But the employers of free labor and their workmen unite in affirming that when any convict-made product is placed in competition with the product of free labor the market becomes demoralized, even a small sale affecting prices far out of proportion to the amount of the sale. . . . Every state objects to being made the market for convict-made goods produced in other states.[1]

The prisons do not stand in the normal relation of producers to the commodity market; they go on working, regardless of the fluctuations of business; they can undersell any competitor, for they do not have to meet the usual costs of production and in the last resort they can always fall back on the taxes. Manufacturers sometimes assert that they do not feel the competition of convict labor except in times of depression.[2]

The employer of "free labor" can meet this competition in several ways. He may adulterate or otherwise lower the quality of his goods so as to lower his cost of production, or he may give up the particular branch of his trade in which the competition of convict labor is felt. Instances can, however, be given of whole industries which have been practically absorbed by convict labor in certain localities, such as the cooperage industry in Chicago during the 'eighties.

The problem of convict labor competition takes an even more serious aspect when it is considered in respect to interstate commerce. Pressure brought to bear on the government of any one particular state is often successful in getting a law passed forbidding the sale of convict-made goods within that state; but this only means that convict-made products from other states are brought in and sold there. In fact, the publicity given to the system of convict contract labor when a bill to abolish it is being discussed is apt to attract

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[1] United States Commissioner of Labor, *Twentieth Annual Report*, pp. 11, 23.

[2] *Ibid.*, p. 59 (statement of a Minnesota shoe manufacturer).

attention to the fact that a new market will be opened for the convict-made goods of other states. It has been estimated that only 34.7 per cent. of convict-made goods are sold within the state of origin, and 65.3 per cent. in other states.[1]

Many of the states have laws designed to put some restraint on competition between convict and free labor. No law has, however, yet been enacted approaching in simplicity a proposal made in the last Congress, that the convict should be put to remunerative work, charged with his upkeep, and have his labor credited to him; that he should in fact be put on the same competitive footing as an ordinary laborer.[2] The laws bearing directly on the subject of competition are for the most part of recent origin and may be divided into three main classes: (1) The general statement that convicts are not to be employed where their work conflicts with free labor (Illinois, Minnesota, Tennessee, Utah); (2) the prohibition of convict labor in certain forms of industry—*e. g.*, the manufacture of tin cans for fruit-packing (Iowa, Maryland, New Jersey, Oregon, Wyoming)—Washington has a provision the reverse of this, by which it refuses to allow its convicts to manufacture anything save jute fabrics and bricks, while Arizona provides that convicts shall be set to work on streets and highways, when they do not compete with free labor; (3) the distribution of convicts among diversified lines of industry, sometimes coupled with the limitation of the number to be employed in a given industry (Indiana, Massachusetts, Nebraska, Ohio, Pennsylvania). A few other states have adopted different plans. California has a constitutional provision forbidding the sale of convict-made goods, unless specifically sanctioned by law. Massachusetts, in addition to the provision mentioned above, stipulates that convict-made goods must be sold at not less than wholesale prices. The constitution of Michigan forbids the teaching of a trade to convicts, excepting only the manufacture of such articles as are mainly imported into the state.

Indirect methods of legislating against the competition of convict labor are laws providing that convict-made goods shall

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[1] United States Commissioner of Labor, *Twentieth Annual Report*, p. 497.

[2] *Congressional Record*, Vol. LI, 1914, p. 4294.

be labeled, as in Pennsylvania, Montana, and other states, or that dealers in such goods shall have a license, as in New York. The most effective kind of law is probably the provision that all goods manufactured in prisons shall be for the use of the state (the "state use" system). There seems to be no good reason why the state should make money out of its convicts, and on the other hand work on the roads, reclaiming land, or manufacturing for state use provides work that is both productive and non-competitive.

Federal legislation has been attempted for the last thirty years, but nothing has as yet been accomplished. In the last (63d) Congress, the proposal was made to subject to the law of a state convict-made goods imported into it,[1] which, it was hoped, would check interstate commerce in these goods. The opinion has often been expressed that, if such a law were enacted, the competition of convict labor with free labor would cease. Up to the present, however, the attempts to get such legislation enacted have met with no success.

5. Legal Aid and Industrial Courts

We have seen how modern legislation has attempted to give to the individual wage-earner increasing privileges and to place him more nearly on an equality with his employer. Yet these privileges are available to him only so far as the state actually enforces them. We shall see that, in the case of factory legislation,[2] the early statutes assumed that the employee would initiate proceedings in court, with the aid of the ordinary officers of law, to enforce the safety and health laws. Not until many years had passed did the state provide special police, the factory inspectors, to relieve the laborer of this impossible obligation. So in these more fundamental rights growing out of the labor contract the state leaves to the laborer the duty of realizing upon them through the ordinary means of prosecution in court.

But poverty, ignorance, and the technicalities of law often combine to set the remedies beyond his reach. "From birth

[1] 63d Congress, 2d Session, H. R. 5601.
[2] See Chapter IX, "Administration."

to death," says a report of the New York Legal Aid Society,[1] "the poor man is the prey of a host of petty swindlers. He is educated to believe that justice is free, and he finds that, to get it, he must pay a lawyer a price he cannot afford." To realize justice he must appeal to charity. Attorneys, in countless individual cases, have given their aid without price, but it cannot be expected that they can meet the need without neglecting their regular clients. Yet without their aid the chance of the laborer's success in the legal battle is negligible.

The reports of legal aid societies are filled with cases of injustice that call for an attorney. Wages are withheld. Pawnbrokers and "loan sharks" command usurious rates of interest on small loans, and compel their victims to sign papers, such as chattel mortgages and wage assignments, of whose contents they are ignorant. Wage exemption laws are nullified by garnishment proceedings brought against the employer to attach wages not yet paid. The laborer must then have an attorney to secure the release of his wages, and he may lose his position, for employers often make it a rule to discharge employees whose wages are garnisheed. Thus, even the threat of garnishment may serve, not only to nullify his exemptions, but to force him to pay unjust claims out of wages not exempt. Foreigners are a class especially exposed to fraud. The abuses of peonage, vagrancy laws, and the padrone system have already been mentioned.[2]

Against these invasions of their legal rights wage-earners are for the most part helpless to defend themselves. The majority of their grievances involve small amounts which do not justify the employment of a lawyer. Besides, there are the initial court costs, such as fees for filing, fees for serving summonses and subpœnas and for attaching property, and fees to clerks of court in contested cases. To the man with a small claim the remedy may cost more than the result.

(1) *Private and Public Legal Aid*

To remedy these abuses, private charity has found a large field. Legal aid societies have been organized in some forty

[1] *Thirty-eighth Annual Report*, 1913, p. 23.
[2] See "Peonage," p. 37; "Padrone System," p. 46.

American cities. Their object is "to render legal aid and assistance gratuitously to all who may appear worthy thereof, and who from poverty are unable to procure it." [1] The first was started by certain German merchants in New York in 1876 to help poor German immigrants, and was called the German Law Protection Society, but soon extended its aid to others. In 1890 Arthur von Briesen, called the "father of the legal aid society movement," became president and the name was changed to the Legal Aid Society of New York. The society has confined its work to wage-earners, but without regard to nationality, race, or religion. The applicant must be one whose claim is too small or who is too poor to hire an attorney, a poor man being defined as one whose income may be just sufficient to maintain him but not sufficient for extraordinary demands. It is the aim of the society to cooperate with and not to compete with other lawyers. Its attorneys are under agreement to have no other legal business and they are not permitted to recommend any particular attorney to applicants whom the society may reject. A case to be accepted must be unquestionably meritorious, and this is ascertained by investigation and an impartial hearing of both sides. Finally, the society makes every effort to settle cases out of court, and, up to the moment of trial, if a reasonable offer of settlement is made, advises its client to accept. The policy is to discourage litigation in such a way as to protect the rights of all. In 1914, only 2,296 cases were taken into court, out of a total of 40,430 handled by the society.[2]

From New York, legal aid societies have spread throughout the United States and Europe. In the United States they are generally unincorporated voluntary associations, conducted, with one exception,[3] by private individuals. In 1911 the first national conference of legal aid societies was held in Pittsburgh, thirteen of the forty organizations in the country being represented. The second was held in New York in 1912, with delegates from sixteen societies. At this time the National Association of Legal Aid Societies was established, the objects

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[1] Legal Aid Society of Philadelphia, *Thirteenth Annual Report*, 1906, Constitution, Art. I, Sec. 2.

[2] New York Legal Aid Society, *Thirty-ninth Annual Report*, 1914, p. 7.

[3] Kansas City, Mo.

being to give publicity to the work, to bring about cooperation and increased efficiency, and to encourage the formation of new societies.[1]

The legal aid movement has flourished especially in Germany. In 1911, there were 1,016 societies[2] which in 1910 had 1,546,971 cases. In 1913, they held a convention at Nuremberg, which was attended by delegates from the United States, Denmark, Holland, Belgium, Austria, and Switzerland. In London, the "Poor Man's Lawyer's Association," with "centres" in settlements and missions, gives gratuitous legal advice to persons who cannot afford a solicitor, but does not furnish assistance in court.[3] It is sometimes objected that legal aid will encourage litigation, but the record of cases settled out of court by legal aid societies does not support this view.

So far legal aid is almost entirely a private enterprise, and, excellent as has been the work, it is restricted to a few of the larger cities. Even there the work has been seriously hampered by lack of funds, a handicap repeatedly mentioned in the reports. There is, accordingly, an increasing demand that legal aid be made a function of government and thus put within the reach of all. Several attempts in this direction have been made in the United States. Kansas City, Mo., has the distinction of possessing the only municipal free legal aid bureau in the United States. It was organized as a department under the board of public welfare, in August, 1910.[4] Los Angeles County, Calif., has established the office of public defender,[5] the duties in civil cases being the prosecution of actions for the collection of wages and other demands of persons who cannot afford counsel, in cases where the sum involved does not exceed $100. This officer also defends such persons in civil litigation, when they are being unjustly harassed. Costs are paid from the county treasury. While the office is efficacious in obtaining justice and reducing

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[1] Chicago Legal Aid Society, *Bulletin No. 2*, 1912–1913, p. 3.

[2] W. E. Walz, "Legal Aid Societies, Their Nature, History, Scope, Methods, and Results," *The Green Bag*, Vol. XXVI, 1914, p. 101.

[3] Arthur Blott, "Legal Dispensaries in London," *Legal Aid Review*, Vol. IV, 1906, No. 3.

[4] See Board of Public Welfare, Kansas City, Mo., *Reports*.

[5] Los Angeles County Charter, Sec. 23. Became effective July 1, 1913.

its expense for the poor man, the question of the law's delay has not been solved. The public defender does not have power to hear and determine questions involving the payment of wages. His findings might be made final on all questions of fact, and, when the findings are filed in court, judgment might be entered accordingly.[1] The public defender would thus have the functions of an industrial court as later described.

A provision for the collection of wages in California is the payment of wages act of 1911. It provides for immediate payment of wages due to a discharged employee and for payment in five days to an employee not having a definite contract who quits or resigns.[2] All other wages fall due at least once a month, and must not be withheld more than fifteen days after that time. As the legislature made no provision for the administration of the act, the bureau of labor statistics undertook to enforce it. During the fiscal year 1912, no fewer than 1,899 claims for wages were filed and investigated, and 1,292 claims were collected, amounting to $24,445.59.[3] The majority of cases are settled within three days of filing the claim. A special agent is sent to the employer to investigate. If the latter refuses to pay the wages and cannot give a satisfactory explanation, he is cited to appear before the labor commissioner, who hears both sides. This is necessary in 80 per cent. of the cases. If no settlement can be reached, the employer is cited to appear before the district attorney and show cause why a warrant should not be issued for violation of the payment of wages law. Both parties and a representative of the bureau are present. If the employer still refuses to pay, a warrant is issued, as a last resort, for his arrest. Twelve arrests were the total for the year.

In November, 1914, the act was declared unconstitutional by a district court on the ground that in effect it permitted imprisonment for debt, which the state constitution prohibits except in case of fraud.[4] Although the statute did not pro-

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[1] Recommended by the public defender in a letter to the Milwaukee Bar Association, March, 1914.

[2] California, Laws 1911, C. 92.

[3] California Bureau of Labor Statistics, *Fifth Biennial Report*, 1911–1912.

[4] *Ex parte* Crane, On Habeas Corpus, Crim. 560, November 23, 1914.

vide imprisonment as a penalty and was silent as to the process by which the court might obtain jurisdiction of the person of the offender, in the test case arrest and detention pending a hearing were the means used. Accordingly, in 1915, an amendment to the payment of wages law was passed.[1] Instead of the earlier $500 fine for violation if an employer fails to pay in full within five days after the same are due, the wages of an employee who leaves or is discharged are to continue at the same rate until paid, or until action is commenced, but in no case after thirty days. No employee who refuses or avoids payment is entitled to benefit under the act for such time as he avoids payment. Wilful refusal to pay for labor, with intent to secure a discount, or to harass or defraud, constitutes a misdemeanor. The constitutionality of this new act is believed to depend largely on this last clause. It has not as yet (October, 1915) been tested in the courts; but the attorney-general, when drafting the bill, had a study made of similar laws and their constitutionality, hoping thus to secure a more fortunate career for this act than its predecessor had.

In 1910, following the recommendation of a state immigration commission appointed to investigate the condition of aliens in the state, the legislature of New York created a bureau of industries and immigration subordinate to the department of labor, whose object was to give newly arrived immigrants a fair start. This was to be done by securing to aliens a hearing for complaints in their own language, the bureau to act as mediator in securing the enforcement of existing laws to prevent exploitation. The chief investigator brings the parties together at a hearing and tries to adjust the differences. If he fails, a civil case is turned over to the Legal Aid Society.

This system of state legal aid for immigrants was extended to all wage-earners by a section of the New York industrial commission law of March, 1915: "The commission shall render all aid and assistance necessary for the enforcement of any claim by an employee against his employer, which the commission finds reasonable and just and for the protection

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[1] California, Laws 1915, C. 142.

of employees from frauds, extortions, exploitation, or other improper practices on the part of any person, public or private; and shall investigate such cases for the purpose of presenting the facts to the proper authorities and of inducing action thereon by the various agencies of the state possessing the requisite jurisdiction."[1] Under this act, the state industrial commission is made an agency for providing the services of a lawyer to wage-earners unable to pay for them. It lacks, however, a provision making the findings conclusive in court proceedings.

(2) *Industrial Courts*

In Europe, a different type of legal aid has been evolved, taking the place, not of the lawyer, but of the judge. This is the industrial court, or *conseil de prud'hommes*. Industrial courts are special courts for the settlement of disputes arising out of labor contracts between employers and employees, and their purpose is "to settle by conciliation whenever possible and by legal judgment when conciliation fails, but in any event cheaply, quickly, and by means of a court composed in part or in whole of elected representatives of the two classes, all individual legal cases which arise from the relations of employer and employed."[2] The first industrial court was founded at Lyons, France, in 1806, for the silk industry. The law creating the Lyons court provided that similar courts might be established in all the factory cities of France, and accordingly their number has increased steadily. When the left bank of the Rhine in 1815, and Alsace-Lorraine in 1871, became German territory, the industrial courts were retained, and in 1890 a general law provided for their establishment throughout the empire. Industrial courts similar to the French were introduced into Belgium in 1859, while Austria followed in 1869, Italy in 1893, and Spain in 1908. In Switzerland, Geneva was the first canton to take up the idea, creating an industrial court on the French model in

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[1] New York, Laws 1915, C. 674, Sec. 52e.

[2] United States Bureau of Labor, *Bulletin No. 98*, January, 1912; "Industrial Courts in France, Germany, and Switzerland," Helen L. Sumner, p. 273.

1882. In 1910, only seven of the Swiss cantons lacked legislation of this character.

There are, in general, three types of industrial courts: (1) The French, in which only employers and workers are represented, and the number of members is even; (2) the German, in which the president is neither an employer nor a worker, and the number of members is odd; (3) the Swiss, which is an adaptation of the ordinary court, with the addition of special "assessors," or advisers, to the judge.[1] In all three types the employers and workmen are equally represented.

With respect to jurisdiction, a labor contract of some kind is essential, but the idea is interpreted to cover any relationship between wage-givers and wage-receivers. The great majority of cases are for wages due,[2] but discharge without notice is also a frequent cause of complaint. By far the greater number of complaints are made by workers. In 1908, in Germany as a whole, 5,672 cases were brought by employers and 106,269 by workers. Most of the complaints are for small sums.

Conciliation being the chief object of industrial courts, the procedure is a radical departure from that of the ordinary court. Personal appearance of the parties is required, except for a good excuse, as illness or absence from the city. In Germany, parties may be represented only by persons in the industry, but in France lawyers are allowed to be present, either to represent or assist the parties.[3] Lawyers are permitted in Spain also, but not in Basel, Zurich, or Geneva. The proceedings are much less formal than in an ordinary court, and the president takes an active part. Preliminary hearing for the purpose of conciliation before a section of the court is provided for in France and Germany. More than half the cases are settled by conciliation, and, as a large num-

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[1] Two cantons have courts based on the French model (Geneva and Vaud), and four have the German type (Lucerne, Berne, St. Gall, Neuchâtel).

[2] In Berlin in 1908 more than one-half the complaints were for wages and a third about illegal discharge.

[3] In practice lawyers appear before the board of judgment in Paris in only 10 per cent. of cases, and before the board of conciliation in only 5 per cent.

ber are not contested, or are settled by default, only a small percentage call for formal judgment.[1]

The salient advantages of the industrial courts are rapidity and cheapness. Cases are set for as early hearing as possible after complaint, and only necessary delays are permitted. In France, cases must be settled in four months, and in Germany in 1908 only 1.5 per cent. of cases brought to final judgment lasted over three months. Expenses exceeding the fees collected are met by the municipalities over which the court has jurisdiction, or, in the case of courts with wider jurisdiction, by the state. In such cases there are no fees; in others the fees are low. Members of the courts are compensated by fees or salaries, the method varying within the country. In Germany the president receives a salary, and the representatives of employers and employees receive fees for time in court.

Wherever established, industrial courts are held indispensable, the fact that no dispute is too insignificant for them being regarded as a special advantage. They are, however, much more successful with small-scale production than with the factory system, the reasons being that in the latter case standardization of conditions obviates many disputes, and also that employees fear blacklisting if they bring suit.

No such institution exists in English-speaking countries. In Great Britain the arbitration act of 1824 was designed to cover individual disputes, but the procedure was too intricate and costly ever to be applied. The "councils of conciliation" act of 1867 permitted industrial courts like the French, but no true judicial tribunal was ever created under it.[2] In the United States, a Pennsylvania law, enacted in 1883, attempted to establish a sort of industrial court, but none was ever created and ten years later the law was repealed. The constitutions of New York and a few other states contain provisions for courts of voluntary arbitration, but no courts were ever established.

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[1] In 1908 only 17 per cent. of cases in Paris and 9 per cent. in Berlin required formal judgment.

[2] See also "Mediation by Government," p. 124. The above description applies to industrial courts in their relation to the individual bargain. In some cases they also deal with the collective bargain.

A few attempts have, however, been made, along quite different lines. One of these is the Conciliation Court of Cleveland, Ohio. It grew out of a provision in the municipal court act, designating a clerk to assist persons unable to hire a lawyer in preparing and filing papers, and, if possible, to bring about a settlement. An experienced man was selected by the chief justice, and he often acted successfully as a mediator. In 1912, 1,200 cases were thus settled out of court. All services were free. Since March, 1913, a conciliation branch of the court has been in operation. The fee is usually 25 cents, never more than 45 cents, and all writs are served by registered mail. Lawyers are not allowed to represent the parties, and no set procedure is required. Each party is allowed to state his case in his own way. When both sides have been heard, the judge must seek to effect an amicable adjustment of the differences between the parties.[1] Ordinarily, he obtains their consent that he shall adjust the issue himself. The Cleveland court differs from the European industrial courts in that neither employers nor workmen are represented on the bench, the judge is not elected by the two classes, and the court does not confine itself to disputes arising out of the labor contract. It resembles them in that it is an authoritative tribunal, instead of being merely a private society, like the legal aid agencies of the United States.

To what extent it would be possible to apply the European industrial court system in the United States is as yet an open question. People have not awakened to the need, and they are not prepared for such a system by habits of organization and joint action of interests. It is improbable that industrial courts would be created generally by local initiative, as in France, and even if the system were made mandatory by the state government, as in Germany, it would require a state agency to guide local governments in starting them. It is possible that the California wage payment law and the New York industrial commission law, above referred to, may lead to state and local advisory boards of employers and employees to assist the state authorities in executing the laws, and

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[1] R. C. Moley, "Justice through Common Sense," *The Survey*, Oct. 31, 1914, p. 101.

that, eventually, through the enlightenment of public opinion and through practice in cooperation between employers and employees,[1] the industrial court may be successfully modified and adapted to American conditions.

[1] See Chapter IX, "Administration."

CHAPTER III

COLLECTIVE BARGAINING

Collective bargaining dates back as far as individual bargaining. Its first examples are town charters and merchant gilds. The townspeople through a collective contract secured certain rights from the king in return for a money payment. Among these rights none was more valuable than that of the doctrine "City air makes free." If a serf had been in a free city for a year, he became a free man. Freedom was established through collective bargaining. Without freedom there can be no individual contracts. Historically, individual and collective bargaining have been interdependent; the one has been necessary to maintain the other.

1. The Law of Conspiracy

Yet collective bargaining for a long time was viewed with suspicion. All associations were treated as conspiracies. They were much more powerful than individuals, and hence were considered dangerous. Moreover, collective bargaining implies a restriction of the freedom to make individual bargains. To bargain collectively there must be a contract or an agreement between the members of the association that each shall give up his right to make an individual contract, and shall either make his contracts only as the majority decides or shall permit the agents elected by the majority to make his contracts for him. In order to enforce such bargains the association must have full disciplinary powers and must be allowed to determine who shall be admitted to membership. Non-members do not share in the benefits of the collective bargain; in fact, they are often injured thereby. Collective

bargaining seriously restricts the freedom of both members and non-members to make individual bargains.

(1) *Origins of Collective Bargaining*

Collective action was permitted in early law only under grant of a special charter from the king. Thus, the king granted charters to free citizens, and to merchant and craft gilds. Armed with a charter, the association might not be prosecuted as a conspiracy, and was conceded the great privileges of acting as a unit and continuous existence through the right of succession.

Of these early associations the craft gilds were the nearest approach to the trade unions of to-day; yet their functions were very different. They were composed of three classes: the masters, the journeymen, and the apprentices. The masters and the journeymen worked side by side, with the same tools. It was easy for an apprentice to become first a journeyman, then a master. Hence the relations of the masters to the journeymen and apprentices received but little attention in the charters which created gilds. The *wage bargain* which the master made with the journeyman and the apprentice was as yet not a matter of public concern. The public was interested primarily in the other bargaining function of the masters; their *merchant* function, the making of the *price bargain* with consumers. The consumers dominated the government; and it was their concern to prevent extortionate prices and the substitution of "bad ware."[1]

With the gradual expansion of markets, the merchants gained recognition in society. Charters were granted to the merchant adventurers who risked their capital in foreign enterprises, and patents of monopoly were granted to merchants in the domestic trade. Later came the special charters to banks, canal, turnpike, and railway companies and other corporations. Thus, the right of association was granted to capital. With freedom from the taint of conspiracy, the corporation charter conferred upon the incorporators the privilege

[1] See Commons, *Labor and Administration*, 1913, "American Shoemakers," p. 219 ff.

of "limited liability." In a partnership the members are responsible to the full extent of their resources for the contracts and torts of the partnership. But the members of corporations have only "limited liability," usually only to the extent of their subscription. At first, incorporation could be secured only through special act of the legislature; and corruption was often employed to secure such charters. Finally, in the decade of the 'fifties, general corporation laws were enacted. It is now the privilege of all persons to combine their capital and form corporations, with but few restrictions. So complete is the right of association of capitalists that the law has introduced the fiction that corporations are persons, entitled to many of the advantages of natural persons; and the rule of "limited liability" lessens the responsibility of the members for the acts of the corporation.

The modern corporation has taken over both of the bargaining functions of the masters of old: the *price bargain* and the *wage bargain*. In the first the corporation performs the *merchant* function, and its object is to get as high prices as possible from the consumer. In the second it performs the *employer* function, and its object is to give as low wages as possible to the laborers.

Collective action by capital has not stopped with the corporation. The corporations have themselves become members of associations. In these associations it has generally been found advantageous to separate the two bargaining functions. *Manufacturers' associations*, "pools," and "trusts" are formed to deal with the price of products to consumers. *Employers' associations* deal with the wages paid to labor. Practically the same individuals may compose these associations; but their functions are totally different.[1]

Labor did not win the right of collective bargaining as early as capital. When, in the eighteenth century, in England, the laborers combined to enforce their demands for higher wages they were prosecuted for "conspiracy." In the journeyman tailors' case,[2] for example, all combinations to raise wages were held to be conspiracies. This common law doctrine was inherited by our fathers from England. In the

[1] Commons, *Labor and Administration*, especially p. 262.
[2] 8 Mod. 11 (1721).

mother country the journeyman tailors' case was followed by the enactment of statutes to penalize combinations to raise wages. In 1824 and 1825 these statutes were repealed, and a considerable degree of freedom to combine was conceded to labor. In 1871 trade unions were declared not to be illegal combinations in restraint of trade. In 1875 labor was entirely freed from the conspiracy law in its criminal aspects. Finally, in 1906 the law of civil conspiracy also was swept away, and the trade unions were conceded complete exemption from responsibility for damages growing out of tortious acts alleged to have been committed in their behalf.

In the United States, also, prosecutions for "conspiracy" often followed the early strikes for higher wages. In the indictment or in the charge to the jury in some of these cases there was presented the doctrine of the common law that all combinations to raise wages are illegal.[1] But this was never unchallenged law in the United States; and in only one case did a court of final jurisdiction hold this view.[2] Yet it was considered that there was something unlawful about combinations of laborers. They were denounced as being injurious to the public, because they were injurious to employers and made it difficult for them to compete in distant markets. Naturally the journeymen looked upon all of these cases as prosecutions brought by the masters to resist increases of wages. This was undoubtedly the real motive of the prosecution; but in most of these cases the restrictive rules and practices of the unions were emphasized, not the effort to raise wages.

In the earliest cases the juries always convicted; but there was a growing public sentiment against these prosecutions. After the decade of the 'thirties it was generally recognized that a combination to raise wages is not of itself a conspiracy. In 1842, in Commonwealth *v.* Hunt,[3] the Massachusetts Supreme Court even held that it was lawful for laborers to go on strike to gain a closed shop. This decision was very much more favorable to the workingmen than are those of

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[1] For these early cases see *Documentary History of American Industrial Society*, Vols. III and IV.

[2] People *v.* Fisher, 14 Wendell 10 (1835).

[3] Commonwealth *v.* Hunt, 4 Metcalf 111 (1842).

the Massachusetts courts of recent years. After Commonwealth *v.* Hunt there were still prosecutions of workingmen for "conspiracy," but in the cases of the 'fifties and 'sixties acts of violence were usually involved. There was still complaint about the "conspiracy laws," but they had lost their meaning.

Thus, in a certain sense, the rights which the workingmen gained in England through legislation in the 'seventies were secured to them in the United States without legislation at a much earlier date. But there was the vital difference that, while in England the entire conspiracy law in its application to labor was swept away, it was only modified in this country by common consent and favorable construction. In England definite statutes replaced the vague conspiracy law; in the United States the conspiracy law remained, without ever being really clarified. The few statutes which were enacted in reference to labor combinations did little more than to restate the common law.

(2) *Doctrine of Conspiracy*

In the 'eighties a new spirit was manifested in the court decisions in this country involving labor combinations. These decisions made clear that labor's right to combine was still seriously restricted. Part of the explanation of the changed attitude of the courts is the aggressiveness of labor at that time. The violence and riots which accompanied the strikes of that period made the unions seem dangerous combinations. Another factor was the gradual identification of "business" with "property." "Good will" and "trade names" have been recognized as property only within the last century. Not until the last few decades have the courts gone further and recognized as property the right of a free access to the commodity market and to the labor market. Not merely are contracts already made treated as property, but also the right to be unhindered by others in making contracts.

It is this right "*to do business*" which is of greatest importance in labor disputes. Strikers may attack the physical property of employers; but the police, the military, and the

criminal laws are usually adequate to deal with this menace. But without any destruction of physical property the employer's business may be ruined. Picketing may prevent his getting new employees, and boycotting may keep him from selling his products. While the modern manufacturer can often survive the destruction of his physical property, obstruction of access to the labor market or to the commodity market brings with it certain ruin.

The recognition of "business" as "property" afforded an easy transition to the use of injunctions in connection with labor disputes. But it is to prevent strikes, picketing, and boycotts that employers chiefly have recourse to injunctions. None of these, however, of themselves involve injury to physical property. Hence, in the complaint in injunction cases business is treated as property, it being alleged that the employer's profits will be seriously impaired unless the court comes to his aid. It is the fact that injunctions protect the right "to do business" which gives them importance.

Due to these factors, the conspiracy doctrine assumed new meaning in the 'eighties. It became once more a serious menace to collective action by labor. Within the last two decades another menace has arisen: the restraint of trade doctrine, as expressed in the Sherman antitrust act of 1890. This statute was held applicable to labor early in the 'nineties; but not until the Danbury hatters' case in 1908[1] was its full import understood. It was then feared that the Sherman act rendered all strikes unlawful, if not all labor organizations. This was probably beyond the thought of the Supreme Court; but the decisions of some district courts made this a reasonable fear. Organized labor believes that the Clayton act, passed in 1914, has placed it entirely outside of the scope of the antitrust laws. This act provides that the antitrust laws shall not be construed to forbid the existence of labor organizations, nor to restrain their members from carrying out the "legitimate objects" thereof. During the debates in Congress upon its passage, this provision was interpreted as merely removing the menace of the few extreme

[1] Loewe *v.* Lawlor, 28 Sup. Ct. 301 (1908).

decisions, not as completely exempting labor from the anti-trust laws.

However that may be, it is certain that most of the cases of which labor complains have been premised, not upon the Sherman act, but upon the common law doctrine of conspiracy. This doctrine makes illegal acts done in pursuance of an agreement which are legal when done by one person. One manner of explaining this result is that when men combine their motives become of importance. Their combination is legal when their motive is primarily to benefit themselves, and illegal when they aim primarily at the injury of another. One person may sever all business relations with another, if not under contract to continue them, regardless of the motives which may lead him to take this step. But when workingmen combine to go on strike or to boycott an employer, the courts will inquire whether their primary motive is injury to the employer or benefit to themselves.

To understand the full import of the conspiracy doctrine, it is necessary to note two of its corollaries. One is the proposition that where the purpose of the combination is illegal every act done in pursuance thereof is rendered illegal, though the act may be innocent of itself. Acts normally protected by the constitutional guarantees of free speech, free press, and public assembly, become unlawful when done in furtherance of an unlawful purpose. As put by the Supreme Court of the United States:[1] "No conduct has such absolute privilege as to justify all possible schemes of which it may be a part. The most innocent and constitutionally protected of acts or omissions may be a step in a criminal plot, and if it is a step in a plot neither its innocence nor the constitution is sufficient to prevent the punishment of the plot by law." Again, if an illegal plot has been formed, all of the conspirators are responsible for the acts of any of the conspirators done in pursuance of the common object. Once it is established or taken for granted that the workingmen have conspired, any and all of them are liable for acts of violence which may be committed by some of them.

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[1] Aikens *v.* Wisconsin, 195 U. S. 194 (1904).

The soundness of the doctrine that the legality of a combination depends upon the motives which actuate it has been often questioned in recent years. It is most difficult to determine what is the primary motive of the workingmen in undertaking a strike or a boycott. They aim both to injure the employer and to benefit themselves. The bias of the judge necessarily plays a large rôle in the determination of which of these is the controlling motive. The doctrine that it is the immediate object and not the ultimate purpose which is controlling, helps but little. In most labor disputes many questions are at issue. A demand for the closed shop may be coupled with the demand for an increase in wages. The latter is recognized by all courts to be legal, while the former is held illegal by many courts. The result has been confusion and arbitrariness in the law. Where one judge sees only a lawful combination, another discovers an unlawful conspiracy.

The fundamental premise in the conspiracy doctrine is that the many have a power for harm which no one person can exercise. Hence, while in the class of acts which are involved in labor disputes the motive is considered unimportant when they are done by one person, it becomes a determining factor when they are done in pursuance of an agreement among several. But in American law the corporation has been made a person. This makes the premise of the conspiracy doctrine an absurdity. The power of the large corporation, though a single person in the law, is greater than that of the combination of workingmen.

Considerations such as these have led some courts to abandon the old form of statement of the conspiracy doctrine. They start with the proposition that the employer has a right of free access to the labor market and to the commodity market. Intentional interference with this right to do business is *prima facie* wrongful. Only when the injury done to the employer is the result of the exercise of equal or superior rights by the workingmen is it justified. These courts distinguish between *malice in fact* and *malice in law*. Whether personal ill-will and spite, malice in fact, actuates the workingmen, they hold to be of no importance. Malice in law determines the legality of their actions; and malice in law is

merely the intentional infliction of injury without justification.[1]

In actual application, however, malice in fact is an important factor in determining whether there is malice in law. If intentional infliction of injury without justification is unlawful, everything turns upon what is considered a sufficient justification. This involves an evaluation of the respective rights of capital and labor. The employer has a right to conduct his business without interference. The non-unionist has a right to earn his living. The union workman has a right to work or not to work, as he chooses. Which of these rights is to prevail when the union workmen go upon strike to compel the employer to discharge the non-unionist? Competition is recognized to be a justification for interference with the rights of others. But when can the workingmen be said to compete with their employers? It is competition when the workingmen aim primarily to benefit themselves, when there is no malice in fact. Thus, the doctrine that intentional injury done without justification is unlawful makes the motive the criterion of the legality of the acts of labor combinations. Though it differs in statement from the older conspiracy doctrine, its substance is the same. As Dean Lewis has put it: "Those who say with Justice Wells that a man is liable for the harm he does if he does it maliciously, meaning by malice without legal excuse, naturally turn to the defendant's motive as at least one of the elements on which the existence of a 'legal excuse' depends." [2] Labor has profited little from the coming in of the "legal excuse" doctrine. It has rephrased the conspiracy doctrine, but has kept its spirit.

In labor cases there is always much discussion of the rights of the respective parties. Thus, it is said that employers have a right to conduct their business as they see fit. On the other hand, the right of the workingmen to quit employment is often described as absolute. These abstract statements read well; but the trouble is that in labor disputes

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[1] Doremus *v.* Hennessy, 176 Ill. 608 at p. 615 (1898); Berry *v.* Donavan, 188 Mass. 353, 74 N. E. 603 (1905); Barr *v.* Trades Council, 53 N. J. Eq. 101 (1894).

[2] *Columbia Law Review*, February, 1905, p. 118. See also Trowbridge, "Legal Limitations upon Interference with the Contract Rights of a Competitor," in *Yale Review*, May, 1910, pp. 55–78.

these rights come into conflict. This clash of rights has led the courts to inquire into the motives which actuate the workingmen. To justify holding against labor unions recourse has been had to the theory that the element of combination radically changes the situation. Where the court holds to the conspiracy doctrine, no matter how it may be expressed, the decision is apt to be against the union.

There are a large number of cases, however, in which the courts have held that the fact that acts are done in pursuance of a combination does not affect their legality.[1] Other cases hold that a bad motive cannot render illegal acts which are otherwise lawful.[2] Thus, they sweep away the foundations of the doctrine of conspiracy. The courts of California have gone furthest in this regard. In California quitting work and refusing to patronize are held to be absolute rights of the workingmen, and the fact that these rights are exercised in pursuance of a combination is treated as immaterial.[3] The only limitation upon collective action is that labor shall not resort to coercion or intimidation. The practical conclusion reached in California is that all strikes and all boycotts are lawful.

Even if the motive of the workingmen is held to be immaterial, there is wide room for diversity of opinion as to the means which labor may employ to gain its ends. There is agreement that coercion and intimidation are unlawful. But what conduct is coercive and intimidating? In California, pressure brought to bear upon third parties through sympathetic strikes and secondary boycotts is treated as not coercive. On the other hand, picketing is held to be necessarily intimidating.[4] In other jurisdictions pressure upon third parties, other than that resulting from persuasion, is treated as coercion, while picketing is often considered legal. There is a pronounced tendency in recent cases throughout the country to say little about the illegal motives of the work-

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[1] Cooke, *The Law of Combinations, Monopolies, and Labor Unions*, 1908, p. 33 and the cases there cited.

[2] *Ibid.*, p. 17 and cases cited.

[3] Parkinson Co. *v.* Building Trades' Council, 154 Cal. 581, 98 Pac. 1027 (1908); Pierce *v.* Stablemen's Union, 156 Cal. 70, 103 Pac. 324 (1909).

[4] Pierce *v.* Stablemen's Union, 156 Cal. 70, 103 Pac. 324 (1909). *Ex parte* Williams, 158 Cal. 550, 111 Pac. 1035 (1910).

ingmen and to find the illegality of their conduct in the unlawful means they employ. This may seem to be a great advance for organized labor; but the gain is deceptive. Practically it makes no difference whether a sympathetic strike is condemned because the motive of the workingmen is held to be to injure the employer, or because it amounts to an effort to coerce a third party. "Coercion" and "intimidation" are so vaguely defined, that almost any conduct can be considered coercive or intimidating.

Thus, there are three theories which underlie most of the cases involving collective action by labor. The most fundamental of these is the theory that when men combine the legality of their acts depends upon their motives. Another holds that intentional interference with the rights of others is wrongful, unless it results from the exercise of equal or superior rights. The third theory places emphasis upon the element of coercion and intimidation involved in the acts of combination. In their manner of statement these theories are wide apart; but their practical conclusions have been much the same. No matter which theory a court may entertain, there is great latitude in its application. Under each theory much depends upon whether the demands of the workingmen are justified or unjustified. Hence, the bias of the judge is likely to be determining.

(3) *Court Decisions*

a. Strikes. When we pass from the abstract theories of the courts to their practical conclusions, similar diversity of statement is encountered. In part this is due to real differences in the conclusions reached. In different states the rights of organized labor differ widely. Even in the same state it is often quite impossible to reconcile the several decisions. Dissenting opinions are very common. The confusion which exists, however, is due not only to real differences as to the law, but also to the use of common terms in divergent meanings. Neither the term "strike" nor the term "boycott" has a standard meaning in law. Some courts speak of the "strike" as involving only the collective quitting of work.

Others include within that term not only the collective quitting, but also the agreement which precedes it. Even this conception is too narrow. To it must be added the idea that the quitting is but temporary, that the strikers do not consider that they have permanently quit, but that they expect to be employed again on different terms, through coercion of their employers.

As to the term "boycott" it has been truly said that "scarcely any two courts treating of the subject formulate the same definition."[1] The essential idea in many of these definitions is that third parties are illegally coerced to sever their business relations with the employer against whom the union is waging its fight. Thus, it was said in one case that "the word in itself implies a threat."[2] Similarly Judge Taft defined a "boycott" as a "combination of many to cause a loss to one person by coercing others, against their will, to withdraw from him their beneficial business intercourse, through threats that, unless those others do so, the many will cause similar loss to them."[3] Such definitions make no allowance for the so-called primary boycott, in which no effort to coerce third parties is involved. In recent years boycotts against restaurants have been more frequent than any other boycotts, but they would not fall within the definition of Judge Taft. On the other hand, sympathetic strikes and strikes against the use of non-union material are by this definition treated as "boycotts." Trade unionists at times use the term in this broad sense, but more commonly only in reference to the collective refusal to buy the products of an "unfair" manufacturer or merchant. This is the sense in which this term will be used in this chapter.

Upon the question of the legality of trade unions *per se* there is general agreement among the courts. In only two cases were unions held to be unlawful organizations. An inferior Ohio court in 1908 ordered the dissolution of the Amalgamated Window Glass Workers of America.[4] This

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[1] Lindsay & Co. *v.* Montana Federation of Labor, 37 Mont. 264, 96 Pac. 127 (1908).

[2] Brace *v.* Evans, 5 Pa. Co. Ct. 163, at p. 171 (1888).

[3] Toledo, etc., Ry. Co. *v.* Pennsylvania Co., 54 Fed. 730 (1893).

[4] Kealy *v.* Faulkner, 18 (Ohio) Superior and Common Pleas Decision 498 (1908).

action was taken upon the theory that the restrictive rules and practices of this union made it an illegal combination in restraint of trade at common law. The other case was the decision of United States Judge Dayton in Hitchman Coal and Coke Co. *v.* Mitchell in 1912.[1] Therein it was held that the United Mine Workers of America is an illegal organization both at common law and under the Sherman antitrust act, because it aims at a monopoly of the mine labor of the country and maintains restrictive rules. The United States Circuit Court of Appeals, however, reversed this decision.[2] Appeal has now been taken by the Hitchman Co. to the Supreme Court of the United States.

With the exception of the two cases noted it has always been held in the United States that trade unions are lawful organizations. The theory, entertained in England before 1871, that trade unions have no standing in court because they are illegal combinations in restraint of trade, never gained a foothold in this country.

But while the legality of trade unions is not questioned, there have been serious restrictions upon their efforts to make themselves effective. The strike, the most essential of labor's weapons, has often been condemned as illegal. Much confusion exists as to the legality of strikes, due principally to the different meanings in which this term is used. Many courts hold that "striking," in the sense of collectively quitting work, is always legal. What is really meant is that quitting work cannot be directly prevented. The thirteenth amendment has forbidden slavery and involuntary servitude. The specific enforcement of labor contracts is slavery. Even when under a definite time contract, workmen may not be compelled to labor when they wish to quit. But an action would still lie against them in damages for the breach of their contract. In practice but few workmen labor under contracts running for a definite time. Hence, to all practical intents and purposes, quitting work is always lawful. This is what most courts mean when they declare that it is lawful to strike for any or no reason.

But in all strikes something more than quitting work is

[1] Hitchman Coal & Coke Co. *v.* Mitchell, 202 Fed. 512 (1912).
[2] Mitchell *et al. v.* Hitchman Coal & Coke Co., 214 Fed. 685 (1914).

involved. There is an antecedent agreement to quit, there are demands upon the employer, and there is a "threat" that unless he yields a strike will be called. The element of combination enters into the strike. Even after the workmen have quit they still act in concert. It is the entire combination, of which the quitting work is but a part, which constitutes the strike.

The strike in this sense is not always legal. The rule most generally applied is that when the purpose of the strikers is primarily to injure the employer or non-union workmen the strike is illegal. The Massachusetts Supreme Court has best stated this rule:[1] "To justify interference with the rights of others the strikers must in good faith strike for a purpose which the court decides to be a legal justification for such interference. . . . A strike is not a strike for a legal purpose because the strikers struck in good faith for a purpose which they thought was a sufficient justification for a strike. As we have said already, to make a strike a legal strike the purpose of the strike must be one which the court as a matter of law decides is a legal purpose of a strike, and the strikers must have acted in good faith in striking for such a purpose." In other cases the fact that the strikers aim to "coerce" the employer and "threaten" him with loss unless he complies with their demands is emphasized.

The result of the application of these doctrines has been that strikes have often been condemned as unlawful. The Massachusetts cases are the most extreme in this respect. They hold unlawful all strikes to procure the discharge of non-union workmen or of the members of a rival union.[2] They condemn also strikes to procure the removal of objectionable foremen, and all sympathetic strikes.[3] The Massachusetts cases even hold that though the strike is one for higher wages the members of the union may not be coerced

[1] De Minico *v.* Craig, 207 Mass. 593, 94 N. E. 317 (1911).

[2] Plant *v.* Woods, 176 Mass. 492 (1900); Berry *v.* Donavan, 188 Mass. 353, 74 N. E. 603 (1905); Alberthaw Construction Co. *v.* Cameron, 194 Mass. 208, 80 N. E. 478 (1907); Reynolds *v.* Davis, 198 Mass. 294, 84 N. E. 457 (1908); Folsom *v.* Lewis, 208 Mass. 336, 94 N. E. 316 (1911). Slightly contrary, Pickett *v.* Walsh, 192 Mass. 572 (1906).

[3] De Minico *v.* Craig, 207 Mass. 593, 94 N. E. 317; Hanson *v.* Innis, 211 Mass. 301, 97 N. E. 756 (1912); Reynolds *v.* Davis, 198 Mass. 294, 84 N. E. 457 (1908).

to participate therein through threat of a fine or of expulsion from the union.[1] In Connecticut and in Vermont strikes against non-unionists have been condemned.[2] Closed shop strikes have been held unlawful also in New Jersey, as have strikes against the use of non-union material.[3] In Pennsylvania there is a statute which reads to a layman as though it legalized all strikes. Yet the courts of that state have held unlawful strikes growing out of jurisdictional disputes, closed shop strikes, and strikes against non-union material.[4] In Illinois the question of the legality of a strike for the closed shop has been several times before the supreme court. In 1905 such a strike was held to be unlawful; in 1912 the court split evenly upon this question.[5] New York has a statute legalizing "peaceable assembling or cooperation" by workingmen "for the purpose of securing an advance in the rate of wages." Elsewhere such strikes are held lawful, even without any such statute. Strikes for many purposes have been condemned by the New York courts. The court of appeals has held unlawful strikes to collect fines from employers.[6] Inferior courts have condemned strikes against non-union material.[7] Some New York cases also hold sympathetic strikes to be unlawful.[8] The question of the legality of strikes

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[1] Willicut & Sons Co. *v.* Bricklayers' Benevolent and Protective Union, 200 Mass. 110, 85 N. E. 897 (1908); Casson *v.* McIntosh, 199 Mass. 443 (1908).

[2] Wyeman *v.* Deady, 79 Conn. 414 (1906); Conners *v.* Connolly, 86 Conn. 641, 86 Atl. 600 (1913); State *v.* Dyer, 67 Vt. 790 (1894).

[3] Booth *v.* Burgess, 72 N. J. Equity 181, 65 Atl. 226 (1906); Brennan *v.* United Hatters, 73 N. J. 467, 65 Atl. 165 (1906); Blanchard *v.* District Council, 78 N. J. 737, 71 Atl. 1131 (1909); Ruddy *v.* Plumbers, 79 N. J. 467, 75 Atl. 742 (1910).

[4] Erdman *v.* Mitchell, 207 Pa. 79, 56 Atl. 327 (1903); House Painters *v.* Feeney, 13 Pa. Dist. 335 (1904); Bausbach *v.* Rieff, 237 Pa. 482, 85 Atl. 762 (1912); Patterson *v.* Trades' Council, 11 Pa. Dist. 500 (1902); Purvis *v.* Carpenters, 214 Pa. 348, 63 Atl. 585 (1906).

[5] O'Brien *v.* People, 216 Ill. 354, 75 N. E. 108 (1905); Kemp *v.* Division No. 241, Amal. Association of Street and Electric Ry. Employees, 255 Ill. 213, 99 N. E. 389 (1912).

[6] People *v.* Barondess, 133 N. Y. 649 (1892). See also People *v.* Weinsheimer, 102 N. Y. Supp. 579 (1907).

[7] People *v.* McFarlin, 89 N. Y. Supp. 527 (1904); Newton Co. *v.* Erickson, 126 N. Y. Supp. 949 (1911).

[8] Beattie *v.* Callanan, 73 N. Y. Supp. 518, 81 N. Y. Supp. 413 (1901–03); Schlang *v.* Ladies' Waist Makers, 124 N. Y. Supp. 289 (1910). Contrary, Searle Mfg. Co. *v.* Terry, 106 N. Y. Supp. 438 (1905).

for the closed shop has often come up in New York. The decisions of the court of appeals upon this issue are very difficult to reconcile. In the Curran *v.* Galen case in 1897[1] a non-union workman who lost his job because his employer entered into a closed shop agreement was held to have an action against the union. In the Cumming case in 1902[2] the majority of the court squarely sustained a strike to establish a closed shop. In the Jacobs *v.* Cohen case in 1905,[3] however, an effort was made to reconcile the two prior decisions and to consider them both as law. The doctrine evolved seems to be that the closed shop is lawful as long as it does not give the union a monopoly in the community in which it operates.

Enough cases have been cited to illustrate the attitude of the courts toward strikes. Strikes solely and directly involving the rate of pay or the hours of labor are everywhere considered legal. But strikes to gain a closed shop, sympathetic strikes, and strikes against non-union material have been condemned in many jurisdictions. Only in California is it settled law that all strikes are legal.

b. Boycotts. But because strikes are illegal it does not follow that there is any effective way of preventing them. Arthur *v.* Oakes[4] authoritatively established that laborers may under no circumstance be enjoined from quitting work. In some injunctions, however, "conspiring to quit" has been enjoined. In others the union officers have been prohibited from advising or ordering the workmen to go upon strike, or from paying strike benefits. In some recent cases such injunctions have been condemned as an indirect method of compelling the workmen to labor.[5] Usually injunctions are not taken out until after the workmen have quit. Almost never have the courts acted upon the theory that, inasmuch as the strike is unlawful, all efforts of the workingmen to

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[1] Curran *v.* Galen, 152 N. Y. 33, 46 N. E. 297 (1897).

[2] National Protective Association of Steamfitters and Helpers *v.* Cumming, 170 N. Y. 315, 63 N. E. 369 (1902).

[3] Jacobs *v.* Cohen, 183 N. Y. 207, 76 N. E. 5 (1905).

[4] Arthur *v.* Oakes, 63 Fed. 310 (1894).

[5] Thomas *v.* Cincinnati, etc., Ry. Co., 62 Fed. 803, 817 (1894); Wabash R.R. *v.* Hannahan, 121 Fed. 563 (1903); Barnes *v.* Berry, 157 Fed. 883 (1908); Delaware, etc., R.R. Co. *v.* Switchmen, 158 Fed. 541 (1908); Kemp *v.* Div. No. 241 Amalgamated Association of Street and Electric Railway Employees, 255 Ill. 213, 99 N. E. 389 (1912).

make it effective must be prevented. Whether the strike is considered lawful or unlawful by the courts makes little difference either in the phraseology of the injunction or in its enforcement. In reference to damage suits the situation is different. Most of the cases in which closed shop strikes have been condemned grew out of actions for damages brought by non-union workmen who had lost their jobs because of such strikes. The suits were premised upon the illegality of the strikes, not upon the unlawful conduct which may have accompanied them.

The boycott was condemned as unlawful as early as 1886.[1] Many decisions have since confirmed this view. As the Supreme Court of the United States has said, the courts are nearly unanimous in condemning boycotting as wrongful.[2] In a few states it is specifically prohibited by statute.[3] The reasoning relied upon in condemning the boycott has generally been that it amounts to an effort to "coerce" third parties. Hence it falls within the category of conspiracies. In some cases an effort is made to distinguish the primary boycott from the secondary boycott, the latter being the boycott of a third party, usually a merchant who sells the product of the employer primarily boycotted. Many courts in fact use the term "boycott" as embracing only secondary boycotts. But this distinction in practice amounts to little. Few employers of labor sell directly to the consumers. Hence, there can be but few primary boycotts. To boycott a manufacturer pressure must usually be brought to bear upon the dealers who handle his products. This introduces the third party and the element of the secondary boycott. It is significant that all of the statements holding primary boycotts legal are *obiter* and occur in cases in which the courts found an illegal secondary boycott.

In California boycotting has been held to be lawful.[4]

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[1] People *v.* Wilzig, 4 N. Y. Crim. 403 (1886); People *v.* Kostka, 4 N. Y. Crim. 429 (1886).

[2] Loewe *v.* Lawlor, 208 U. S. 274 (1908).

[3] See Harry W. Laidler, *Boycotts and the Labor Struggle*, 1913, pp. 174–177.

[4] Parkinson Co. *v.* Building Trades' Council, 154 Cal. 581, 98 Pac. 1027 (1908); Pierce *v.* Stablemen's Union, 156 Cal. 70, 103 Pac. 324 (1909).

Though its supreme court has not spoken, this seems to be the view also in Oklahoma.[1] Some New York cases also have sustained the boycott.[2] Both in Missouri and in Montana it has been held that the constitutional guarantees of free speech and free press give laboring men the right to refer to employers as unfair.[3] Later decisions in both states, however, have made clear that this does not mean that boycotting is legal, but only that the printing and the distribution of boycott circulars may not be directly enjoined.[4]

Though boycotting has for a long time been held illegal in most jurisdictions, it is only in recent years that organized labor has taken alarm at these decisions. Until 1908 boycotts were conducted openly and fearlessly. Sometimes injunctions were taken out against boycotts, but they only increased their effectiveness, through giving them wider publicity. The Danbury hatters' case in 1908[5] first brought home to labor that damages might be collected for losses sustained through boycotts. The American Federation of Labor at once discontinued its "We Don't Patronize" list. In general, fewer boycotts were thereafter undertaken and they were conducted much less openly. There are still numerous local boycotts and some conducted upon a nation-wide scale; but there can be no doubt that the attitude of the courts toward the boycott seriously restricts labor's use of this collective weapon.

c. Picketing. Strikes cannot be effective when the employer is able to secure a sufficient number of new employees. Hence the strikers endeavor to prevent the employer from getting them. They may do this either through persuasion

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[1] Laidler, *Boycotts and the Labor Struggle*, p. 414.

[2] Sinsheimer *v.* Garment Workers, 28 N. Y. Supp. 321 (1894); People *v.* Radt, 71 N. Y. Supp. 846 (1900); Cohen *v.* Garment Workers, 72 N. Y. Supp. 341 (1901); Foster *v.* Retail Clerks, 78 N. Y. Supp. 860 (1902); Butterick Pub. Co. *v.* Typographical Union, 100 N. Y. Supp. 292 (1906). To contrary, Matthews *v.* Shankland, 56 N. Y. Supp. 123 (1898); Sun Print. & Pub. Co. *v.* Delaney, 62 N. Y. Supp. 750 (1900); Mills *v.* U. S. Print. Co., 91 N. Y. Supp. 185 (1904).

[3] Jeans Clothing Co. *v.* Watson, 168 Mo. 133 (1902); Lindsay & Co. *v.* Montana Fed. of Labor, 37 Mont. 264 (1908).

[4] Lohse Patent Door Co. *v.* Fuelle, 215 Mo. 421 (1908); Iverson *v.* Dilno, 44 Mont. 270 (1911).

[5] Loewe *v.* Lawlor, 208 U. S. 274 (1908).

or through intimidation. All are agreed that intimidation is unlawful. Persuasion, on the other hand, is generally lawful. An exception must be made when the employees persuaded to leave work are under definite unexpired contracts. It is a rule of the common law that action lies against a third person who persuades another to break a contract. This rule has quite often been invoked in labor cases in this country.[1] In some cases this rule has been stretched to apply to the persuasion to quit employment of workmen not under definite contracts.[2] The theory is that they would have continued at work but for the interference of the third parties. The New Jersey courts have most frequently condemned persuasion, upon this theory, and this in spite of the fact that in that state there is a statute declaring it to be legal singly or collectively to persuade another to work or abstain from working.[3]

The more generally accepted view is that if there are no definite contracts the strikers may persuade the new employees to join them. They may employ persuasion, but must not resort to intimidation. But there is no distinct dividing line between persuasion and intimidation. In strikes, and often also in boycotts, the union stations pickets near the employer's premises to observe and speak to prospective employees or customers. Does the establishment of such a picket line of itself amount to intimidation? One view was forcibly expressed by United States Judge McPherson:[4] "There is and can be no such thing as peaceful picketing, any more than there can be chaste vulgarity, or peaceful mobbing, or lawful lynching. When men want to converse or persuade, they do not organize a picket line. . . . The argument seems to be that anything short of physical violence is lawful. . . . But the

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[1] Haskins *v.* Royster, 70 N. C. 601 (1874); Bixley *v.* Dunlap, 56 N. H. 456 (1876); Beekman *v.* Marsters, 195 Mass. 205 (1907); Flaccus *v.* Smith, 199 Pa. 128, 48 Atl. 894 (1901); Employing Printers' Club *v.* Doctor Blosser Co., 122 Ga. 509, 50 S. E. 353 (1905); Hitchman Coal & Coke Co. *v.* Mitchell, 202 Fed. 512 (1912).

[2] Walker *v.* Cronin, 107 Mass. 555 (1871); O'Neil *v.* Behanna, 182 Pa. 236, 37 Atl. 843 (1897); Frank *v.* Herold, 63 N. J. Eq. 443, 52 Atl. 152 (1901); George Jonas Glass Co. *v.* Glass Bottle Blowers, 77 N. J. Eq. 219, 79 Atl. 262 (1911); Southern R.R. Co. *v.* Machinists, 111 Fed. 49 (1901); Machine Co. *v.* Robinson, 84 N. Y. Supp. 837 (1903).

[3] New Jersey, act of February 14, 1883.

[4] Atchison, T. & S. F. Ry. *v.* Gee, 139 Fed. 582 (1905).

peaceful, law-abiding man can be and is intimidated by gesticulations, by menaces, by being called harsh names, and by being followed, or compelled to pass by men known to be unfriendly. . . . The frail man, or the man who shuns disturbances, or the timid man, must be protected, and the company has the right to employ such."

This view, that picketing always amounts to intimidation, has been adopted also by the courts of California.[1] Though they recognize the strike and the boycott as legal, they will not permit picketing in furtherance of either. In a Massachusetts case the presence of two pickets at a factory entrance was held to be intimidating.[2] Colorado and Washington have statutes forbidding picketing.[3] All picketing has been condemned also by the supreme courts of Illinois, Michigan, and New Jersey and in several federal cases.[4]

There are even more cases which hold that peaceful picketing is lawful. There have been definite expressions to this effect from the supreme courts of Indiana, Missouri, and Virginia; and it is well-established law in New York.[5] But this still leaves open the question, when is picketing peaceful? In answer to this question a federal court said:[6] "The defendants claim to have the belief that physical violence alone is to be condemned. But all persons know that intimidation by words, by menaces, by numbers, by position, and by many

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[1] Pierce *v.* Stablemen's Union, 156 Cal. 70, 103 Pac. 324 (1909). *Ex parte* Williams, 158 Cal. 550, 111 Pac. 1035 (1910).

[2] Vegelahn *v.* Gunther, 167 Mass. 92 (1896).

[3] Colorado, Laws 1905, p. 161; Washington, Laws, 1915, C. 181.

[4] Franklin *v.* People, 220 Ill. 355 (1906); Barnes *v.* Typographical Union, 232 Ill. 402, 424 (1908); Beck *v.* Railway Teamsters, 118 Mich. 497, 77 N. W. 13 (1898); Ideal Mfg. Co. *v.* Ludwig, 149 Mich. 133, 112 N. W. 723 (1907); George Jonas Glass Co. *v.* Glass Bottle Blowers, 72 N. J. Eq. 653, 66 Atl. 953 (1907), 77 N. J. Eq. 219, 79 Atl. 262 (1911); Otis Steel Co. *v.* Molders, 110 Fed. 698 (1901); Knudsen *v.* Benn, 123 Fed. 636 (1903); Kolley *v.* Robinson, 187 Fed. 415 (1911).

[5] Karges Furniture Co. *v.* Woodworkers, 165 Ind. 421, 75 N. E. 877 (1905); City of St. Louis *v.* Gloner, 210 Mo. 502, 109 S. W. 30 (1908); Everett Waddey Co. *v.* Typographical Union, 105 Va. 188, 53 S. E. 272 (1906); Krebs *v.* Rosenstein, 66 N. Y. Supp. 42 (1900); Rogers *v.* Evarts, 17 N. Y. Supp. 264 (1891); Foster *v.* Retail Clerks, 78 N. Y. Supp. 860 (1902); Mills *v.* U. S. Printing Co., 91 N. Y. Supp. 185 (1904); Searle Mfg. Co. *v.* Terry, 106 N. Y. Supp. 438 (1905); Butterick Pub. Co. *v.* Typographical Union, 100 N. Y. Supp. 292 (1906).

[6] Union Pacific R.R. Co. *v.* Ruef, 120 Fed. 102 (1903).

other things is just as effective as by using clubs or brass knuckles or knives."

It is the manner in which the picketing is conducted which determines its legality. Veiled threats toward the new employees are condemned just as strongly as are acts of physical violence. Many courts have held that if the number of the pickets is large, the picketing is necessarily intimidating.[1] Others have gone so far as to assert that speaking to the new employees against their will is intimidation.[2] Often the payment of union benefits to induce the new employees to join the strikers has been prohibited in injunctions; and there are a few decisions sustaining such prohibitions.[3] In most cases involving picketing which come before the courts the evidence is contradictory. On behalf of the strikers testimony is presented that the picketing has been conducted in an orderly manner, and that there have been no threats or acts of violence. The employers in their turn allege that force, threats, and violence have been resorted to, and often they are able to point to specific acts of this character. Usually, however, the evidence leaves doubt as to the responsibility of the union for the acts of violence which have occurred. Such responsibility is assumed in many cases. There are few standards which the courts may employ to determine whether picketing has in fact been peaceful or intimidating. Hence, again, their bias is often determining, and the decisions have more frequently gone against organized labor than in its favor.

Strikes, boycotts, and picketing have often been held illegal. These are the weapons through which labor secures and maintains collective bargains with employers. Collective

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[1] American Steel & Wire Co. *v.* Wire Drawers, 90 Fed. 608 (1898); Union Pacific R.R. Co. *v.* Ruef, 120 Fed. 102 (1903); Pope Motor Car Co. *v.* Keegan, 150 Fed. 148 (1906); Allis-Chalmers Co. *v.* Iron Molders, 150 Fed. 155 (1906); Foster *v.* Retail Clerks, 78 N. Y. Supp. 860 (1902); Searle Mfg. Co. *v.* Terry, 106 N. Y. Supp. 438 (1905); O'Neil *v.* Behanna, 182 Pa. 236, 37 Atl. 843 (1897); Jones *v.* Van Winkle, 131 Ga. 336, 62 S. E. 236 (1908).

[2] Frank *v.* Herold, 63 N. J. Eq. 443, 52 Atl. 152 (1901); Jersey Printing Co. *v.* Cassidy, 63 N. J. Eq. 759, 53 Atl. 230 (1902); Goldfield Mines Co. *v.* Miners' Union, 159 Fed. 500 (1908).

[3] Jersey City Printing Co. *v.* Cassidy, 63 N. J. Eq. 759, 53 Atl. 230 (1902); Tunstall *v.* Steans Coal Co., 195 Fed. 808 (1911). To contrary, Levy *v.* Rosenstein, 66 N. Y. Supp. 101 (1900); Everett-Waddey Co. *v.* Typographical Union, 105 Va. 188, 53 S. E. 272 (1906).

agreements are worthless without a strong union to back them up. They are not enforceable in courts of law. The unwilling employer is kept from violating them only through fear of a strike. *Real* collective bargaining implies equal strength upon both sides. It results only when each side is aware of the strength, ability, and willingness of the other. Then a joint conference is held and a compromise is effected. Neither will violate the agreement while the other party maintains its strength. Thus, it will be seen that restrictions upon the weapons which labor may employ in trade disputes are in fact limitations of its right to bargain collectively.

(4) *Restrictions on Employers and Employees*

The Clayton act of 1914[1] many believe has removed the restrictions which hamper trade unions. The most tangible gain to labor is the provision for jury trial in contempt cases where the offense charged is also indictable as a crime. This act further provides that injunctions issued by the federal courts shall not prohibit the quitting of work, the refusal to patronize, peaceful picketing, or peaceful persuasion. Nor are these acts to be considered "violations of any law of the United States." These provisions are to apply whether these acts are done "singly or in concert." Yet those in charge of this legislation pointed out that it did not modify the law of conspiracy. When workingmen combine to injure an employer or non-unionists, their illegal purpose colors all their conduct. Quitting work, for instance, though ordinarily lawful whether done "singly or in concert," becomes unlawful when undertaken in pursuance of an unlawful conspiracy. Hence, the Clayton act seems to make no material modifications in the substantive rights of employers and employees. Certainly it does not affect cases in the state courts, which far outnumber those in the federal courts.

Do similar restrictions apply to employers? In theory, yes, in practice, no. While the workingmen's right to strike is restricted, the employers' right to discharge is absolute.

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[1] United States, Laws 1913–1914, C. 321.

In the last decades many states have enacted statutes prohibiting employers from coercing workmen into surrendering their right to belong to labor unions through threatening them with discharge unless they comply with this demand. These statutes have uniformly been held unconstitutional, and the Supreme Court of the United States is among the courts holding this view.[1] This means that the employer may establish a shop closed to all union workmen. Some recent cases even hold that where workmen have signed an agreement to the effect that they will not belong to any union, all efforts made thereafter to induce them to join a union are illegal.[2] With these decisions must be contrasted those relating to the establishment of a closed shop through the effort of the union. It is true that it has often been stated that there is nothing unlawful about an agreement that only union men shall be employed, if the employer voluntarily enters into such an arrangement. The hub of the situation is that such contracts are usually not entered into voluntarily, but are gained through strikes. As has been noted, such strikes have often been condemned as an effort to injure non-unionists, or as amounting to coercion. Yet the Supreme Court has held that it is not "coercion" to threaten to discharge a workman unless he will renounce his union membership.[3]

The theory of the absolute right of the employer to discharge results also in the virtual legalization of the blacklist. Most of the states of the union have laws prohibiting blacklisting; but they have been dead letters. The explanation lies in the fact that employers may discharge or refuse to employ any workman who is an "agitator" or who belongs to a union. Antiblacklist laws which merely prohibit the circulation of information as to who are union members are probably constitutional, although one federal decision does not even grant that much.[4] He who circulates this information

[1] Adair *v.* United States, 208 U. S. 161 (1908); Coppage *v.* Kansas, 35 Sup. Ct. 240 (1915).

[2] Flaccus *v.* Smith, 199 Pa. 128, 48 Atl. 894 (1901); Hitchman Coal & Coke Co. *v.* Mitchell, 202 Fed. 512 (1912. Overruled in 214 Fed. 685, but further appeal taken to the Supreme Court). This is also the basis of the injunction involved in the case of Bittner *v.* Coal Co., 214 Fed. 716 (1914).

[3] Coppage *v.* Kansas, 35 Sup. Ct. 240 (1915).

[4] Boyer *v.* Western Union, 124 Fed. 246 (1903).

may be punished; but the employer who acts upon it is entirely within his rights. His reasons for refusing to employ or for discharging cannot be questioned in any court. In this day of the telephone, the telegraph, water-marked paper, and the card system, it is well-nigh impossible to prove who furnished the information upon which a blacklisted workman was discharged. Moreover, the supplying of such information by a former employer upon the request of the present employer is regarded as privileged. It is expressly declared legal in the antiblacklist laws of many states. This is the simplest and most common manner in which an employer secures information about the "records" of his employees. A workman discharged for "union activity" as a result of information secured in this manner has no redress against either his employer or his former employer. If the information was supplied by an employers' association or furnished gratuitously by the former employer, the blacklisted workman cannot recover unless he proves who furnished the information and that he was discharged as a result thereof. He cannot establish either proposition unless the employer who discharged him is in sympathy with him.[1] This is not the case where the reason for the discharge was membership in a labor union. To all intents and purposes blacklisting is legal throughout the United States.

That the blacklist is a powerful weapon in combating labor organizations cannot be questioned. To offset its effects unions have often adopted the policy of giving employment as organizers to members who have been blacklisted. Nor is there any doubt that this weapon is extensively used. There is no industrial center in which there are not scores who claim to have been blacklisted. The boycott in many respects is the counterpart of the blacklist; but while blacklisting is practically unrestricted by the laws and the courts, labor's use of the boycott is very seriously interfered with.

In theory the same principles are applied in reference to the activities of employers as to those of labor. The absolute right of employers to discharge is stated to be paralleled by

[1] This explains why workmen who were discharged upon the demand of employers' liability insurance companies have sometimes been able to recover from these companies.

the right of the workmen to quit for any or no reason. In all the cases in which the right to discharge was at issue no element of combination was involved. Hence, it may be said that employers have not been freed from the conspiracy laws. But the important fact is that in cases involving employers this question does not arise. Even when employers act in concert, the number of individuals involved is usually small, and the proof that there is a combination is difficult to obtain. Because of their small numbers employers can effectively act together without giving much publicity to their combination. In fact, in the case of the blacklist, its success depends upon secrecy. On the other hand, every collective action of labor must necessarily be public. A strike cannot take place without a meeting and a vote. The boycott depends for success upon publicity. The union must resort to the public rights of free speech, free press, and public assembly; but the employers' association succeeds through private correspondence. Again, it is evident that the collective activities of labor are much more likely to interfere with the rights of the public than are the acts of the employers. Pickets must use the streets, agitation may lead to violence, but the procuring of new employees is but an incident in the regular conduct of business. Another factor operating to give employers a real advantage is the difficulty of getting the question of the legality of their actions before the courts. The strike and the boycott may be questioned because they invade the rights of the employers to free access to the labor market and to the commodity market. But no right of the workingman is violated when he is discharged, or when a new man is given the job which he quit in order to go on strike.

(5) *Justification of True Collective Bargaining*

Viewing the situation from the point of view of the practical results, the conclusion is reached that the law to-day seriously restricts labor in its collective action, while it does not interfere with the parallel weapons of the employers. Is this result socially desirable? Fundamentally the question is whether collective bargaining by labor should be encouraged

or discouraged. If collective bargaining is desirable, organized labor must be conceded the free use of the methods through which it can secure and maintain trade agreements. The right of organization is valueless unless it is accompanied by the right to make the organization effective.

The issue of the desirability of collective bargaining by labor is much confused by the parallel of the combination to control prices. Combinations to monopolize commodities are against public policy; why then should labor unions be favored in the law? This parallel overlooks the vital distinction between commodities and labor. The commodity, labor, can never be divorced from the human being, the laborer. The labor contract is a bargain, not only for wages, but also for hours of labor, physical conditions of safety and health, risks of accident and disease. Labor cannot be placed upon the same plane with commodities, which are external and unhuman. It is in the interest of the public that the most favorable conditions of labor shall prevail. Since labor constitutes such a large part of the public, the general welfare depends intimately upon its advancement. While the public suffers from high prices, it benefits from high wages.

It is apparent that the individual laborer is at a great disadvantage in bargaining with an employer. The employer is often a great corporation, which is itself a combination of capital. But the disadvantage of the laborer is even more fundamental. Being propertyless, he has no opportunity to make his living but to work upon the property of others. Having no resources to fall back upon, he cannot wait until he can drive the most favorable bargain. It is a case of the necessities of the laborer pitted against the resources of the employer. It is only when labor bargains collectively that its bargaining power approximates equality with that of capital.

To treat labor unions as being in the same category with combinations to control prices is a misunderstanding of their functions. Labor unions are not business organizations, like corporations or partnerships. They have nothing to sell. When they enter into a trade agreement they do not obligate themselves to furnish a given number of laborers, or any laborers, at the terms agreed upon. They cannot do so,

since they cannot compel their members to labor if these do not wish to work. The members of the union do not labor for the organization, but for themselves and their families. The difference between a labor union and a business organization, and between a trade agreement and an ordinary contract, is well expressed in a recent decision of the Supreme Court of Kentucky:[1] "A labor union, as such, engages in no business enterprise. It has not the power, and does not undertake, to supply employers with workmen. It does not, and cannot, bind its members to a service for a definite, or any period of time, or even to accept the wages and regulations which it might have induced an employer to adopt in the conduct of his business. Its function is to induce employers to establish usages in respect to wages and working conditions which are fair, reasonable, and humane, leaving to its members each to determine for himself whether or not and for what length of time he will contract with reference to such usages. . . . It [the trade agreement] is just what it, on its face, purports to be, and nothing more. It is merely a memorandum of the rates of pay and regulations governing, for the period designated, enginemen employed on the Chattanooga division of the company's railway. Having been signed by the appellee, it is evidence of its intention, in the conduct of its business with enginemen on said division, to be governed by the wages and rules, and for the time therein stipulated. Enginemen in, or entering, its service during the time limit contract with reference to it. There is on its face no consideration for its execution. It is therefore not a contract. It is not an offer, for none of its terms can be construed as a proposal. It comes squarely within the definition of usage as defined in Byrd *v.* Beall, 150 Ala. 122, 43 So. 749. There the court, in defining usage, said 'usage' refers to 'an established method of dealing, adopted in a particular place, or by those engaged in a particular vocation or trade, which acquires legal force, because people make contracts with reference to it.'"

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[1] Hudson *v.* Cincinnati, etc., R.R. Co., 152 Ky. 711, 154 S. W. 47 (1913). See also Burnetta *v.* Marcelline Coal Co., 180 Mo. 241 (1906); Barnes *v.* Berry, 157 Fed. 883 (1908); Fell *v.* Berry, 108 N. Y. Supp. 669 (1907). To the contrary, Jacobs *v.* Cohen, 183 N. Y. 207 (1905).

The so-called "contract" which a trade union makes with an employer or an employers' association is merely a "gentlemen's agreement," a mutual understanding, not enforceable against anybody. It is an understanding that, when the real labor contract is made between the individual employer and the individual employee, it shall be made according to the terms previously agreed upon. But there is no legal penalty if the individual contract is made differently. To enforce the collective contract would be to deny the individual's liberty to make his own contract.

That capital and labor should be treated equally is a proposition fundamental to American law. But the dual bargaining functions of capital must be distinguished. The *price bargain* is something very distinct from the *wage bargain.* The corporation deals with both; the laborer only with the wage bargain. *Manufacturers' associations* deal with the *price bargain; employers' associations* with the *wage bargain.* Trade unions do not deal with consumers at all. Their function is to offset the advantage the employer enjoys in bargaining about wages with the individual laborer. Equal protection of the law does not consist in treating a trade union like a *manufacturers' association*, but in treating it like an *employers' association.* This is not class legislation, but sound classification.

Unions of labor are just as likely to abuse their power as are unions of manufacturers. No organization can be trusted with unlimited power. In the case of the price bargain the public has been compelled to enact railroad commission laws, in order to keep down the prices charged by corporations. Is there similar reason for public interference in the case of the wage bargain? Trade unions have hitherto been treated as organizations for private purposes.[1] Should they be subjected to public regulation, as have been the monopolistic combinations?

There is a better safeguard than public regulation against the abuse of power by trade unions. This is the power of the employers to resist such demands. Herein lies the *raison d'être* of the employers' association. It is to the interest of

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[1] See Coppage *v.* Kansas, 35 Sup. Ct. 240 (1915).

the public, not only that labor shall be free to bargain collectively, but that the employers should also be allowed to combine. Without organization upon both sides there is only one-sided or *pseudo-collective* bargaining. When a corporation deals with individual consumers or individual wage-earners, all the advantages of combination are on one side. Similarly, *pseudo-collective* is the bargaining maintained by the so-called "open shop" organizations of employers. Each wage-earner is compelled to accept the bargain which the association requires its members to demand when hiring a laborer. Labor unions also practise one-sided collective bargaining when they compel employers as individuals to "sign up" the agreements they offer. They use the power of their combination to prevent the employers from acting collectively. The labor union which refuses to recognize the employers' association is setting up a pretense of collective bargaining, similar to the pretense of the employers' association when it proclaims, under the name of the "open shop," that it is entirely willing to employ union men but refuses to confer with the union. It is the usual outcome of such practices in these one-sided bargains for the union to insist on the closed shop against non-unionists, and for the employers under the name of "open shop" to run a non-union shop. Theoretical principles of freedom are proclaimed to gain popular or legal support; but in actual practice each side when possessed of unlimited power rides rough-shod over the rights of others.

Real collective bargaining is something very different. It is premised upon organization on both sides. This requires getting together in a joint conference, and, through representatives, making a *trade agreement* binding upon individuals on both sides. A compromise between the extreme positions is the result. While it is in force, a trade agreement is the supreme law of the industry. It may even override the constitutions and the by-laws of the two associations. Dictation is autocracy; conference is democracy. Trade agreements are likely to be tolerably satisfactory to both sides, as both have had a voice in framing them. In real collective bargaining also lies the protection of the public. It means fair conditions for labor, and yet conditions under which industry

can operate. It is an assurance of a minimum of industrial disturbance.

Restrictions in the law upon collective action upon either side are inconsistent with collective bargaining. Complete freedom to combine should be given to both employers and employees. This policy requires no change in the status in law of employers' associations and the weapons they use to combat labor. Some dead-letter statutes are directed against them; but these are of no practical importance. It is otherwise as to the restrictions upon collective action by labor. Moreover, these restrictions are likely to be even more serious in the near future. The damage suit looms up as a new menace to labor. The injunction has lost many of its terrors on account of the frequency of its use. It is now more of an annoyance than a real obstacle to labor; but the damage suit is likely to mean the destruction of unionism in its present form.

(6) *Damage Suits*

While there were earlier damage suits, and judgments as well, this menace to labor escaped notice until the recent Danbury hatters' case.[1] As a result of the decision of the Supreme Court in this case, a judgment of nearly $300,000 (including interest) is outstanding against some 175 members of the hatters' union. It is quite probable that the houses and bank accounts of these union members which have been attached will be sold to meet this judgment. The damages awarded were for losses sustained through a boycott conducted by the union officers. Only a few of the defendants are charged with having had any direct connection with this boycott. They are held liable because they remained members of the union after wide publicity was given to the boycott.

The importance of this case cannot be overstated. It establishes the principle that the members of labor unions are responsible *without limit* for the unlawful actions of the union officers and agents which they have in any manner

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[1] Lawlor *v.* Loewe, 235 U. S. 522 (1915).

authorized or sanctioned. Such antecedent authorization or subsequent approval of unlawful acts does not require to be expressed, but may be inferred from all the facts in the situation. Membership in the union constitutes approval of unlawful acts of the officers and agents when they have been given wide publicity. The Danbury hatters' case arose under the Sherman antitrust act; but the menace of the damage suit does not depend upon that statute. Damages may be recovered not only for restraint of interstate commerce, but for any wrongful act of a labor union. Under the Sherman act triple damages may be collected, but without that act only single damages, yet even single damages are likely to bankrupt all unions. Nor can damages be secured only for boycotting. Recovery can be had also for losses sustained through lawful strikes, or through picketing, or because of any other wrongful conduct.

Within the next few years there are likely to be many damage suits against labor unions and their members. Several such suits are already pending (1915). The principles established in the Danbury hatters' case render probable that judgments will often be recovered. It may become impossible for a workman with a little property to belong to a labor union. Union funds are likely to be exhausted in court fights and to satisfy judgments. It is not unlikely that the unions will endeavor to offset this menace by greater secrecy. The Danbury hatters' case turned upon the point that so much publicity had been given to the boycott that all the members of the union could reasonably be presumed to have knowledge thereof. Thus, a premium is put upon secrecy and encouragement is given to the slugger. But this means the end of conservative unionism. Collective bargaining cannot be conducted in secret.

The menace of the damage suit is best brought out in the contrast between the position of the members of labor unions and that of stockholders in corporations. It is evident that labor unions are very much looser organizations than are corporations. Unions must entrust their officers with great power; the rank and file of the members know little about what the officers are doing. Even when members disapprove of the actions of the officers, they can ill afford to get out of

the union, as they would lose their insurance benefits and in many industries would find it difficult to get a job. These are reasons why the members of labor unions should not be held to the same accountability for acts done in their behalf as are stockholders in corporations. But in the United States the members of labor unions have the greater liability. For a tort committed in behalf of a corporation, the stockholders can be held only to the extent of their stock subscription, or double the amount, under certain laws regulating banks. The members of labor unions are responsible *without limit* for tortious acts done in their behalf.

(7) *English Law of Labor Disputes*

Very nearly the same situation which has been created in the United States by the Danbury hatters' case existed in England subsequent to the Taff Vale case in 1901.[1] In that case a union of railway workers was assessed damages in excess of $200,000 on account of injury to the company through acts of violence during a strike. The upshot of this case was the enactment of the British trade disputes act of 1906. This act places labor unions upon a position of equality with employers' associations, and distinguishes both from combinations to control prices. It provides that acts done by a combination, either of employers or employees, "in contemplation or furtherance of a trade dispute," shall be lawful unless they would be unlawful if done by one person. It provides further that such acts shall not be deemed unlawful because they interfere with another's free access to the labor and commodity markets, or because they amount to meddling by third parties with contractual rights. Thus, the law of conspiracy, in all its forms of statement, is declared not to be applicable to labor disputes. Moreover, in lieu of vague prohibitions of "violence," "intimidation," and "coercion," England has definite statutory declarations as to the conduct which is unlawful. The dividing line between lawful persuasion and unlawful coercion is fairly definite, so that

[1] 70 L. J. K. B., 905 (1901).

all who read may know. Picketing for the purpose of peacefully obtaining or communicating information, or of peacefully persuading another to work or abstain from working, is lawful. On the other hand, it is unlawful to commit acts of violence or sabotage, or persistently to follow another. Nor may any one quit work in violation of a contract when he has reason to know that the consequence of his leaving will be to endanger human life, or to expose valuable property to injury, or to deprive a city of gas or water.

In English law there are no doubts as to the legality of labor unions or of employers' associations. Both the lockout and the strike are legal, as are the boycott and the blacklist. Parallel to the right of employers to get new workmen is the right of the strikers to picket peacefully and to induce them to abstain from working. England's policy is to allow both sides a free hand for a fair fight. It ignores the motives which underlie labor disputes. It does not interfere until the line of intimidation and violence has been crossed. And this is a line definitely established by statute, and not left wholly to the courts. Thus the English law has the merits of certainty and practicality.

The most radical departure in the British trade disputes act must still be noted. It is the exemption of trade unions and employers' associations and their members from all liability in tort for wrongful acts alleged to have been committed in their behalf. This was Parliament's answer to the Taff Vale case. It made it impossible to maintain any damage suit against a trade union or an employers' association. This is a greater privilege than the limited liability of business corporations. The liability is not merely limited, it is removed *in toto*. Even though a union may be responsible for acts of violence, it cannot be sued for the damage it caused. Our courts hold the members of labor unions to the unlimited liability of partnerships; in England they are not liable at all.

The position given in England to trade unions and employers' associations violates that concept, fundamental in law, that he who is responsible for a wrong must answer therefor. But an overwhelming majority of Parliament believed it sound policy to modify this principle to this extent.

Prior to the Taff Vale case damage suits were never brought in England against trade unions. Whatever may have been the law, they enjoyed exemption, to all practical purposes, from actions in tort. In the United States, also, labor unions until recently occupied much the same position. And this practical exemption of unions from responsibility in damages has led to no dire consequences. Exemption of trade unions and employers' associations from actions in tort does not mean that wrongs they commit are allowed to go unpunished. The union members who are guilty of acts of violence can be held therefor, both criminally and in tort; but the members who have not been direct participants in the wrongdoing cannot be held civilly liable as principals. As a curb upon union violence, it is doubtless much more effective vigorously to prosecute those who commit the violence than to take away the property of entirely innocent union members.

The exceptional position given in English law to trade unions and employers' associations rests upon the proposition that collective bargaining is socially desirable. Trade unions are such loose organizations that a rigid application of the principles of agency law is unjust. Such a doctrine operates to destroy the unions. This is even more true in the United States than in England, since many of the acts of unions that are lawful there are unlawful here.

The law conceives of no responsibility other than financial responsibility, and of no check other than that furnished by the law. But a more satisfactory check upon abuse of power by unions is the like power of employers. The protection of the public lies in the equal strength of both parties to make the wage bargain. To this end restrictions upon collective action upon either side should be removed. Thus can collective bargaining in the voluntary sense be maintained and extended.

2. Mediation by Government

The development of large scale production and the growing complexity and interdependence of the social order have vastly increased the number and disastrousness of strikes and

lockouts.[1] For settling differences and avoiding these far-reaching conflicts there have been devised four main methods: mediation or conciliation, voluntary arbitration, compulsory investigation, and compulsory arbitration.

(1) *Definition of Terms*

By *mediation* or *conciliation* is usually meant the bringing together of employers and employees for a peaceable settlement of their differences by discussion and negotiation. The mediator may be either a private or an official individual or board, and may make inquiries without compulsory powers, trying to induce the two parties by mutual concessions to effect a settlement. The successful mediator never takes sides and never commits himself as to the merits of a dispute. He acts purely as a go-between, seeking to ascertain, in confidence, the most that one party will give and the least that the other will take without entering on either a lockout or a strike. If he succeeds in this, he is really discovering the bargaining power of both sides and bringing them to the point where they would be if they made an agreement without him. Where the difficulty is due to the parties' not having thoroughly discussed the situation together, the mediator is often able to bring them into joint conference, and, in practice, most of the settlements have been arranged through compromise. In other cases the parties are unwilling to admit to each other the utmost concession they will make,

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[1] In the German Empire there were 10,484 strikes in the years 1899 to 1905, affecting 938,543 men, and 583 lockouts, affecting 207,800 men. In Austria there were 3,073 strikes affecting 572,746 men from 1894 to 1904, and 69 lockouts involving 43,395 men. In France, from 1890 to 1904, there were 7,741 strikes involving 1,865,620 men, and from 1900 to 1904, 7 lockouts involving 1,031 men. In Belgium there were 961 strikes affecting 274,654 men from 1896 to 1904. Italy had 3,852 strikes affecting 855,066 men from 1895 to 1903. In Great Britain and Ireland there were 6,030 strikes and lockouts affecting 1,783,889 men from 1895 to 1905 (Maximilian Meyer, *Statistik der Streiks und Aussperrungen*, 1907, pp. 43, 45, 71, 78, 107, 116, 133, 154, 158, 184). From 1881 to 1905 there were in the United States 36,757 strikes involving approximately 8,703,824 employees, and 1,546 lockouts affecting 825,610 employees (Commissioner of Labor, *Twenty-first Annual Report*, 1906, pp. 476, 477, 736, 737).

fearing to weaken their position. In such cases a mediator whom both sides can trust can render invaluable service as an intermediary. Occasionally parties refuse to treat with each other, but will consent to make each a separate settlement with the mediator. Finally, mediators, through their familiarity with methods for dealing with analogous difficulties in different trades, are sometimes able to suggest a solution. In all cases the mediator is merely a confidential adviser. Even when he is a state authority he does not exercise any of the compulsory powers of the state, and if he even endeavors, by public investigations and recommendations, to bring public opinion to bear upon the disputants, he disqualifies himself for further mediation.

Voluntary arbitration occurs when the two parties, unable to settle the controversy by themselves or with the assistance of a mediator, agree to submit the points at issue to an umpire or arbitrator, by whose decision they promise to abide. The complete procedure of arbitration consists of a number of steps: (1) The submission of the dispute to the decision of a third party; (2) submission to an investigation; (3) refraining from strike or lockout pending investigation; (4) drawing up an award; (5) enforcement of the award and refraining from strike or lockout during its life. Arbitration remains strictly voluntary even if at every step except the first the state uses its compulsory power. The essential thing is that *both* parties consent in advance to calling in the powers of government. Hence it is not inconsistent with the idea of voluntary arbitration for the state to use its power of compelling testimony, or even of enforcing an award, provided that both sides have previously agreed that this be done.

Under the system of *compulsory investigation* a board created by the state summons witnesses and takes testimony on the initiative of one party to the dispute without the consent of the other, or upon its own initiative without the consent of either. The board is one of investigation and recommendation, without legal power to enforce its awards. Compulsory investigation is sometimes accompanied by prohibition of strikes or lockouts pending the completion of the investigation and the publication of the recommendations. This compulsory postponement is the characteristic feature

of the Canadian industrial disputes investigation act of 1907, copied by Colorado in 1915, designed to prevent sudden strikes or lockouts.[1] But it is not essential to compulsory investigation. The alternative is compulsory investigation without the prohibition of strikes and lockouts, and this is provided for in the laws of several American states.[2] These laws are generally thought to establish voluntary systems of mediation, but they go beyond that point when they take testimony without the consent of either side.

Compulsory arbitration consists in the government's directly or indirectly compelling employers and employees to submit their disputes to an outside agency for decision. In a complete system of compulsory arbitration, government coercion is exercised at all five of the steps previously mentioned. Differences *must* be submitted to arbitration; witnesses *must* testify and produce papers; the parties *must* refrain from strike or lockout during the investigation; the board *must* reach a decision and announce an award; the parties *must* observe the award and refrain from strike or lockout during its life. The penalties for violation are fine and imprisonment, not, however, imposed on a workman for ordinarily quitting work or on an employer for the ordinary discharge of a workman, but for quitting or discharging collectively or with intent to obstruct any of the steps essential to the arbitration.

(2) *Foreign Countries*

Voluntary arbitration attained its most characteristic development in England. Sir Rupert Kettle, one of the founders of the English system, wrote: "It is agreed that according to the spirit of our laws and the freedom of our people, any procedure, to be popular, must be accepted voluntarily by both contending parties,"[3] and the whole history of con-

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[1] See "Coercion by Government," p. 160.

[2] See "United States," p. 132.

[3] Jos. D. Weeks, "Report on the Practical Operation of Arbitration and Conciliation in the Settlement of Differences between Employers and Employees in England," Pennsylvania Doc. 1878–1879, *Legislative Documents*, Vol. II, No. 8.

ciliation and arbitration in England verifies his assertion. In the early years of the nineteenth century the effects of the industrial revolution, the repeal of the conspiracy laws in 1824 permitting the organization of many new unions, and the panic of 1828 with the ensuing years of depression, united to bring about a series of violent strikes and lockouts. These early collective disputes were envenomed by mistaken legislation to control the workmen, and the memory of the period embittered the relations of masters and workmen for years. Gradually, however, both sides began to see the futility of these destructive methods, and the idea of avoidance or peaceful settlement of trade disputes by means of joint boards of employers and employees took root. One of the very earliest of these boards was established for the Macclesfield silk trade in 1849, and was suggested by the French industrial courts (*conseils de prud'hommes*).[1] It proved a failure. In 1856 and 1860 committees of the House of Commons found the men favorable to arbitration, but the employers opposed to state intervention. The year 1860, in which A. J. Mundella established the first permanent board of conciliation and arbitration, marks the real beginning of the movement for conciliation, and between 1867 and 1875 countless boards were established without legislation.

It was not until 1896 that Parliament enacted legislation dealing solely with collective disputes. The act of 1824[2] applied only to individual disputes and the act of 1867[3] attempted to introduce the French industrial courts. The act of 1872[4] provided for conciliation boards, but was a dead letter. In 1893 occurred the disastrous coal mine strike in which finally the government intervened and arranged a conciliation board similar to those which had been so widely organized without government interference. Following this came the conciliation act of 1896. It repealed the acts of 1824, 1867, and 1872, and is the present law. It entrusts to the board of trade[5] certain powers of mediation. The board may (1) register any private conciliation or arbitration board on application. This confers no additional powers on these

[1] See "Industrial Courts," p. 86.
[2] 5 Geo. 4, C. 96.
[3] 30–31 Vict., C. 105.
[4] 35–36 Vict., C. 46.
[5] Similar to our Departments of the Interior, Commerce, and Labor.

boards. (2) If the means of conciliation in a district are inadequate the board of trade may appoint mediators to confer with the parties as to the formation of conciliation boards. (3) In case of an industrial dispute the board of trade may (a) make an inquiry, (b) bring the parties together, (c) on the application of one party appoint one or more conciliators, (d) on the application of both parties appoint an arbitrator. All expenses are paid by the government.

Since the passage of the act two additions have been made to the conciliation machinery of the board of trade, neither of which necessitated further legislation. In 1908, the president of the board sent a memorandum to the chambers of commerce and employers' and workmen's associations, stating that the scale of operations of the board under the conciliation act required more formal and permanent machinery and announcing the creation of a standing court of arbitration. Three panels were to be appointed by the board, the first comprising "persons of eminence and impartiality" from whom the chairman should be chosen, the second employers, and the third workmen. In case of a request for the services of the court, it should be nominated by the board of trade from these panels, either selected by them or jointly selected by the parties, and should consist of either one or two representatives of each side, and a chairman, who should have a vote. In addition, technical assessors or experts might be appointed by the board to assist the court. The members of the court would thus be unconnected with the particular dispute but representative of the respective classes. In 1909 the Forty-second Trades Union Congress adopted a resolution that the congress should elect the members of the workmen's panel, to guard against political influence, but the board of trade denied the request on the ground that "public confidence in the impartiality of the tribunal" was better served by the existing arrangement.

The court of arbitration proving a failure, an industrial council, similar to that requested by the Trades Union Congress in 1909, was created in 1911. It consists of "representatives of the two great sides of the industry of the country." The chairman of the industrial council is called "chief industrial commissioner." The reasons for

the creation of the council were the desirability of a national representative body, and the fact that the president of the board of trade is necessarily a politician. The council deals with cases referred to it for its opinion upon the facts only; with cases referred to it for inquiry and recommendations, to be made public, or accepted, if so agreed upon; with cases referred by the board of trade or the government; and with general matters referred by the board for a representative opinion.

Registration of conciliation boards has been far from complete, but most unregistered boards furnish the board of trade with annual returns. The first report of the board of trade recorded one attempt to establish a board where none existed, but the later reports contain no such information. Evidently that feature of the act has become a dead letter. In the settlement of disputes the board of trade has been more successful. From 1896 to 1913, 696 cases were dealt with, of which 345 involved a stoppage of work and 351 involved no stoppage. About 65 per cent. of the total cases occurred in the last six years, the highest number recorded being for 1913.[1] Since 1907 conciliation and arbitration of railway disputes have been under an agreement secured through the board of trade. This agreement broke down in 1911 with a strike on every railway except one. It was then revised, so that a central chairman or arbitrator might be chosen from a panel prepared by the board of trade.

Present legislation concerning arbitration and conciliation in Great Britain is thus entirely permissive and voluntary. Employers as a class favor negotiation through the voluntary conciliation boards, but many of them condemn the interference of the state, partly on the ground that it assumes no responsibility for enforcing its award, and partly on the ground that the arbitrator is likely to have no practical knowledge of the trade. They would favor compulsory arbitration, but, regarding this as premature at best, they are inclined to oppose state intervention altogether.

English trade unions have from the first favored conciliation and voluntary arbitration, but they are opposed to com-

[1] From the eleventh Report by the Board of Trade of *Proceedings under Conciliation Act of 1896.*

pulsory arbitration. Several efforts have been made in the trades union congress to secure indorsement of compulsory arbitration, all of which have been defeated by large and increasing majorities. In 1908 a resolution was introduced requesting Parliament to amend the conciliation act of 1896 so as to give the board of trade powers of compulsory investigation on request of either party, no stoppage of work to take place pending inquiry and report. It was defeated by a large majority at that time and again in 1909.

Legislation providing for mediation or conciliation and for voluntary arbitration is found also in France, Germany, Austria, Denmark, Italy, Sweden, Belgium, Roumania, Servia, Spain, the Netherlands, Switzerland, and Argentina.[1] The French law of 1892 applies to all industries, and makes justices of the peace mediators. In Germany the law of 1890, revised in 1901, provides that the industrial courts[2] shall act as boards of arbitration.

(3) *United States*

a. State Legislation. Thirty-one states, Alaska, and the Philippine Islands have legislation providing for the settlement of industrial disputes, and Wyoming has a constitutional provision to the same effect.[3] Many of these states have permanent boards called boards of conciliation and arbitration or some similar title, with from two to six members, although three is the usual number. It is provided in every state except Alabama that one member shall be a representative of the employees, while all but Alabama and Connecticut provide for representation of employers. The Oklahoma board represents farmers in addition. Many states

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[1] See United States Bureau of Labor, *Bulletin No. 60*, September, 1905, "Government Industrial Arbitration," L. W. Hatch; *Bulletin of the International Labor Office*, 1906–1913; United States Bureau of Labor, *Bulletin No. 98*, January, 1912, "Industrial Courts," H. L. Sumner (for Germany).

[2] See "Industrial Courts," pp. 86–88.

[3] See United States Bureau of Labor Statistics, *Bulletins No. 148*, 1914, "Labor Laws of the United States," and *No. 166*, 1915, "Labor Legislation of 1914."

forbid that more than two members of the board be chosen from the same political party. In other states the labor commissioner acts as mediator, as in Idaho, Indiana, and Maryland. In states having industrial commissions, a chief mediator is appointed along with temporary boards for arbitration.

In a score or so of states compulsory investigation is provided for.[1] In the Philippine Islands general powers are given to the bureau of labor to investigate "strikes, suspensions of work, and other labor difficulties." The state board of arbitration *must* proceed to make an investigation (1) on failure to adjust the dispute by mediation or arbitration, in Idaho, Indiana, Maryland; (2) if, in the opinion of the governor, the dispute is likely to affect the public welfare, in Maine; (3) when notice of the dispute is given to the board by a mayor or district judge, in Louisiana; or (4) simply when the existence of the dispute comes to the knowledge of the board, as in Massachusetts and Vermont. In other states such investigation is permissive. The board of arbitration *may* investigate (1) when it is deemed necessary by the governor, in Alabama and Nebraska, or the commissioner of labor in New York (the industrial commission since May, 1915). In Ohio the industrial commission can make an investigation, if it deems necessary, where a strike exists or is threatened, but if no settlement is obtained on account of the opposition of one of the parties investigation is to be made only if requested by the other party. Compulsory investigation may be employed (2) when both parties refuse arbitration and the public would suffer inconvenience, in Illinois and Oklahoma, or simply where the parties do not agree to arbitration, in New Hampshire; (3) or generally, whenever a strike occurs, in Connecticut, Minnesota, Missouri, Montana, and Utah.

Provision for enforcement of an arbitration award when arbitration has been agreed to by representatives of both sides is made in the laws of eight states. In Illinois, if the court has ordered compliance with an award, failure to obey is punishable as contempt, but not by imprisonment. In

[1] Alabama, Connecticut, Idaho, Illinois, Indiana, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New York, Ohio, Oklahoma, Utah, Vermont.

Idaho and Indiana the award is filed with the district court clerk, and the judge can order obedience, violation being punishable as contempt, but imprisonment may be inflicted only for wilful disobedience. In Missouri violation of a binding award is punishable by a fine or jail sentence, and in Ohio a binding award may be enforced in the county court of common pleas as if it were a statutory award. In Nevada, Texas, and Alaska the award is filed with the district court clerk, and may be specifically enforced in equity. In Nevada appeal is made to the supreme court, in Texas to the court of civil appeals, and in Alaska to the United States Circuit Court of Appeals. Colorado is the only state (1915) that has copied the Canadian act forbidding strikes or lockouts pending investigation and recommendation.

In fourteen states and Alaska the voluntary agreement to arbitrate must contain a promise to abstain from strike or lockout pending arbitration proceedings.[1] In Massachusetts it is the duty of the parties to give notice of impending stoppage of work. In Nevada and Alaska strikes or lockouts during arbitration, and in Alaska for three months after, without thirty days' notice, are unlawful and ground for damages.

b. Federal Legislation. Federal legislation on mediation and arbitration is comprised in four acts concerning interstate commerce carriers, the act of 1888, the act of 1898 (the Erdman act), the act of 1913 (the Newlands act), and Section 8 of the act creating the Department of Labor, also enacted in 1913. The act of 1888 provided, on the initiative of the President of the United States, for voluntary arbitration, compulsory investigation, and publication of the decision. It also provided that the President might appoint two commissioners, who, with the United States Commissioner of Labor, should investigate controversies and make to the President and to Congress a report, which should be published. The investigation might be made on application of one of the parties, of the governor of the state concerned, or on the President's own motion. The act of 1888 was on the statute books ten years and in that time no attempt is known

[1] Alabama, California, Connecticut, Iowa, Louisiana, Maine, Massachusetts, Montana, Nebraska, New Hampshire, Ohio, Texas, Utah, Vermont, Alaska.

to have been made to apply the arbitration provision. Only once was an investigating commission appointed, that for the Pullman strike at Chicago in 1894, and on that occasion the commission took no action toward settling the dispute.

In 1898 the Erdman act[1] was passed, repealing the earlier law. It applied to common carriers and their officers and employees except masters of vessels and seamen, engaged in interstate commerce, by railroad or by railroad and water, the term "employees" including only those actually engaged in train operation. The act was therefore restricted to engineers, firemen, conductors, trainmen, switchmen, and telegraphers. In case of a dispute, the chairman of the Interstate Commerce Commission and the Commissioner of Labor must on application of either party endeavor by mediation to adjust the difference. Mediation was conditioned on request by one party, and on acceptance of the mediator's offer by the other party. If mediation proved unsuccessful, the mediators were to urge arbitration, and if the parties agreed a board of arbitration was formed, one member being named by each party and the third by these two. Failing their agreement on a third, he was to be named by the commissioners. The submission was to contain the following provisions: Pending arbitration the status existing immediately prior to the dispute was not to be changed; the award was to be filed with the clerk of the United States circuit court for the district and should be final and conclusive except for error of law; the parties must be bound by the award and it might be specifically enforced in equity, as far as the powers of a court of equity permit; neither side was to cease work on account of dissatisfaction with the award, for three months, without thirty days' notice; the award should continue for one year and no new arbitration should be had on the same subject in that time. The award being filed, judgment was to be entered accordingly at the end of ten days, unless exceptions were filed for matter of law. Appeal might be taken from the decision of the circuit court to the circuit court of appeals, whose determination should be final. The arbitrators were given powers of compulsory investigation, and

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[1] United States, Laws 1898, C. 370.

strikes or discharge of employees except for good cause were made unlawful pending arbitration and for three months after an award. Violation subjected the offender to liability for damages.

During the first eight years after the enactment of the Erdman law only one attempt was made to invoke it,[1] and that proved futile; but since 1906 there has been no serious strike, actual or threatened, in which one of the parties has not sought settlement under the act. Only one failure to adjust, when mediation was accepted before a strike began, is recorded. From 1898 to 1912, forty-eight applications for mediation and arbitration were received, the total mileage involved having been over 500,000 and the number of employees over 160,000. Nineteen applications were made by employers, thirteen by employees, and sixteen by both together. Mediation was involved in forty-four cases, of which eight were carried to arbitration. Four cases were directly submitted to arbitration. Almost invariably, when one side applied for mediation, the offer was at once accepted by the other, the exceptions having been comparatively unimportant. At the time the Erdman act was passed the arbitration features were regarded as paramount, but in practice the mediation features proved more valuable. Mediation proceedings were made as informal as possible. Conferences were held with the two parties separately, a joint meeting being held only when complete settlement or agreement to arbitrate was reached, and a fixed rule was observed that neither side should know what concession the other was willing to make, until the final agreement. The terms of settlement were not published without authorization of the parties. In the twelve arbitration cases, the first two arbitrators were able to agree on the third in only three instances. In no case was there repudiation by either side of an arbitration award, and there is only one instance of an appeal to the court, which proved most unsatisfactory on account of the prolonged litigation necessary.[2]

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[1] 1899.

[2] The act of March 4, 1911, authorized the President to designate any member of the Interstate Commerce Commission or of the Court of Commerce to take the place of the chairman.

In July, 1913, the Erdman act was superseded by the Newlands act.[1] It provides that a Commissioner of Mediation and Conciliation be appointed by the President with the advice and consent of the Senate, his term to be seven years. The President is also to designate not more than two other government officials, appointed with the consent of the Senate, to constitute, with the commissioner, the United States Board of Mediation and Conciliation. In the same manner the President must appoint an assistant commissioner of mediation and conciliation, to take the place of the commissioner if he be absent or the office vacant, and otherwise to assist him. In case of a controversy to which the law applies either party may apply to the Board of Mediation and Conciliation, which must seek to effect an amicable adjustment and if unsuccessful must urge arbitration. If interruption of traffic is imminent and would prove detrimental to the public, the board may proffer its services as mediator. In case of a dispute over any agreement reached through the mediation of the board, either party may apply to it for an opinion. On the failure of mediation, a board of arbitration may be formed, composed of six or three arbitrators. Each side chooses two members, or one member, and these choose together the remaining two or one. In case of failure to agree, the Board of Mediation and Conciliation names the remainder. Unorganized employees may choose their representative through a committee. The agreement to arbitrate must comply with the following requirements: (1) It must be in writing, (2) it must state arbitration is had under the act, (3) it must specify whether there are to be three or six arbitrators, (4) it must be signed by the accredited representatives of both parties, (5) it must specify the questions to be decided, (6) it must state that a majority award is valid, (7) it must stipulate the maximum interval from the completion of the board to the beginning of hearings, (8) it must stipulate the maximum interval from the beginning of the hearings to the handing down of the award, this time to be thirty days unless otherwise agreed, (9) it must state the date on which the award becomes effective and the life thereof, (10) it must promise

[1] United States, Laws 1913, C. 6.

faithful execution of the award, (11) it must declare that the award, testimony, etc., are to be filed with the clerk of the appropriate United States district court, and (12) it may provide that differences as to interpretation be referred back to the board, their ruling to have the force of the original award. Upon consent of both parties the board of arbitration is given powers of compulsory investigation. The arbitration agreement must be acknowledged before a notary public, the clerk of a United States district or circuit court, or one of the Board of Mediation and Conciliation.. The award is to become operative in ten days after being filed, unless exception be taken for matter of law apparent upon the record. Decision is rendered by the district court, or, on appeal, by the circuit court of appeals. Parties may jointly ask to have a board of arbitration reconvened. Nothing in the act may be construed so as to require service of any employee, and no injunction or other legal process may issue to compel performance by any employee of a contract.[1]

The act of March 4, 1913, creating a Department of Labor, provides that the Secretary of Labor shall have power to act as mediator and to appoint commissioners of conciliation in labor disputes, whenever in his judgment the interests of industrial peace may require it to be done.[2] No appropriation was made for the expenses of commissioners till October, 1913, and none for their compensation till April, 1914. Until the latter date, therefore, it was necessary to detail government employees from their regular work. An executive clerk was appointed in July, 1914, and the work systematized. Notwithstanding obstacles, the mediation work of the Department of Labor is reported to have been successful in twenty-three disputes out of a total of thirty-two.[3] In three important disputes the Secretary of Labor's offer of mediation was rejected. In the Père Marquette Railroad shop strike, the Calumet copper miners' strike, and the Colorado coal strike, mediation was desired by the employees, but declined

[1] F. H. Dixon, "Public Regulation of Railway Wages," *American Economic Review*, Vol. V, 1915, pp. 245–269; United States Bureau of Labor, *Bulletin No. 98*, January, 1912, "Mediation and Arbitration of Railway Labor Disputes in the United States," C. P. Neill.

[2] United States, Laws 1912–1913, C. 141, Sec. 8.

[3] Secretary of Labor, *Second Annual Report*, 1914, p. 48.

by the employers. In case mediation fails, arbitration may be proposed by the mediators, but they do not themselves act as arbitrators.

A semiofficial instance of arbitration occurred in the case of the great anthracite coal strike in Pennsylvania in 1902. In this case the government appointed an arbitration commission on the request of the parties without any special authority in law.[1] The miners wanted an agreement, the operators felt that it would not be binding and that the union obstructed discipline. In October, five months after the beginning of the strike, President Roosevelt appointed the Anthracite Coal Strike Commission. The men returned to work and the commission began its inquiry. It took the testimony of 558 witnesses. The losses of the strike were estimated at $25,000,000 in wages, $1,800,000 in relief funds, $46,100,000 to the operators, and $28,000,000 in freight receipts to transportation companies. The commission found the underlying cause of the strike to be the issue of recognition of the union. The award stated that the commission would recommend recognition of the union, were the anthracite unions separated from the bituminous unions, but that difficulties should be referred to a permanent joint committee of miners' and operators' representatives with an umpire appointed by the federal court, and that the life of the award should be till March, 1906. The commission further recommended a system of compulsory investigation. The agreement has been renewed, with modifications, and was still in force in 1915.

Much the best results of state or government intervention have been achieved through mediation. Public investigation up to the last few years has seldom been used. On the whole a good deal has been accomplished in the promotion of industrial peace, the chief obstacle in the way of success having been a lack of confidence on the part of the disputants in the impartiality or ability of the state or government officials. The powers of compulsory investigation and publication of the recommendations without consent of the parties, adopted

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[1] United States Bureau of Labor, *Bulletin No. 43*, November, 1902, "Report to the President by the Commissioner of Labor"; *Bulletin No. 46*, May, 1903, "Report of the Anthracite Coal Strike Commission."

in nearly half the American laws, have seldom been resorted to.

There still remains a large field for federal legislation which the Newlands act does not cover and where provision for mediation and arbitration seems desirable, namely, disputes involving railroad employees not engaged in actual train operation, disputes involving other agencies of interstate commerce, and disputes in which the President is requested to intervene to preserve order. State agencies cannot cope with these kinds of disputes. The Secretary of Labor is empowered to intervene in such cases, but his intervention brings in the political and trade union partisanship which is avoided under the Newlands act. Cooperation between federal and state agencies for the settlement of industrial disputes is also needed.

3. Coercion by Government

(1) *Restrictions on Strikes and Lockouts*

The preceding section has covered the mediatory measures which governments have adopted to diminish strikes and lockouts. Their essence, whether it be mediation, conciliation, or arbitration, is the voluntary acquiescence and participation of both the employer and the employees acting collectively. As long as arbitration is voluntary the bargaining power of neither party is affected.

From the point of view of legislation the strike and lockout have two aspects. On one hand they create injury to the public. On the other hand, they are a part of the bargaining process by which wages are determined. To the public the effects of the strike and lockout are similar. Both cause sudden stoppage of trade, failure to pay debts, expense of public relief, and sometimes disorder and famine prices. Hence legislation, springing simply from the needs of the public, treats the strike or the lockout as a public nuisance.

But as methods of bargaining these two are not equivalent. To the employer the right to lock out is comparatively unimportant. He may use it to discipline an unruly set of employees, to discourage unionization in his factory, or to "get the start" of his men. But in the usual bargaining he has no

need of it. He can keep his factory gates open even though, at the same time, he may be reducing wages or refusing demands for higher wages. He is not forced to lock out and he can force his employees to strike or submit. Legislation which prohibits or restricts the lockout does not greatly weaken the bargaining power of the employer.

But to the employees there can be no collective bargaining without the right to strike. For a strike is nothing but the collective refusal of the terms of the employer. Legislation which restricts or prohibits strikes, restricts or prohibits collective bargaining itself. It leaves the employee a helpless individual in the face of an aggregation of capital, unless the same law which restricts or prohibits the collective bargaining provides an adequate substitute in its place.

Consequently, as affecting the collective bargain, there are two essentials to an adequate measure of compulsory arbitration. First, the power to restrict strikes and lockouts. This is directed primarily against the employees. Second, the power to enforce awards as to wages and conditions of labor while the plant is running. This is directed primarily against the employer. There necessarily goes with these two powers the power of compulsory investigation where one of the parties is unwilling to submit to arbitration, but such power is but a means to an end of obtaining a just award and is as essential to a system of public information, like the Canadian industrial disputes investigation act of 1907, as to a system of coercion, like the Australian arbitration acts. It is the joint presence of these two essentials which makes the difference between compulsory arbitration and minimum wage boards on the one hand, and compulsory arbitration and the Canadian disputes act on the other hand. The wage board enforces a minimum award, but does not restrict the right to strike.[1] The Canadian disputes act restricts the right to strike without notice, but grants no power to enforce an award.

The degree of restriction upon the strike, as expressed in different laws, varies widely. Carried out in administration it varies still more widely. In the Canadian disputes act and in the Colorado industrial commission act of 1915, only

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[1] Except under special circumstances.

strikes without notice and hearing are unlawful. The same is true in the case of "unregistered" unions in New Zealand. On the other hand, all strikes by "registered" unions in that colony and strikes by anybody in most of the Australian states are unlawful. But because of administrative weakness, as will be shown, the actual coercion is very much less than is indicated on the face of the laws.

Of compulsory awards we have nothing in North America, except that in acts of eight states [1] and in the Canadian industrial disputes investigation act, there are provisions for enforcing awards which have first been voluntarily accepted by both parties. New Zealand goes a step further toward coercion, for there it is optional for either employers or employees to register, but one of the parties registered can appeal for an award which will be enforced against both the parties. Finally, in Australia, there is left no option to either employers or unions.

(2) *Development of Coercive Intervention*

a. England. This development toward restriction of the right to strike and the substitution of wage awards is sometimes treated as a step backward. This is entirely too simple a view. It is true that the freedom of the bargain has developed from a former time of government coercion and now shows tendencies to go back under government coercion again. But the modern coercion is different from the old coercion, since the modern government derives its authority from a broader range of classes than those which controlled the older governments. In the England of the middle ages, at first, the lord of the manor and the town officials determined the wages. The national catastrophe of the Black Death in the fourteenth century caused Parliament to fix wages by law in certain occupations. This proved unwieldy and Parliament gave the right to declare wages to the local justices of the peace. This system was codified in the Elizabethan statute of apprentices, 1562. England therefore was under a local wage board system, but on this local wage board was no

[1] See "Mediation by Government," p. 132.

representative of labor. The wage determined was not the minimum wage, as at present, above which the employee can bargain and below which the employer cannot bargain. It was a fixed wage. It was as unlawful for the employee to demand more as for the employer to offer less. It thus gave no freedom to either party for either individual or collective bargaining.

In the seventeenth and eighteenth centuries England ceased to be an aggregation of local markets and became a national market. A local system of wage determination became absurd and fell into disuse. In spite of the protests of the incipient trade unions of the time, the employer was freed from the compulsory wage, and obtained the right to bargain with the individual employee. On the other hand, at about the same time, the right of collective bargaining by employees was denied both by statutes and by judicial decisions. In 1720 Parliament began a series of acts against combinations of labor. In 1721 the court brought within the common law doctrine of conspiracy a combination of laborers to raise their wages. This policy reached its culmination in the conspiracy acts of 1799 and 1800.[1] But, beginning in 1824, when a strike to raise wages was partly legalized, the nineteenth century showed a continuous development in England of the right of collective bargaining. This formal right has been backed by unions which are both strong and reliable. The public has been saved much of the nuisance of the strike and lockout by a long series of voluntary trade agreements. Yet, recently in several of the sweated industries and in coal mining[2] the government has formed minimum wage boards which both protect the workers against the individual bargain of the employer and give a basis for collective action by the employees. Thus the twentieth century opens with a policy exactly opposite to that of the eighteenth century. Collective bargaining is free, but individual bargaining, when likely to be oppressive to employees, is restricted.

b. Australasia. In Australasia,[3] Canada and the United

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[1] See Bryan, *Law of Conspiracy*, 1909, for a general discussion of the subject.

[2] See "The Minimum Wage," pp. 174, 175.

[3] The material used in determining facts and conclusions regarding

States there was much the same development as in England up to about 1890. Since 1890, however, there has been in Australasia a complete revolution in policy. In 1894 New Zealand passed its compulsory arbitration act. The next state to adopt compulsory arbitration was New South Wales in 1901. It was followed by Western Australia in 1902, by the Commonwealth itself in 1904, and by South Australia and Queensland in 1912. Meanwhile Victoria and Tasmania had adopted compulsory wage boards. In twenty years all of Australasia has adopted laws which are coercive either of the individual bargain, the collective bargain, or both. Even in the United States and Canada, through the enactment of the Canadian act of 1907 and the Colorado act of 1915, there has been reintroduced coercion against strikes or lockouts without notice in industries affected with a public interest.

No single reason explains this new development. It rests in part on the comparative failure of collective bargaining to bring about collective agreements, in part on the broader democratic source from which modern governments derive their authority and which makes their coercion less oppressive to workmen, in part on the growing importance of industries affected with a public interest, and latterly, in part, on the demand of employers for protection against more powerful unions.

The evolution of coercion in Australasia to an extent far greater than that of the United States is a normal result of a development, economic, social, and political, sharply in contrast with our own. The public has been itself the largest employer of labor through its government railroads and other

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Australasia is mostly of a controversial nature. The wages boards of Australia have had a recent thorough and impartial treatment by Dr. Hammond ("Wages Boards in Australia," *Quarterly Journal of Economics*, Vol. XXIX, 1914, pp. 98–148, 326–361, 563–630). For the rest, the books on the subject are either too old (books age rapidly in regard to the Australasian labor situation) or too controversial, or if government publications, too colorless. The parliamentary debates which are given in full for the Commonwealth, Victoria, and New Zealand have been mainly relied upon. Three Australian labor papers have been consulted, but the anti-labor papers have been accessible only in the forms of clippings or quotations, of which the most valuable is the report of the American Trade Commission of the National Association of Manufacturers (see Bibliography).

public utilities. Private employers of labor, particularly industrial employers, have been men of small capital, employing few hands as compared with those in the United States. Apparently the capitalistic power which the Australasian labor leaders attack most bitterly is that of the shipper and the merchant. The position of the employer is somewhat similar to that in the United States in 1830. But the position of the employee has been sharply different. In 1830 in the United States the workingmen were striking for a ten-hour day. In Australasia, before compulsory arbitration had come into existence, the eight-hour day had become the general rule. But in America there is no standard. The hours range from eight to twelve, the days from five and a half to seven a week, the pay from $2 to $6 a day in the same locality. The bricklayer gets from two to even four times as much as the hod-carrier, measured by the hour, and an even higher ratio in comparison with ordinary laborers.[1] In Australasia there is no such difference. The bricklayer gets but 20 per cent. to 50 per cent. more than the building laborer.[2] In the United States labor is divided both politically and industrially by the negro and the immigrant. During the last twenty years the bulk of our immigration is from people receiving relatively low wages even for Europe. The immigration into Australasia has been comparatively light. It has almost all come from the British Isles, from a people receiving the highest wages in Europe. There have been no difficulties presented by conflicting races and different languages. There has been no large body of disfranchised or unnaturalized laborers. The election laws have been continuously more favorable to labor than those of the United States. In New South Wales, for example, an immigrant from Great Britain can vote in one year, from any of the Australian states in three months. Provision is made for absent voting. The entire labor force, not merely the skilled workmen, as in some of our eastern and southern states, can be mobilized at the polls.

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[1] Great Britain, Board of Trade, *Report on Cost of Living in American Towns*, 1911, pp. 65, 107.

[2] Australia, Commonwealth Bureau of Census and Statistics, Labor and Industrial Branch, *Report No. 2*, 1913, "Trade Unionism, Unemployment, Wages, Prices, and Cost of Living in Australia," p. 36.

The power of labor at the polls was first shown during the very years when labor proved impotent in collective bargaining. From 1890 to 1893 labor was defeated in four disastrous strikes. In 1890 a maritime strike paralyzed the shipping of Australia and New Zealand. To an exporting people, like the Australasians, a maritime strike ties up business as completely as a railroad strike in the United States. In the midst of the strike the unions asked for arbitration. The employers refused and the unions were beaten. The next year there was a sheep-shearers' strike, mainly for the right of collective bargaining. There was great public disorder. The unions were defeated. In 1892 the miners at Broken Hill, New South Wales, before they struck, asked for voluntary arbitration. This the employers refused and in the strike that followed the men were defeated. Another turbulent and disastrous sheep-shearers' strike marked the year that followed. During those same four years the number of parliamentary seats held by labor greatly increased.

These were the events preceding 1894, when the first compulsory arbitration act was passed in New Zealand. Strikes had meant loss to the public, and defeat to the employees. Voluntary arbitration had been refused by the employers. With a progressive Liberal Party dominant in New Zealand, with the Labor Party developing in Australia, the unions turned to government for coercive assistance in wage determination.

Unlike Australia, New Zealand has never had a large labor party, but a month after the defeat of the maritime strike a progressive Liberal Party came into power to hold office for the next twenty years. It was under this party that the first compulsory arbitration act was passed, as well as all the succeeding acts and amendments up to the amendment of 1913. The first act had the support of the representatives of labor, but was opposed by the employers. New South Wales had passed a law for voluntary arbitration in 1892 and, in the next large strike which followed, the employers had refused to accept arbitration under the act. So at that period there was little to show that voluntary arbitration laws were of any use. It seemed that if strikes were to be diminished at all it must be by compulsion.

The New Zealand act went into effect in 1895. Thence until 1906 there was a general period of prosperity, and what would probably have been a series of victorious strikes on a rising market became a no less victorious series of awards of the court of compulsory arbitration. Strikes were few and insignificant. With 1907 the prolonged period of prosperity ended. Thereafter the awards gave little or no increases of wages. There was a series of illegal strikes and a readjustment of the law in 1908. In 1913 and 1914 the law was put to a new trial. There was a spread of socialism and syndicalism among the employees. A waterside strike occurred, accompanied by many sympathetic strikes. The government's answer was to limit to narrower grounds the right to strike. Compulsory arbitration has now had twenty years of trial under conditions of ease and under conditions of stress. It started with a law which was just over the borderline of voluntary arbitration. With successive periods of strain the act has been strengthened until now it is clearly coercive.

The act as passed in 1894 provided for district boards of conciliation,[1] and one court of arbitration. The boards of conciliation were composed of an equal number of representatives of employees and employers. The representatives of both employers and employees were nominated by the registered unions of employers and employees within the district. The court of arbitration consisted of one supreme court judge, assisted by one member nominated by the registered unions of employers and one member nominated by the registered unions of employees. Neither the boards of conciliation nor the court of arbitration was authorized to receive any demands except from unions registered under the act. A demand received from a registered union, either of employers or of employees, must first pass before a board of conciliation, but if the award was unsatisfactory to either party an appeal could be taken to the court of arbitration, whose award was binding. During the hearings and until the expiration of the award it was unlawful to strike or lock out.

The experience of twenty years has not changed materially the court of arbitration, but the boards of conciliation have

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[1] Seven were appointed.

been transformed. They were always a cause of irritation and legislative tinkering, as they seem to have been from the beginning little more than boards of argumentation. Being appointed by districts rather than by trades, their members had no expert knowledge of the particular disputes brought before them. In the present law of compulsory arbitration, enacted in 1908, the machinery of the boards in the Canadian disputes act was applied. Commissioners of conciliation are appointed who receive appeals and who appoint advisers nominated by both parties, who must be men with practical experience in the trade concerned, either as employers or employees. This system has proved to be more successful than the earlier system.

As to strikes and lockouts, the first act, on the face of it, implied an equal restriction on employers and employees. But, as employers did not appeal to the court, and as the registration on each side was voluntary and could be withdrawn on short notice, the act meant for the employees voluntary arbitration with an enforceable award. This worked smoothly up to 1906 while wages were rising and the coercion of the act was all upon the employer.

But the illegal strikes of 1907–1908 caused Parliament to separate penalties for strikes by a provision for the attachment of wages, to levy comparatively heavy fines on unions whose members struck, and to penalize all strikes or lockouts, whether of registered unions or not, which were made without sufficient notice in public utilities and in certain industries, the steady continuance of which is affected with a public interest. This was adapted from the Canadian disputes act of 1907. The waterside strike of 1913–1914 caused Parliament to apply a somewhat similar provision to all strikes or lockouts in all industries. For unregistered unions the strike without due notice is not prohibited. For registered unions all strikes are prohibited.

As far as one can judge [1] the enforcement of penalties for strikes and lockouts has been pursued coolly and persistently under a system of moderate fines. Half the strikes which have

[1] Based almost entirely upon government reports and parliamentary debates.

occurred are perfectly legal strikes—strikes of unregistered unions, but there have been a number of serious illegal strikes. The waterside strike of 1913–1914 started with unions which had a perfect right to strike and spread by sympathetic action to other unions registered under the award, which therefore had no right to strike. New Zealand has not achieved industrial peace. One might question whether a system in which it is illegal for some unions to strike and legal for others can ever be satisfactory.

The act of 1894 in New Zealand recognized registered unions only. Neither the individual employer nor employee could appeal to its protection. This remains true for the employee under the latest amendment, but the individual employer now may register.

Though the first act contained no reference to preference to unionists, this preference was granted in the awards as early as 1896 and was incorporated in the law of 1900. In the earlier awards preference to unionists simply meant that if there were a vacancy a union man must be given preference over a non-union man of similar ability. In the later awards preference to unionists has become equivalent to a closed shop, for an employer is ordered to discharge a non-union man in favor of an unemployed union man. Union preference is customarily granted where the union can show that it had a strong organization previous to the dispute.

With the right to strike taken away, the problem of protecting labor leaders against victimization has consumed considerable attention both of the courts and of Parliament, without results satisfactory to the unions. Provisions in regard to victimization have repeatedly been changed. Sometimes the burden of proof has been put upon the employer, sometimes upon the employee.

Registered unions, therefore, have gained a preference which amounts almost to a closed shop and some protection against victimization, but at the expense of very large control through court decisions. Initiation fees, membership fees, fines, procedure of unions, relations to other unions,[1] all have been brought either within the awards or within other

[1] New Zealand, *Journal of the Department of Labour*, January, 1914, p. 3.

court decisions. A recent decision which applies, however, to all unions whether registered or not, declares that union funds may not be used for political purposes.[1] Thus the government makes politically innocuous the labor union which it encourages.

It might be answered that a registered union is free to cancel its registration and thus to escape control by the government, if obnoxious. But both in the strikes of 1908 and in the strike of 1913–1914 the employers coerced the employees into registering under the act by refusing to recognize any union which had not registered. This practical coercion, which seriously restricts the apparent voluntary character of the law on the side of unions, is at present the chief cause for complaint by labor leaders.

Where arbitration is voluntary, the awards represent an adjustment only between the demands of the two parties and are based on their relative strength. With the element of coercion the third party, the public, enters to determine that the awards shall not be inconsistent with its notions of a proper standard of wages. As shown above, compulsory arbitration in New Zealand has been largely voluntary on the part of the employees. Decisions, therefore, have taken into account little more than the respective demands of the two parties. But in two respects there has been a change of policy. Union tactics and the early awards limited the proportion of apprentices. The later awards generally specify no limit, but very sharply raise the wages of apprentices. The public purpose of open opportunity is thus subserved without being turned to the private end of the substitution of apprentices for journeymen. Again, the earlier acts allowed slow workers to receive less than the minimum wage only with the consent of the secretary or president of the union. This was changed in 1908 by allowing a state official to grant permits to slow workers.

The law was originally passed by the Liberal Party, favored by the labor unions, but opposed by the employers. In the crisis of 1908 the Liberal Party revised the law against the opposition of a portion of the Reform Party (the chief opposi-

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[1] *Parliamentary Debates*, 4th Session, 1914, pp. 659–665.

tion party) and of the Labor Party. This revision the employers favored. In the debates in Parliament the leader of the opposition (later the premier) declared himself against compulsory arbitration, but in favor of an act somewhat similar to the Canadian disputes act. During the strike of 1913–1914 the Reform Party, now in power, declared in favor of compulsory arbitration and added to the law amendments which were distasteful to the Labor Party. At the present time (1915), however they differ in details, all parties in Parliament are committed to the principle of compulsory arbitration, the only opposition being from groups not yet represented in Parliament, like the Socialists and Syndicalists.

Turning from New Zealand to Australia, three chief facts appear in the history of coercive legislation: (1) The laws were enacted and administered in the presence of a large labor party; (2) two systems, compulsory arbitration and wage boards, have grown up side by side, until, in several of the states, the two have merged; (3) Australia, as a federal commonwealth, has had both federal and state courts of arbitration. It has been one thing to enact and administer laws of compulsory arbitration in the presence of an insignificant labor party, as in New Zealand. It has been very different to do the same in Australia, where the Labor Party was first a large third party, later a large second party, and in September, 1915, was in control of the Commonwealth and the majority of the states.

The period of the strikes of 1890–1893 was a period of extraordinary growth of a socialistic Labor Party. In 1890 there was but one labor member in all the legislatures of Australia. In 1893 there were eighty in the lower houses.[1] The members of the upper houses are elected or selected under restrictive conditions.

This movement was a flash in the pan, but with the creation of the Commonwealth in 1899 a much more solid labor movement developed. There was a labor ministry for a few months in 1904, another labor ministry in 1910, just barely defeated by the popular vote of 1913. Again, during the European war, there was another appeal to the polls and, upsetting all

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[1] St. Ledger, *Australian Socialism*, 1909, p. 56.

precedents and marking the distinction between the Australian labor movement and labor movements elsewhere, the Labor Party was victorious in a campaign based on its record of adopting a universal military service act. Queensland, New South Wales, Western Australia, South Australia, and even conservative Tasmania are also now, in 1915, under labor ministries. One large state, Victoria, remains anti-labor. With labor parties taking the labor vote, with anti-labor parties having but slight chance of any large labor vote, with organization of labor on the farms as well as in the workshops, Australia is divided politically between the employer and the employee. This means that any law affecting wage bargains is enacted or administered by a party which unequivocally represents one or the other side to the bargain. If a labor party is in control the compulsion of a compulsory arbitration law is not very real to the employee nor is it very real to the employer if an anti-labor party controls.

The two Australian states with the largest population, Victoria and New South Wales, were the first to adopt coercive measures, but one adopted the wage board system, while the other adopted the compulsory arbitration system. In 1896 Victoria enacted the first of its wage board laws. In 1901 New South Wales enacted its first law of compulsory arbitration. Here we may contrast the workings of the minimum wage boards and compulsory arbitration as compared with the theoretical differences between the two systems.

In the early 'nineties there was a strong humanitarian movement in Victoria, increased by the report of the parliamentary board of 1893 on the existence of sweated labor in Melbourne. The minimum wage bill, as originally introduced, applied only to women and was intended solely for the benefit of those who were suffering under unfair wage conditions. The act as finally passed in 1896 applied to both sexes, but only to those industries particularly notorious for low wages. Each wage board consisted of a chairman and an equal number of representatives elected by the votes of all employees and of employers. The employer had votes in proportion to his average number of employees. The wage board fixed wages, hours, and certain other matters, but could not grant union preference. This method of election of representatives prac-

tically created state unions of employees and employers. The method proved unsuccessful. The elected employees and employers were too much committed to their electors. In the present system the employers and employees on the board are appointed, presumably from the more reputable employers and less militant employees. Decisions are based on what the more reputable employer pays and are designed to protect him from unfair competition. In fact, it was stated in one of the laws, since amended, that wage board decisions should conform to what was "paid by reputable employers to employees of average capacity." This has gradually brought employers to favor the law. The law also has usually been favored by the Labor Party. It does not take away the right to strike, but provides such a ready substitute that Victoria, more than any other of the Australian states, can claim to be a "country" almost "without strikes."

The original wage boards were created in industries notorious for sweated labor and brought rapid improvement in the condition of workers. But wage boards have since greatly increased in number and have been extended to industries where wages are high and labor is organized. To mark the change of purpose in the creating of new wage boards it is sufficient to say that two of the new boards of 1912 were created against the protest of the labor members of Parliament, one of them at the petition of the employers, and that another wage board was given authority only over men workers because the women petitioned not to be brought under it. The wage board system of Victoria, therefore, has been extended beyond its original purpose and has become a method of protecting reputable employers from unfair competition and insuring industrial peace by providing a ready means of adjustment of grievances.

Turn now to the turbulent history of New South Wales. Before compulsory arbitration was adopted, New South Wales was much more subject than Victoria to serious strikes and such it has remained. This one state furnishes more than half of the days lost by strikes in all of Australia.[1] Compulsory arbitration cannot be said to have increased such disputes,

[1] Australia, Commonwealth Bureau of Census, *Labour Bulletin No. 4*, February, 1914, p. 262.

but simply not to have stopped them. After a futile voluntary arbitration law of 1892, New South Wales passed its first compulsory law in 1901. This act was especially important because on it was based the present Commonwealth act of 1904. Here was first introduced the unique feature later copied in the Commonwealth act, that the court itself must give its consent before any prosecution for a violation of the nature of a strike or lockout could be commenced. That consent was not frequently granted. For the rest, the act provided for a single court with final determinations on all matters within the scope of the act. Preference could be granted to unionists.

The act expired in 1908. The single court had not disposed of the cases brought before it with sufficient rapidity. The anti-labor ministry in power at that time adopted a comprehensive system of wage boards modeled after the Victorian system, whose determinations were subject to appeal to a special court of arbitration. All strikes were declared illegal. A system of fines was adopted to reach the union funds. Strikes, almost of the character of rebellion, followed, and the next year the same ministry rushed through a bill applicable to strikes in certain necessary industries, like coal mining. These provided a penalty of not exceeding twelve months' imprisonment for instigating strikes and the same length of time for mere participation in a strike meeting. Immediately there followed a strike of all the coal miners in New South Wales. The situation became intolerable and the Labor Party came back to power. A new act was passed in 1912. The severe penalties were withdrawn and special conciliation boards were created for mine workers.

But neither under anti-labor ministries nor under the present labor ministry is New South Wales industrially quiet. Frantic assertion of authority has been followed by flabbiness in the administration of the law. This has resulted in a series of headless strikes.[1] The officials of the union, who might be prosecuted, make a show of dissuading the men, and the men strike with neither political nor economic consequences, as

[1] Based on the report of the American Trade Commission of the National Association of Manufacturers and the *Australian Worker*, Sydney.

the government will not prosecute the rank and file, and the employer is bound by the awards. Practically the compulsory arbitration system of New South Wales has become an imperfect wage board system.

Among the other states, Western Australia copied the New Zealand model in its first law of 1902. But, as in New Zealand, the district conciliation boards proved a failure. In the laws of 1912 they were abolished, and now the court may appoint advisers or "assessors" to assist it. Interestingly enough, union preference, provided in the earlier law, disappears from the later one in spite of the fact that the new law was passed by a labor ministry. Reports of the actual working of the law are contradictory. The two other states, Queensland and South Australia, passed their first law in 1912, in both cases by the anti-labor party. The Queensland law was the result of a streetcar strike. The South Australian law is noteworthy for its severe and elaborate penalties for acts connected with strikes, such as picketing. These systems have been in existence too short a time to show their actual working.

Among the provisions of the new Commonwealth constitution of Australia, adopted in 1899, was the right to create a compulsory arbitration court for interstate disputes. This right was made substantial in 1904 by the passage of the industrial arbitration act. The law was modeled on the 1901 act of New South Wales. There was no system of wage boards, but simply a single court of arbitration with its president the sole member. This court not only hears appeals, but can on its own initiative summon parties. Its determinations are final, but it "may" state a case to the high court (the supreme court of the Commonwealth) for advice. As in the New South Wales law, no prosecution can be started against any one for a strike or a lockout without the consent of the court. Since this consent has never been given in the case of a strike the law is scarcely more than a minimum wage law.

The scope of its power in relation to the state courts is, for us, the most interesting question. The law gives to the court power over "disputes extending beyond the limits of any one state"—except in regard to disputes in agricultural industries. Subsequent acts have attempted to enlarge its scope,

but have been declared unconstitutional, and when Justice Higgins, the president, has submitted a case to the high court, the rulings of the court have usually been restrictive against the Commonwealth. Uncertainty has remained as to what is a "dispute" and what is really meant by "extending beyond the limits of one state." It is obvious that if a request for a change of wages paid by two different employers in two different states constitutes a "dispute extending beyond the limits of one state" the Commonwealth court can strip the state courts of any real power. Already the court has determined wages on the local tramways from Perth on the west coast to Brisbane on the east coast.

A curious distinction has been made by the high court, by which wage board decisions of Victoria are considered part of the Victorian law and have restrictive power over rulings by the Commonwealth Court of Arbitration, where applied within that state, while the awards of arbitration courts of the several states are not regarded as law and have no restrictive power. This led in 1912 to the employers of Victoria petitioning that the building trade laborers of that state be brought under a state wage board, as the latter were seeking, with the building laborers of other states, to come under the Commonwealth Court of Arbitration. The Labor Party stands committed to the abolition of state courts of arbitration, their place to be taken by district courts under the authority of the Commonwealth.

Unlike New Zealand, there can be no legal strike in Australia outside of Tasmania and Victoria, since the compulsory arbitration laws have "blanket" provisions against strikes and lockouts. But, with governments either purely labor or purely anti-labor, th eadministration of these laws seems to have been, at least in New South Wales, either absurdly flabby or absurdly frantic. Instead of government acting as a judge it becomes a plaintiff or defendant determining the administration of law.

More Commonwealth ministries have been wrecked on both sides of the question of "union preference" than on any other question. Union preference, which is used as a harmless bait in New Zealand to bring labor unions under the act, becomes a grave political question in the states and in the Common-

wealth, where the vote of labor and its opponent is very close. New South Wales has adopted union preference in its compulsory arbitration acts. Rather curiously, Western Australia, with the strongest labor party of all the states, repealed, in 1912, the provisions regarding union preference which had existed in the act of 1902. The Commonwealth court has had the right to grant union preference, but Justice Higgins, although once a member of a labor ministry, grants union preference, not as in New Zealand in cases where there is a strong union, but only in cases where a union has been oppressed.

In most of the states decisions are based on existing strength of the parties, and are similar, therefore, to decisions in a court of voluntary arbitration. But Justice Higgins of the Commonwealth court has chosen for his minimum for the lowest paid laborers not the customary wage, nor a wage based on the strength of the union, but a wage based on a standard of living. This was most sharply shown in the decision in 1914 in the case of the dock laborers, where probable annual earnings, taking into account fluctuations of employment, were taken as the basis for an hourly wage.[1] We have thus traveled far from voluntary arbitration or strikes, with wages determined by the strength of the two parties, far from minimum wages based on what the more reputable employers pay, to a determination of wages on a consumers' standard of living.

c. Canada and the United States. In Canada and the United States we again contrast the situation of the classes. Australia is ruled by a labor party. Labor in the United States has never been a chief minority party. Where it has been a straight conflict between labor on one side and the other elements of society on the other side, labor has been defeated at the polls. Again, in regard to unionization, the unskilled and semiskilled are unionized in but a few industries. Organized labor is, for the most part, organized skilled labor. Such labor is strong at industrial bargaining; it is weak only at the polls. It is therefore no blindness but wise calculation which has set the leaders of organized labor against government interference in industrial disputes. They could not count on controlling government, and they cannot predict what standard the gov-

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[1] *New Statesman*, June 6, 1914, p. 262.

ernment would use in its awards. Unions which have gained for their members the more desirable conditions of labor are not willing to risk what they have gained for a doubtful standard imposed by the outside public which might take into account the average and not the exceptional condition of labor.

The employers, also, are afraid of compulsory arbitration. Through their voting rights alone they have even less power at the polls than the skilled workmen. Only by other means and by the aid of other classes can they control politics.

There is but one class which would be likely to gain by enforcing higher standards. It is the immense but miscellaneous class of unskilled and semiskilled men, and of women and children. They have no voice to make their wishes known.

Against the joint opposition of organized labor and capital, compulsory arbitration makes no headway in the legislatures, in spite of the agitation that follows every great strike. Only once has it been within the zone of practical politics. The anthracite coal strike of 1902 put the voluntary system to a considerable strain. Arbitration was accepted by the employers only after pressure was put upon them by the President of the United States.

In the report on the arbitration award governing the demands of the eastern locomotive engineers in 1912, the chairman, representing the public, advocated a permanent wage commission and added: "Is it unreasonable to ask that men in the service of public utilities shall partially surrender their liberty in the matter of quitting employment, so that the nation as a whole may not suffer disproportionately?"[1] The sharpest criticism of this doctrine came from the minority report representing the engineers: "To insure the permanent industrial peace so much desired will require a broader statesmanship than that which will shackle the rights of a large group of our citizens."[2] When the western railroad arbitration of 1915 resulted unsatisfactorily to the brotherhoods the minority, representing them, protested that "no act by a

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[1] *Report of the Board of Arbitration in the Matter of the Controversy between the Eastern Railroads and the Brotherhood of Locomotive Engineers*, 1912, p. 107.

[2] *Ibid.*, p. 123.

governmental tribunal could more keenly bring home to the wage-earners of this country the consideration they might expect if boards under governmental supervision and control were to review and adjust their wages and working conditions on that basis." And so the matter stands: the employers are dissatisfied with what they consider one-sided compulsory arbitration, the employees attack any greater measure of coercion.

One of the objections frequently raised against compulsory arbitration is its unconstitutionality in violation of the thirteenth amendment, in that it imposes involuntary servitude other than punishment for crime. This objection is probably not sound. We have already seen [1] that quitting work collectively in pursuance of an unlawful agreement contains the element of conspiracy which makes a strike essentially different from the ordinary quitting of work. Such a concerted agreement may be enjoined and punished as contempt, and there are sufficient precedents in the decisions to warrant the constitutionality of imposing penalties, should a compulsory arbitration law be shrewdly drafted and popularly supported. It is not enough to raise the objection of constitutionality, for constitutions change with interpretation. The lasting objections must be found elsewhere.

While Canada and the United States have not adopted systems of compulsory arbitration, they have adopted coercive features at three different steps in the procedure of governmental arbitration. These are compulsory investigation, the enforcement of awards which have been accepted by both parties, and the prohibition of sudden change of terms or sudden strikes or lockouts.

The first is for the sake of official and public information. Directly it can have no effect on the bargaining rights and the bargaining tactics of the two parties. It is embodied in some of the state laws of voluntary arbitration and was a part of the federal act of 1888.[2] But when it was proposed in the Townsend bill in 1904 to give that power again to a commission appointed by the President, the bill was defeated, for at the

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[1] See "The Law of Conspiracy," pp. 101–104.
[2] See "Mediation by Government," pp. 132, 133.

hearing appeared against it the representatives of the American Federation of Labor, the railroad brotherhoods, and of the American Anti-boycott Association.

It is only with the Canadian industrial disputes investigation act that collective bargaining itself is subject to the coercion of government. That act makes a sudden change of terms and a strike or lockout without sufficient notice unlawful in a certain class of industries affected with a public interest. The industries are public utilities and mines. In 1906, the year before its passage, there had been a prolonged strike in the Alberta coal mines which threatened a coal famine. The act makes it unlawful in such industries to change the terms of employment without thirty days' notice, and requires that, if within that time, appeal is taken to the minister of labor, the terms of employment shall remain the same pending an investigation. It is likewise unlawful to strike or lock out until after a hearing and findings by the investigating board. Then either a change of terms, or a strike, or a lockout is perfectly lawful. The act is coercive only against the sudden strike and the sudden change of terms. Upon application the minister of labor appoints a board to which the employees nominate one man, the employers another, and the two men nominate the chairman. In case of failure to nominate the minister does the selecting.

The law seems to have been successful in diminishing the number of strikes, probably more through conciliation and public opinion than through coercive measures, which seem not to have been seriously enforced. There have been but nineteen strikes in industries under the act from 1907 to 1915, and the *Labour Gazette*[1] boasts of a very large number of settlements. The employers favor the law. As to the employees, the miners are hostile, the railroad men generally favor it. Other classes of labor are mild in their attitude.

The Canadian disputes act instantly appealed to the public or to the employers of other lands. Part of its machinery was adopted the following year (1908) in New Zealand. An act somewhat similar was passed in the Transvaal in 1909. Bills based on its principles were introduced into the legisla-

[1] Canada, *Labour Gazette*, Vol. XV, 1915, pp. 1302–1312.

tures of New York, Wisconsin, and California, but it was not until the upheaval in Colorado in 1914–1915 that a law was actually passed in the United States embodying restrictions on change of terms and on strikes and lockouts.

The law of 1915[1] gives to the Industrial Commission of Colorado, among its other powers, the power to compel a hearing in the case of an industrial dispute, and to deliver an award, which, like those under the Canadian act, is not mandatory. As in the Canadian act, change of terms of employment, strikes, and lockouts are prohibited until after thirty days' notice and until after a hearing and award if such hearing is started within the time of notice. Going beyond the Canadian act, which is limited to public utilities and mines, the Colorado law covers all employees except those in domestic service, in agriculture, and in establishments employing less than four hands. The law was first invoked[2] when a large cracker company announced a decrease of wages to take effect the following week. Some of the employees struck and the commission ordered the employers to submit their proposed reduction to the commission and the employees to resume work. Both sides obeyed.[3] "No longer is a strike a private affair," was the editorial comment in a prominent Denver paper.[4]

4. Unions of Government Employees

With the broadening scope of the state as an industrial employer, the collective bargain is, in some cases, entered upon even by the government with its employees. Here it presents a peculiar problem. The state[5] employs permanently larger bodies of workers than any other single employer.[6] It is not

[1] Colorado, Laws 1915, C. 180.
[2] August, 1915.
[3] *Rocky Mountain News*, August 10, 1915.
[4] *Ibid.*, August 11, 1915.
[5] Meaning the governmental unit, national, state or municipal.
[6] The United States government on June 30, 1914, had in its employ 482,721 persons (United States Civil Service Commission, *Report*, 1915, p. 6), approximately the same number as employed in the entire iron and steel industry in the United States. To this number should be added the employees of state and local governments.

subject to the competition that limits the private employer in his bargain with labor, and it is the medium through which the employee with the suffrage becomes in a measure his own employer. In such states as allow practically universal suffrage it then seems less necessary for the public employee to use the weapon of strike or boycott employed by the private worker in his struggle for better wages and working conditions.

(1) *Recognition of Unions*

The right of the public employee to strike is not conceded by government, although in many countries the right of government workers to organize is not denied them. Russia,[1] Turkey,[2] and Roumania[3] forbid concerted action on the part of government employees under penalty, and even in republican France public strikes are forbidden and punished,[4] while the right of public employees to organize is at least doubtful and certainly restricted.[5] Even in the United Kingdom, in Australasia and the United States, where government employees are nominally allowed to combine, trade unionism among public employees is not freely tolerated, there being still a general sentiment that opposition of public employees to the government savors strongly of insubordination and unpatriotism.[6] This feeling is especially strong in France, where unionism has come to be regarded as a real danger, due largely to the great postal and railway strikes.[7] At the same time

[1] Imperial ukase of December, 1905 (*Bulletin of the International Labor Office*, Vol. I, 1906, p. 51).

[2] Act of November 6, 1908 (*Ibid.*, Vol. III, 1908, p. 331).

[3] Decree of December 19, 1909 (*Ibid.*, Vol. V, 1910, p. 437).

[4] Order of March 18, 1909, relating to the organization of disciplinary committees of the outdoor staffs of the postal and telegraph service, providing penalties for "collective or concerted refusal" on the part of the staff. (*Ibid.*, Vol. IV, 1909, p. 293.)

[5] The minister of public education maintained in 1912 that under the law of 1884, which gave legal standing to labor unions, syndicates of teachers were not recognized, and such a syndicate was dissolved by the French government. See *American Federationist*, February, 1913, p. 136.

[6] *New Statesman*, May 8, 1915, special supplement on "State and Municipal Enterprise," p. 22.

[7] An account of the postal strike and its cause may be found in J. H. Harley, *New Social Democracy*, 1911, pp. 122–143. Also see Graham Taylor, "Unionizing Government Employees," *The Survey*, May 8, 1909, p. 226.

the feeling of the employees, as expressed in the international conference of public employees (August, 1907), is that the employee, even on public works, has a right to organize and strike as a means of obtaining desired concessions as to conditions of employment.[1] In the United States, in 1902, the President by executive order, amended in 1906, forbade all government employees directly or indirectly to solicit an increase of pay or to influence legislation in their behalf, save through the heads of departments in which they served. The protest of the unions[2] led to the act of 1912, adopted as a rider to the Post Office appropriation act,[3] which permits post office employees to petition Congress, but forbids them to affiliate with any outside organization which imposes upon them an obligation to strike, or purposes to assist them in any strike against the government.[4] The executive order applies only to the activities of unions of public employees influencing Congress. It does not prevent organizations within the department nor collective bargaining with the department. Such collective bargaining exists in a crude form in departments requiring skilled labor, and, in the case of the War Department, a complete scheme of arbitration has been worked out for the arsenal at Watertown, Mass., for all mechanical employees. This provides for a mediation board of an equal number of members elected by the employees and officers appointed by the commanding officer. There is a supreme Mediation Board at Washington, including representatives of the national unions to which the arsenal workers belong, and officers appointed by the Chief of Ordnance. Appeal lies to the Secretary of War.[5] A similar arrangement had been worked out in the street-cleaning department of New York in 1896.[6]

Other governments have found it necessary to adopt forms

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[1] United States Department of Labor, *Bulletin No. 88*, May, 1910, p. 867.

[2] See *American Federationist*, January, 1915, p. 28; also January, 1912, p. 36; January, 1914, p. 51.

[3] *Congressional Record*, Vol. XLVIII, 1912, p. 11819.

[4] United States, Laws 1912, C. 389, Sec. 6.

[5] See O. O. 10225/582, "Instructions in regard to Hearings of Grievances, issued January 9, 1915, by the Chief of Ordnance to the Commanding Officer, Watertown Arsenal."

[6] See Commons, *Labor and Administration*, 1913, pp. 108–113.

of collective bargaining with employees. In New Zealand the act of 1908 [1] provides that any society of railway employees may register and become officially recognized by the government. It may then enter into an "industrial agreement" with the minister of railways and, by registration, the articles of agreement are brought under government enforcement. Any appeal goes before the court of arbitration, consisting of a judge and representatives of the government and employees. After a hearing the award takes the form of a new compulsory agreement or an enforcement of the old. There are appeal boards for postal and telegraph employees,[2] tramway employees,[3] and for public-school teachers; and any ten or more teachers may organize a society, which, like the railway organization, registers and has corporate existence.[4]

The French plan for railway administration does not recognize an employees' union as such, but goes farther than the New Zealand scheme in arranging for cooperation between government and employees. Officials and workers are represented on the various committees by their chosen delegates. Thus, in the councils and grades committee they help prepare reports and lists of premiums and promotions. As delegates they are part of the council of inquiry whose duty it is to express an opinion on all important questions of discipline submitted by the general manager.[5] In addition there are the representative district councils, which act as buffers between the railway administration and the employees, make explanations, and administer necessary reprimands. Officials no longer reprimand workmen. Above the district councils is the *Conseil de Reseau*,[6] the supreme advisory board of the whole state railway system. Of the twenty-one members

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[1] *Bulletin of the International Labor Office*, Vol. III, 1908, p. 312.

[2] Act of October 24, 1894. New Zealand Statutes, 1894, post and telegraph department act.

[3] An act to amend the tramways act, 1908, New Zealand Statutes, 1910, p. 370.

[4] Act of October 31, 1895, New Zealand Statutes, 1895. School teachers in the United States have also organized and affiliated with a central federation; *American Federationist*, January, 1903, p. 15.

[5] Report of State Railways Administration for 1909. (*New Statesman*, May 8, 1915, special supplement on "State and Municipal Enterprise," p. 25.)

[6] Instituted by ministerial decree September 24, 1911. (*Ibid.*, p. 25.)

appointed by the minister of public works, four are working employees.[1]

In the Prussian railway system, autocratic as it is, there have been since 1892 a series of advisory committees appointed by the minister of public works, whose express mission it is to smooth the working of the system by advising on all possible points of friction between management and operatives.[2] In the Swiss administration it is said to be an invariable custom for the general secretary of the railwaymen's trade union to be appointed a full member of the board of administration, the supreme governing authority of the railway system.[3]

The foregoing are instances of formal agreements sanctioned by law or established by administrative order. Far more extensive than these formal agreements is the unofficial recognition of unions, especially in England and the United States, where the head of the department deals with the representatives of the union and then issues orders conforming to the agreement but not mentioning the union. In this respect the collective bargain is similar to that of certain large railway systems in the United States which nominally do not recognize the railroad brotherhoods, but actually issue orders, through the general manager, to which the unions have previously consented.

The advantage to government of formal recognition of unions consists in establishing permanent boards of arbitration through which all grievances take their regular course. Without such boards the unions, through political influence, go over the heads of the departments to the legislative branch of government. This is proper enough, and, indeed, is inevitable under universal suffrage, no matter what restrictions the administration attempts to place upon them. But, with permanent boards of arbitration, practically all grievances and demands of the union can be settled within the department, leaving to the legislature (municipal, state, or federal) only the general policy of establishing standards of hours and wages [4] to be enforced through the arbitration boards.

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[1] *New Statesman*, May 8, 1915, p. 25 from Emil Davies, *The Collectivist State in the Making*, 1914.

[2] *Ibid.*, p. 25. See also E. S. Bradford, "Prussian Railway Administration," *Annals of the American Academy*, Vol. XXIX, 1907, p. 310.

[3] *New Statesman*, May 8, 1915, special supplement, p. 25.

[4] See "The Minimum Wage," p. 179; "Hours of Labor," pp. 259, 260.

Outside the compulsory systems of Australasia, the final appeal from arbitration boards lies with the head of the department. In the war department it is the secretary of war. In the street-cleaning department it is the commissioner. This is essential in any voluntary system of arbitration in public employment. The unions retain the right to strike if they are not satisfied with the arbitration, and therefore the head of the department must finally decide as against a strike, in case arbitration fails.

Another distinction between unions of public employees and those that deal with private employers is the attitude toward the closed shop. Government cannot discriminate between citizens, as can private employers, and must maintain the open shop.[1] But, since government is not forced by competition to cut wages or lengthen hours, the unions do not need the protection which the closed shop gives them. Yet, under the compulsory systems of New Zealand and New South Wales, a preferential union shop is maintained, which approaches the closed shop.[2]

In the United States there is a semblance of union preference in the statutory requirements of three states[3] to the effect that the label of the typographical union be affixed to all public printing. However, in Maryland this law seems to have been disregarded,[4] while in Montana and Nevada, the remaining two states, there have been no court decisions supporting the law, although it has been observed. In at least eight other states there have been court decisions adverse to discrimination in favor of organized labor, in regard to either employment on public works or the use of the union label on public printing,[5] on the ground that the restriction of employment thus imposed is unconstitutional.

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[1] See decisions below.

[2] New Zealand, act of 1908, *Bulletin of the International Labor Office*, Vol. III, 1908, p. 312. New South Wales, industrial arbitration act, Acts of Parliament, 1911–1912, No. 17.

[3] Maryland, Public General Laws 1911, Art. 78, Sec. 9; see also Laws 1910, C. 698, Art. 78; Montana, Revised Code 1907, Sec. 254; Nevada, Revised Laws 1912, Sec. 4309.

[4] Reports of state officials do not carry the label.

[5] Illinois: Adams *v.* Brennan, 177 Ill. 194, 52 N. E. 314 (1898); Holden *v.* Alton, 179 Ill. 318, 53 N. E. 556 (1899); Fiske *v.* People, 188 Ill. 206, 58 N. E. 985 (1900). Iowa: Miller *v.* City of Des Moines, 143 Ia. 409,

(2) *Cooperative Employment*

An official recognition of organizations of public employees is found in the cooperative employment system. There are two principal methods, the first of which is the cooperative day labor system, as applied in New Zealand.[1] This is a time and piece work system under which men out of employment arrange themselves in small groups, averaging about fourteen (the groups were at first, and occasionally still are, larger), select one or two "headmen," and enter into contracts with the government for sections of public work at "schedule rates" based on the estimates of government engineers in charge of the work. The plan seems to have worked well in New Zealand, but not so well in New South Wales, where it has been confined to the lowest and least efficient stratum of workers. Under the plan the government is responsible for the checking up and actual direction of the work. Evidently the group is not a real labor union.

The second form is found principally in France and Italy,[2] where workmen organize their own groups and, as such, contract for government work. The group constitutes, therefore, not a labor union, but a union of labor contractors. The officials of the government are not in charge of the work, but they turn it over to the groups, the plan being a modification of the competitive contract system rather than a variety of direct employment. The government authorities favor these societies in the placing of contracts, and the result has been a steady and appreciable growth in their number and undertakings.

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122 N. W. 226 (1900). Tennessee: Marshall & Bruce Company *v.* Nashville, 109 Tenn. 495 (1902). Michigan: Lewis *v.* Detroit Board of Education, 139 Mich. 306 (1905). Georgia: Atlanta *v.* Stein, 111 Ga. 789, 36 S. E. 932 (1900). Nebraska: Wright *v.* Hoctor, 95 Neb. 342, 145 N. W. 704 (1914). Alabama: Inge *v.* Board of Public Works, 135 Ala. 187 (1902). Ohio: Cleveland *v.* Clements Bros. Construction Co., 67 Ohio St. 197 (1902).

[1] Great Britain, Board of Trade, Labour Department, *Report on Co-operative Contracts Given out by Public Authorities to Associations of Workmen, Parliamentary Papers*, Vol. LXXX, 1896.

[2] Victor von Borosini, "The Italian Triple Alliance of Labor," *American Journal of Sociology*, Vol. XIX, 1913–1914, p. 204 ff.

CHAPTER IV

THE MINIMUM WAGE

Minimum wage legislation marks a new stage in the long line of attempts to equalize the power of employer and employee in making the wage bargain. In contrast with conciliation and arbitration, either voluntary or compulsory, which take place only after a demand has been made by one party and refused by the other, minimum wage laws seek to regulate the wage rate before any dispute over the terms of the wage bargain has arisen. Moreover, interference by the state between the parties to the wage bargain through conciliation or arbitration usually implies the organization of the workers and the existence of collective bargaining.[1] But in any modern industrial community large numbers of unorganized workers are found, still bargaining individually, employed at low wages and apparently unable to make any effective efforts themselves to improve their condition. If they are to be helped toward an equality in bargaining power with the employer, the state must take the initiative. This it does by setting standards below which wages may not be depressed —in other words, by passing minimum wage legislation.[2]

From a slightly different point of view the legal minimum wage fills a gap in our code of laws which protect the employee by regulating the conditions of employment. Minimum standards for safety and sanitation have been enacted in many states and the maximum length of the working day has often been fixed. Such safeguards have long been familiar and are

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[1] The industrial courts of Europe, previously described, employ conciliation in both collective bargaining and individual contracts.

[2] Modern minimum wage legislation is not comparable to the mediæval fixing of wages by justices of the peace, which prescribed not a minimum, but the actual rates to be paid. See "Coercion by Government," p. 141.

generally accepted as necessary and beneficial to the health and welfare of the workers. There exists also a considerable group of laws which determine certain conditions of the wage *payment*. For instance, the weekly payment of wages may be required or payment in "store orders" may be forbidden, as described in Chapter II. But any legislative interference with the wage *rate* was long in making its appearance, though equally essential to a complete code of legislative protection for the workers. Work may be done under safe and sanitary conditions for hours not too long, and payment of wages may be prompt and regular, but if the amount received is too small to secure the necessaries of life the worker's health and welfare are menaced. Therefore, the same motives which have caused most of our states to establish minimum standards to guard the worker against unsafe and unsanitary conditions have caused many of them to set up standards for protection against the evils of low wages.

But whether one emphasizes the protection to health and welfare afforded by minimum wage legislation or its equalization of the strength of the parties to the wage bargain it appears not as a novelty in legislation, but as an extension of principles whose enactment into law is of comparatively long standing.

1. Economic Basis

That a large proportion of unskilled workers are paid wages far too low for decent self-support is a fact confirmed by many wage investigations and well known to those even slightly familiar with present-day industrial conditions.

(1) *Low Wage Scale*

It is the concensus of expert opinion at the present time that a weekly wage of $8 or more is necessary under urban conditions for the maintenance of a self-supporting woman in simple decency and working efficiency, and that a man with a wife and three children requires at least $15 to $20 weekly for their proper support.[1] Yet a recent study on woman's

[1] See Howard B. Woolston, "Wages in New York," *The Survey*, February 6, 1915, p. 510.

wages in the United States concludes that 75 per cent. of female wage-earners receive less than $8 weekly, 50 per cent. less than $6 and 15 per cent. less than $4, and that these wages are further reduced approximately 20 per cent. through lost time and unemployment.[1] The pay of unskilled male workers is at a correspondingly low level. Streightoff, in his discussion of American standards of living, estimates that at least six million adult men, married as well as single, receive less than $600 a year, or $12 a week.[2] More intensive investigations bear out these figures. The United States Immigration Commission studied a large number of typical households representing both native and foreign-born in sixteen leading industries. More than half of the male heads of families earned less than $500 a year, and nearly two-thirds less than $600.[3] More recently, the New York State Factory Investigating Commission examined the pay-rolls of over 2,000 stores and factories during the fall, winter, and spring of 1913–1914. Out of 57,000 women and girls, approximately 34,000, or 60 per cent., earned less than $8 in a typical week. Seven thousand out of 14,000 married men, or 50 per cent., earned less than $15.[4]

It seems, then, no exaggeration to say that the majority of low-skilled industrial workers in the United States receive wages too small for decent self-support. This fact explains the demand for minimum wage legislation as necessary to social welfare; the causes for the low scale form the economic basis which determines the extent to which the demand is practicable and the legislative standards enforceable.

(2) *Economic Weakness of Low-Paid Workers*

The almost entire absence of strong labor organizations and collective bargaining among this group of wage-earners

[1] Charles E. Persons, "Woman's Work and Wages in the United States," *The Quarterly Journal of Economics*, February, 1915, p. 232.

[2] Frank H. Streightoff, *Distribution of Incomes in the United States*, 1912, p. 137.

[3] Arthur N. Holcombe, "The Legal Minimum Wage in the United States," *American Economic Review*, 1912, Vol. II, p. 33.

[4] Howard B. Woolston, "Wages in New York," *The Survey*, February 6, 1915, p. 510.

is an important factor in producing the low wage scale. Many are women who are often members of a family group, unable to move from place to place in search of better opportunities, but remaining at home to overcrowd the few lines of work available in a given locality. Then, too, the majority of women workers are young and inexperienced and their frequent withdrawal from industry on marriage makes them look upon their work as only temporary. On the whole, it has been extremely difficult to form stable unions among women workers. Experience both in England and in this country shows that organization among low-skilled men workers is almost equally difficult. In the absence of collective agreements it has sometimes been possible to compel the workers to keep their wages secret. An Oregon department store, for instance, requires each applicant for employment to sign an agreement which includes a promise to "keep my salary confidential." [1] Such secrecy obviously makes it easier to depress wage scales. Under the circumstances it is also not surprising that among this group of workers the relation between wages and productivity is not traceable, but that "there are also great differences in wages for work that is apparently the same. Some firms pay constantly 25 per cent. more than their rivals for similar operations." [2] In the United States the situation is further complicated by the stream of immigration, which furnishes an abundant supply of cheap labor and which puts still another barrier, in the shape of divergent language and customs, in the way of union organization.

Another reason for the low wage scale, largely the result of the first, is the cutthroat competition of the workers for work. Among the unskilled, unorganized workers, the wage that the cheapest laborer, such as the partially supported woman, the immigrant with low standards of living or the workman oppressed by extreme need, is willing to take, very largely fixes the wage level for the whole group.

A third reason, the obverse of that just discussed, is the

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[1] *Report of the Social Welfare Committee, Consumers' League of Oregon*, 1913, p. 26.

[2] *Fourth Report of the New York Factory Investigating Commission*, 1915, "The Confectionery Industry," Vol. II, p. 312.

absence of active competition among employers for workers. With a plentiful supply of the lower grades of labor continually seeking employment, the employer need offer no inducement in the form of higher remuneration in order to fill his shop.

Moreover, a socially undesirable type of competition between employers flourishes when the bargaining power of employees is weak. The encouragement of superior ability and invention has always been pointed out as one of the chief advantages gained by the community from the competitive system of production. When an employer can hire workers for practically his own price, he can be slack and inefficient in his methods, and yet, by reducing wages, reduce his cost of production to the level of his more able competitor.

Minimum wage legislation, therefore, may answer the demands of social policy in two ways. By setting a barrier below which wages may not fall, it lightens the pitiful poverty and prevents the degeneration in body and spirit of those forced to live on a wage too small to supply the necessaries of life. Competition among them no longer takes the form of offering to work for lower wages, but that of developing greater efficiency. At the same time employers are forced to compete in efficiency of management, thus securing for society at large the many advantages of constantly improved methods of production. Minimum wage laws attempt neither to destroy competition nor to fix wages by law; they merely seek to set the lower limits to both in the interests of society as a whole.

2. Historical Development

(1) *Australasia*

Australasia is the birthplace of minimum wage legislation. Though it is a new and prosperous country, as long ago as the 'eighties the sweating system, with its evils of low wages, long hours and unsanitary conditions, was discovered to be alarmingly prevalent. The *Age*, the leading Melbourne newspaper, carried on a crusade against these conditions, and a royal commission was appointed whose report in 1884 showed

that hours were excessive and that wages were constantly reduced by the miserable rates paid to home workers. Public indignation was aroused until finally determined efforts were made to overcome these evils.

In 1894 New Zealand passed a law providing for the compulsory arbitration of labor disputes, which, while primarily intended to preserve industrial peace, may also be used for the prevention of sweating. The district conciliation boards established by this law have authority to fix minimum wages, and if sweated workers want their conditions improved they need only file a statement of their claims in the office of the nearest conciliation board. By means of this machinery underpaid workers, men more often than women, have secured wage increases.

However, the first Australasian law whose main purpose was to end sweating was passed by Victoria two years later, and since it is the Victorian method which Great Britain and the United States have adopted, the system deserves consideration at length. The public feeling against the sweating system in Victoria had resulted in the formation of an Anti-Sweating League. Largely as a result of the league's efforts and in spite of bitter opposition from the employers under the leadership of the Victorian Chamber of Manufactures, Victoria passed the first minimum wage law in 1896. Sir Alexander Peacock, originator of the system and later minister of labor in Victoria, has written: "It was alleged, first, that all work would be driven out of the country; secondly, that only the best workers would be employed; and thirdly, that it would be impossible to enforce such provisions at all. . . . However, the government managed to carry the bill and the wage-board system was inaugurated."[1]

The law required that representative boards fix minimum wages in certain industries designated by the legislature. Moreover, being frankly an experiment, the act was to be in force for only four years. Wage boards were first appointed in the six especially sweated trades of boot-making and

[1] M. B. Hammond, "The Minimum Wage in Great Britain and Australia." *Annals of the American Academy of Political and Social Science*, July, 1913, p. 28.

baking, which employed mostly men; clothing, shirt-making, and underclothing, which mostly employed women; and in furniture-making, in which the competition of Chinese labor was depressing wages. In 1900, when the first minimum wage law came to an end, the government brought in a bill providing for the extension of the wage-board system to other trades. The Victorian Chamber of Manufactures protested violently, urging, and with good reason, that the government's proposal meant the extension of the system to trades in which there was no evidence of sweating. However, the government showed that it had received a number of applications from employers, asking for the appointment of special boards, and that sweating had disappeared in the trades in which boards had been established. Accordingly the bill was passed and an extension of the system was begun which has continued from year to year until at the present time nearly 150 separate boards have been appointed, fixing minimum wage rates for over 150,000 employees in a state whose total population is less than a million and a half. The only important group of workers whose wages are not regulated are those in agricultural pursuits. Minimum wage rates have been established for all the important manufacturing occupations in the cities and also for street railways, mercantile and clerical employments and mining. The wage-board system is no longer regarded as an emergency measure intended to secure a living wage where conditions are exceptionally bad, but as a satisfactory method of fixing the standard wage in any trade. The act was again renewed in 1903, and in 1904 was made permanent. While the scope of the law has been widely extended the opposition of the employers has decreased, until in April, 1912, M. B. Hammond, of the Ohio Industrial Commission, as a result of first-hand investigations reported that both employers and employees "are now practically unanimous in saying that they have no desire to return to the old system of unrestricted competition in the purchase of labor." [1] South Australia, Queensland, and Tasmania in 1900, 1908, and 1910, respectively, adopted legislation similar to the Victorian act.

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[1] *Ibid.*, p. 35.

(2) *Great Britain*

One of the most important developments in the English social reform movement during the last decade is the acceptance of minimum wage legislation as a practicable policy. While ten years ago the fixing of minimum wage rates by law was apparently outside the realm of practical politics, it is advocated in Great Britain to-day not only by the Labor Party, but also by the Liberals and an influential group of Conservatives.

Among the chief reasons for this development of public policy is the increased public knowledge of conditions among sweated workers. Investigations showed that large numbers of low-skilled unorganized workers were receiving less than the wage necessary for the maintenance of mere physical efficiency. Attempts were made to extend trade unionism among them, so that they might raise their wages as more skilled workers had done, by collective bargaining. But the formation of strong unions among these sweated workers was generally found to be impossible. The market for their labor was chronically overstocked and the struggle for bare existence was too severe to permit the development of stable organizations. The public was aroused to this menace of insufficient wages, which its victims themselves seemed powerless to remedy, mainly through the efforts of the National Anti-Sweating League, which, with the Labor Party and certain other organizations, vigorously urged the adoption of minimum wage legislation. The agitation resulted first in a parliamentary inquiry and finally in 1909 in the passage of a trade boards act, modeled on the Victorian statute, which should go into effect the following year.

This law provided that wage boards may be established by order of the board of trade, subject to ratification by Parliament, for all employees in any industry in which the prevailing rate of wages is "exceptionally low as compared with that in other employments." [1] The first four trades regulated were tailoring, paper-box making, the finishing of machine-made lace, and the manufacture of certain kinds

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[1] Trade boards act, 9 Edw. 7, C. 22, Sec. 1 (2).

of chain, industries which employed altogether about 250,000 operatives. By 1913 the successful operation of the law was so generally recognized that the formation of boards was ordered in four additional trades: sugar confectionery and food-preserving, shirt-making, hollow-ware making, and cotton and linen embroidery, employing nearly 150,000 more workers. It was hoped also to include certain branches of the laundry trade, but the bill was withdrawn on account of defects in terminology and has not yet been reconsidered. At the time of writing the act has successfully withstood the strain of a year of war-time.[1] The tailoring trade board has even raised the minimum rate for "female workers other than learners," and additional branches of the trade have been brought under the control of the board.[2] The comparatively slight opposition to the original law may be explained by the fact that by its terms it was merely a means of dealing with unusual cases, where wages were "exceptionally low." The trades covered employ chiefly women workers and before regulation conditions of employment were flagrantly bad. Wage boards for them did not seem to commit the nation to the legal regulation of wages as a general policy.

The first extension of the wage-board system outside the sweated trades was also exceptional, but for an altogether different reason. There had been great unrest among the coal-miners during the winter of 1911–1912, culminating in a strike in the spring of 1912 which paralyzed industry. One of the men's principal demands was a flat rate weekly minimum wage. In the interests of industrial peace the government was forced to yield to the principle of this demand by passing a measure establishing representative district boards to fix minimum wages and other working conditions. While the operation of this act is said to have proved less satisfactory than the workings of the trade boards, it presents the issue of wage regulation in a wider form, not simply as a means of protecting the sweated workers at the very bottom of the industrial system, but as a supplement to voluntary collective bargaining for a comparatively well-placed economic group, the skilled men workers in a well-organized trade.

[1] *The Women's Industrial News*, July, 1915, p. 358.
[2] *The Women's Trade Union Review*, July, 1915, p. 8.

So far, then, English minimum wage legislation has reached some of the hardest pressed and some of the most fortunate groups of industrial workers. A further extension of its scope which would in part cover the workers between these two extremes was urged by Chancellor of the Exchequer Lloyd George in the spring of 1914. He proposed that a land commission be empowered to fix minimum rates on a living-wage basis for all agricultural labor, and foreshadowed the extension of the wage-board system to all the lower-paid industries in the towns. If these plans become law, the English system of trade boards will have followed the same line of development as the Australian system; that is, from a special device for remedying unusually bad conditions to a common method for fixing wage standards for all wage-earners.[1]

(3) *The United States*

In America a wide-spread demand for minimum wage legislation dates back no further than 1910. Two factors contributed to the rise of popular sentiment in favor of the legislation at this time. One was the increased knowledge of conditions among sweated workers, resulting from such investigations as that of the federal Bureau of Labor on *Conditions of Women and Child Wage-Earners in the United States*. The other was the successful operation of the British trade-boards act under conditions not unlike those in our own country.

In public employment, to be sure, wages in this country had for several years been regulated both by state laws and by city ordinances. Most commonly these regulations fix the wage rate [2] or require that "prevailing rates" be paid, which are usually interpreted as union rates when a union exists in the locality. Several statutes and ordinances, however, es-

[1] Partly as a war measure, France passed in July, 1915, a minimum wage law for women in certain branches of the clothing industry. (United States Bureau of Labor Statistics, *Monthly Review*, December, 1915, pp. 36–41.)

[2] The New York City Board of Estimate showed a broad social point of view in its efforts in 1915 to fix a just wage for street cleaners, who are among the lowest paid and least skilled of city employees. The board proposed fixing their pay in harmony with the results of a thorough investigation of the income necessary for a family of five "living in accordance with American ideals." Such an income was said to be $70 a month in New York City.

tablish a true minimum wage. For example, California provides that the minimum wage for all public employees except those in public institutions shall be at least $2 a day.[1] Massachusetts stipulates that "women cleaners and scrub women" employed by Suffolk County must be paid not less than $8 a week.[2] In 1913 Spokane, Wash., established by popular vote a minimum wage of $2.75 a day on public work, and on January 2, 1914, the state supreme court sustained this ordinance. But in this country until the last few years wage rates in private employment were seldom considered a subject of possible legal regulation.

There were, indeed, sporadic attempts to fix minimum wage standards by law. Typical of these is a bill introduced in the Nebraska legislature in February, 1909. This provided that "for the purpose of protecting the American standard of living, and to insure to all who labor that they shall have an opportunity to improve themselves, to educate their children and to lay by a sum for old age," the minimum wage "for all adult labor, male or female," should be 20 cents by the hour or $9 by the week, with 25 cents an hour for overtime. Such proposals, however, received but little serious consideration.

The first American state to pass a minimum wage law was Massachusetts. An investigating commission was appointed there in 1911, and its report resulted in legislation in 1912. In 1913, as a result of further investigations, eight states[3] followed the example of Massachusetts, and in 1915 two more were added,[4] in spite of the pending decision of the United States Supreme Court on the Oregon law, which probably retarded the movement in the latter year. Investigating commissions have been at work in several other states, including Connecticut, Indiana, Michigan, New York, and Ohio, so that a further extension of legislation is foreshadowed.

Constitutional amendments specifically allowing minimum wage legislation were passed by California in 1914 for women

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[1] California, Code 1906, No. 2894, Sec. 1.
[2] Massachusetts, Laws 1914, C. 413.
[3] California, Colorado, Minnesota, Nebraska, Oregon, Utah, Washington, Wisconsin.
[4] Arkansas, Kansas,

and minors, and, contrary to American precedent, by Ohio in 1912 for all classes of workers. Ohio, however, had in 1915 taken no step toward legislation except to authorize the state industrial commission to investigate working conditions among women and minors alone.[1]

Federal legislation of several kinds has also been proposed. Bills have been introduced in Congress applying to employees in the District of Columbia, to employees of the federal government, and to all workers engaged in interstate commerce, but these measures have not as yet been given much attention.

Thus far in the United States minimum wage legislation has been even more restricted in scope than at its first enactment in Great Britain or Australia. It has been passed to remedy sweating, not among all workers as in the other countries, but only among women and children. In this respect minimum wage laws resemble much other American labor legislation which also when first passed, in part for constitutional reasons, in part perhaps because of the more evident inability of this class of workers to protect themselves, applied only to women and minors. Then, too, many American representatives of labor oppose minimum wage laws for men, feeling that men workers can obtain better wages by organization without the aid of legislation. In addition wage investigations in this country have far more often dealt with women than with men, so that at present in America there exists a much greater body of evidence to show inadequate wages among women than among men workers.

Minimum wage legislation in the United States, then, is expressly permitted by two state constitutions and exists in eleven states. It is regarded entirely as a remedy for exceptional conditions, providing only a bare subsistence wage for those considered the most helpless class of sweated workers —namely, women and children. The more rigid limitations of our written constitutions, the labor union opposition and

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[1] The department of investigation and statistics of the Ohio Industrial Commission had issued up to November, 1915, two reports on the subject—*No. 1*, "Wages and Hours of Labor of Women and Girls Employed in Mercantile Establishments in Ohio in 1913," and *No. 14*, "Cost of Living of Working Women in Ohio."

the inefficiency of administration are factors which may work against such an extension of these laws in the United States as has taken place abroad.

3. Standards

The purpose of minimum wage legislation is the raising of excessively low wages. The question of the standards of wage awards is therefore an important one. How adequate is the minimum wage? Is it always a "living wage," and, if so, is account taken only of the bare physical necessities of life, or is allowance also made for the requirements of mental and moral welfare? Is provision made for the support of a family or for the needs of the individual worker alone? Is there any consideration of probable periods of unemployment? On what basis do wage boards fix the pay of young, inexperienced, and handicapped workers?

(1) *Australia*

In Australia there exists no statutory definition of the minimum standard. The Victorian law of 1903 provided that the "wages paid by the reputable employer" should be taken as the basis, but this clause has since been stricken out. A standard now often used is "the normal needs of the average employee regarded as a human being living in a civilized community," [1] which insures a living wage in the broader sense of the term, not a mere subsistence wage. Moreover, since the extension of wage boards to non-sweated trades, questions of relative skill have become more important and minimums are frequently set considerably above the level of a living wage.

The question of differing wage standards for men and for women has been clearly worked out in Australia. Since a man must normally maintain a family, a living wage for male workers must cover the cost of such maintenance; a woman

[1] *Commonwealth Arbitration Reports*, Vol. II, p. 3.

ordinarily supports herself alone, so that the minimum for female workers is fixed on that basis. "The minimum cannot be based on exceptional cases." [1] For the same reason the partial support of some women workers by their families is not considered in fixing their wages. When both men and women are employed in the same occupation, the wage rate is fixed for the sex usually found therein.

(2) *Great Britain*

In England, where, again, no standard is set by the law itself, the general practice is "to level the wage for the whole trade in each district up to the standard of the best employer in that district." [2] In the badly sweated trades for which boards have been formed this means a considerable increase for most of the workers, but not necessarily a living wage. For instance, in chain-making, a large increase in hourly rates for time work provided only 5 cents an hour for women workers or approximately $2.70 for a full week's work of fifty-four hours.[3]

(3) *The United States*

a. Definition of the Living Wage. Nearly all the American laws, unlike those of Great Britain and Australia, define in general terms the principle to be followed in fixing wages, which is usually that of a living wage. In a majority of the laws phrases such as "the necessary cost of proper living" and "to maintain the health and welfare" are used.[4] In working out wage standards on this basis, the English practice of leveling up wages to those paid by the best employer in the trade in a given district is obviously not a sufficient guide. Then, too, since the laws apply only to women and minors, relative standards for the two sexes need not be considered

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[1] *Commonwealth Arbitration Reports*, Vol. VI, p. 71.
[2] John A. Hobson, "The State and the Minimum Wage in England," *The Survey*, February 6, 1915, p. 503.
[3] See R. H. Tawney, *Minimum Rates in the Chain-Making Industry*, 1914, p. 39.
[4] California, Laws 1913, C. 324.

as in Australia. One finds, however, America on the whole using the Australian standard for women workers—namely, the cost of living of the entirely self-supporting woman. American employers have sometimes asked that the help received by many women workers from their families be taken into account in fixing the standard, but this request has been denied.

A number of investigations were made to determine the cost of living for a self-supporting woman, and, notably in Massachusetts and Oregon, budgets were carefully worked out to cover all the items considered necessary.[1] Such estimates cover very modest amounts for food, clothes, shelter, and washing, sometimes but not always medical expenses and car fare, and also allow a meager sum for recreation, education, and a short vacation. No provision is made for insurance or savings, yet the other items alone mount up to $8 or $10 weekly. It becomes, then, a matter of grave social concern when careful studies show that a majority of women wage-earners in the United States receive less than this amount. Up to November, 1915, the rates set for experienced adult workers in the four states making decrees fell between the two figures named. The highest rate reported was $10, for salesgirls in Washington; the lowest was $8 for Massachusetts laundry workers and women in Minnesota outside of first, second, third and fourth-class cities.

"Necessary cost of living," therefore, is interpreted in American minimum wage awards as little more than the cost

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[1] Minimum weekly budget for a self-supporting woman in Boston. Wage Board in the Brush Industry, Massachusetts, 1914. (*Second Annual Report of the Minimum Wage Commission*, p. 9.)

Board and lodging	$5.50
Clothing	1.35
Laundry	.20
Car fare	.60
Newspapers	.08
Church	.10
Theater and "movies"	.09
Vacation	.19
Other	.17
Total	$8.28

Minimum yearly budget for a self-supporting woman in Portland. (*Oregon Social Survey*, 1912, p. 67.)

Room and board	$300
Clothing	130
Laundry	25
Car fare	30
Doctor	15
Church and lodge	10
Recreation and vacation	25
Education and reading	10
Total	$545

of physical necessaries to an entirely self-supporting woman. The standard is in no way an extravagant one; it is "not a wage so . . . women can live well, not enough to make life a rich and welcome experience, but just enough to secure existence amid drudgery in gray boarding-houses and cheap restaurants." [1]

b. Wage Losses from Unemployment. In fixing standards for minimum wages, the question of regularity of employment is of great importance. Whether or not a worker can secure steady employment in a given industry is the factor which determines whether the "living wage" prescribed in an award provides a "living income" throughout the year. Until recently the problem has received but little attention in America,[2] many of the awards thus far made being sufficient only for the needs of the current week. As no provision is made for savings, a girl who receives the minimum wage must run into debt or deny herself necessaries if she loses her position. Yet many low-paid industries whose wage rates are affected by minimum wage awards are notably irregular, as for example candy-making and paper-box making. In Massachusetts, in Oregon, and in Washington, however, wage losses from unemployment have been given some attention by wage boards. In Australia the time lost from industrial causes is often definitely computed in fixing wages. For instance, in setting the minimum hourly rate for dock laborers, the necessary cost of a week's living was divided by the average number of hours of work obtained weekly.[3]

c. Profits of the Business. An important question likely to arise when wage standards are fixed is whether or not the financial condition of the industry should be taken into account. Most often the problem comes up in connection with the struggling business which claims it cannot survive if its workers are paid a living wage. The issue here is the lowering of the standard of wages in order to secure the continued existence of such an industry. But such a concession enables

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[1] Walter Lippmann, "The Campaign against Sweating," *New Republic*, March 27, 1915, Supplement, p. 8.

[2] See Irene Osgood Andrews, "The Relation of Irregular Employment to the Living Wage for Women," in *Fourth Report of the New York Factory Investigating Commission*, pp. 497–635.

[3] *New Statesman*, June 6, 1914, p. 263.

an industry to flourish without paying the whole cost of maintenance of those whose time and services it uses. Its workers must be partly supported by the earnings of others, who are thus practically subsidizing the underpaying industry. Such a trade has well been called "parasitic," since its existence depends on the bounty of others. It may be that other members of the woman's family (and the better-paying occupations in which they are employed) make up the deficit in her income; it may be that society as a whole pays the bill for the physical and moral deterioration of the workers by its expenditures for hospitals, charities, and reformatories. On the other hand, in Australia, at least, it has been urged that a higher minimum should be set in an unusually prosperous industry. In that country a clear and consistent stand has been taken on both these points. The living wage is "sacrosanct." "If a man cannot maintain his enterprise without cutting down the wages . . . which are essential for [the employees'] living, it would be better that he should abandon the enterprise." [1] But "the minimum wage must be primarily based on the needs and the qualifications of the class of workers concerned—not usually on the affluence of the employer." [2] In Australia, then, the financial condition of the business is not considered in fixing the minimum wage.

Most American statutes, through the stipulation that the minimum wage shall cover the cost of living, take the same stand. In Colorado, Massachusetts, and Nebraska, however, "the financial condition of the business" is to be considered side by side with the cost of living. In Massachusetts, in the temporary award for the brush industry, this resulted in fixing a minimum less than a living wage. The cost of living for a self-supporting woman was found to be over $8 weekly. But on account of the condition of the business the commission was obliged to make the hourly rate for the first year so low that women could earn only about $7 weekly unless they obtained more than the usual amount of work.[3] In retail stores also the wage board believed the necessary cost of living to be

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[1] *Commonwealth Arbitration Reports*, Vol. III, p. 31.
[2] *Ibid.*, Vol. VII, p. 72.
[3] *Second Annual Report of the Minimum Wage Commission of Massachusetts*, p. 11.

"as much as and probably somewhat above" the minimum recommended, but held that "the schedule of wages adopted is as high as the retail stores of the state will be able to pay until industrial and business conditions shall have shown a marked improvement." [1] A consideration of the prosperity of the industry may thus retard the process of raising the wage to the necessary minimum or even at times overthrow the whole principle of the living wage.

d. Substandard Workers. Nearly all minimum wage laws permit the fixing of special rates for young workers, for apprentices, and for inexperienced workers. As a guide in fixing these special rates, most American laws contain only the provision that rates for children and apprentices shall be "suitable." The usual practice is to name the rates for young workers and for apprentices in the award along with the regular minimum rate. For example, in Oregon the minimum wage for women of over a year's experience was set at $8.25 to $9.25 weekly, according to occupation and locality; but young girls between sixteen and eighteen and inexperienced women workers may be employed for $6 weekly in any occupation anywhere in the state. In some cases where these lower rates have been set, especially in trades requiring little skill, there have been attempts to substitute young girls and inexperienced workers for adults.[2] To overcome this difficulty it has been found necessary to specify the length of the period of apprenticeship and sometimes also the proportion of apprentices allowed. Rates are frequently increased as the period of apprenticeship progresses. Thus in Massachusetts candy factories the minimum rate fixed for beginners is $5 weekly; for those who have worked from a year to a year and a half, $6.75; for those with less than two years' experience, $7.75. The rate for "experienced" workers is $8.75. In November, 1915, this two-year period was the longest apprenticeship established; the period in other states and industries was but one year. In order to avoid any such

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[1] Massachusetts Minimum Wage Commission, *Statement and Decree Concerning the Wages of Women in Retail Stores in Massachusetts*, 1915, p. 3.

[2] See discussion by Theresa S. McMahon, *American Economic Review*, March, 1915, pp. 291–295.

premium on the employment of children Minnesota established the same minimum rates for all ages.

The employment of slow or infirm workers at lower rates is generally permitted only by special license from the commission. For further protection against the abuse of the privilege, certain of the laws specify the proportion of such workers in a single establishment for whom licenses may be issued.

In Australia, as the scope of wage boards widens and the fixing of a legal minimum becomes a common method of setting wage standards instead of merely a remedy for sweating, a variety of factors become more and more important in determining such standards. The relative skill and training required in different occupations is considered, the responsibility exercised, the danger of illness or accident and the probable perquisites or deductions. In America such elements as these have so far not been considered in determining wage standards. Minimum wage standards in the United States as yet do not go farther than an attempt to insure the individual woman worker the bare necessaries of life.

4. Methods of Operation

There are two types of minimum wage law. One, the "flat rate" law, prescribing the legal minimum in the statute itself, is very rare, while the other type, under which a board or commission after proper investigation fixes rates for one industry or group of industries at a time, includes the vast majority of these laws now in existence.

(1) *Flat Rate Laws*

Laws which directly fix the flat minimum rate are found only in certain of the Australian states, in Arkansas, and in Utah. In Australia, in addition to the system of wage boards, laws sometimes establish very low flat-rate minimums, frequently of not more than 2 or 3 shillings a week, intended principally to protect children, learners, and ap-

prentices from being put to work without wages and dismissed when they ask for pay. In America, only the Utah statute, which requires a daily wage of 75 cents for females under eighteen, 90 cents for inexperienced women, and $1.25 for experienced women over that age, fixes a universal flat rate.[1] In Arkansas a flat rate of $1.25 a day for experienced workers and $1 a day for females having less than six months' experience is fixed by the law, but the commission may, after investigation and public hearing, either raise or lower these rates.[2] This method of fixing uniform flat rates prevents the more careful adjustment for various industries and localities which is elsewhere undertaken by wage boards, and the method is therefore held by most students of the problem to be disadvantageous.

(2) *Wage Board Laws*

Representative of the second type of minimum wage laws, those which fix rates for various industries through wage boards, are the laws of Great Britain and of most Australian and American states. In Great Britain[3] the board of trade is authorized to appoint representative "trade boards" to fix minimum rates in any industries in which wages are "unreasonably low" as compared with other trades and where "other circumstances" make the appointment "expedient." Trade boards may fix general minimum time rates or minimum piece rates which may differ for different classes of workers, for different districts, and for different processes. District committees may be appointed to advise the trade board in fixing rates for their respective localities.

When a trade board proposes to fix a certain rate, three months' notice must be given, within which period objections to the rate proposed may be raised. On the conclusion of this period the rate comes into operation to a limited extent, being obligatory for all firms engaged on public contracts, and

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[1] Utah, Laws 1913, C. 63. Enforcement is placed with the commissioner of labor.

[2] Arkansas, Laws 1915, No. 291.

[3] 9 Edw. 7, C. 22.

for other firms in the absence of a written contract signed by the worker providing for a lower rate. Six months later the board of trade has power to make the rate obligatory in all cases. Special exemptions can be procured under the act for old or infirm workers.

The act provides for the appointment of inspectors for enforcing the payment of the minimum rates, and for fines for employers not paying the rate. An employee who has not received the legal minimum rate may recover the balance due him.

In Great Britain the board of trade, which is the general administrative body, has less power over the work of its trade boards than have American administrative commissions over their wage boards. A British trade board fixes a rate and the board of trade decides only whether or not the rate shall be made obligatory. An American wage board has power to recommend rates which the commissions may declare effective, or modify, or reject altogether. In some states the commission may fix minimum rates without the intervention of a wage board. So far the American method is rather a regulation by commissions than by wage boards pure and simple.

These commissions — called minimum wage commissions, industrial welfare commissions, or industrial commissions— are usually unsalaried and composed of from three to five persons, one of whom must usually be a woman, appointed by the governor. Their jurisdiction extends over females and male minors up to eighteen or twenty-one, and over all industries, except in Colorado and Arkansas where specified lists exist. Arkansas, also, is the only state specifically exempting certain industries, those excluded being cotton factories, fruit and vegetable canning, and establishments employing fewer than four women at the same sort of work. The commissions are authorized to subpœna witnesses, administer oaths, and examine books and papers, and employers are required to keep records of the names, addresses, and wages of women and minor employees. If the commission learns by investigation—which is sometimes compulsory on petition —that wages are insufficient to maintain the specified standard of living, it must proceed either to determine a minimum rate or to establish a subordinate wage board for the industry.

The subordinate board must be representative of employers, employees, and the "public." Unlike the foreign acts, which provide for the nomination of representatives by employers and employees, American laws generally leave the method of selection to be determined by the commission. The commission may, of course, ask both parties to elect, and this democratic method is required in the Minnesota law "so far as practicable." While in theory it has been felt desirable that in the interests of democracy employers and employees should elect their representatives to the wage boards, in practice it has proved exceedingly difficult to depend entirely upon election for securing proper representatives for unorganized workers. Their lack of acquaintance and the fear of losing their places on account of their service on the boards make them reluctant to serve, and timid in conference. For the present it has therefore been found more effective to leave the enforcing authority free to select representatives from lists submitted by the employees or from those formerly in the trade as well as through election. Employers, also, have often been unwilling to elect their representatives.[1]

The subordinate wage board may use the investigations of the commission in determining wage rates or may make further investigations of its own. It must make a report of its work with recommendations to the commission, which may accept the recommendations in whole or in part or may refer them back to the board for further consideration or may convene a new board. When the report of the wage board has been accepted by the commission a public hearing must be held; if after public consideration no change is deemed necessary in the recommendations they are promulgated as orders which become effective in thirty or sixty days. Nearly all the laws grant rehearings on petition of either side. Copies of orders issued by a commission must in most cases be forwarded to the employer concerned, who is required to post them in a conspicuous place. Minimum wage rates may apply either to time or to piece work, and in Kansas, Minnesota, and

[1] In Minnesota the commission was obliged to choose representatives of both employers and employees for the wage boards, and to select several of the latter from outsiders. See John A. Ryan, "The Task of Minimum Wage Boards in Minnesota," *The Survey*, November 14, 1914, p. 171.

Oregon orders may be issued for a given locality or area. In Wisconsin the industrial commission has power to classify industries for the purpose of adjusting wage rates.

The commissions are authorized to make special exemptions for women, and in Wisconsin for minors also, who are physically handicapped. Special licenses may be issued to learners and apprentices in all states except California and Colorado, and in Oregon and Washington the life of these licenses may be limited. In Kansas, minors may be employed at lower rates than adults only by special license.

The interests of employers and employees are usually further safeguarded by provisions for a court appeal from the commissions' rulings, the procedure and the subjects for court review being carefully specified. In most of the states rulings may be set aside if unreasonable or unlawful; in Oregon and Washington only questions of law may be reviewed, while in Massachusetts and Nebraska an employer may have an award set aside in his particular case by filing a declaration under oath, in Nebraska that compliance would "endanger the prosperity of his business," but in Massachusetts that it would prevent a "reasonable profit." In most instances, the findings of fact by the commissions are held *prima facie* reasonable, and any new evidence must be referred back to them for consideration.

The commissions, except in Colorado and Arkansas, are authorized to enforce their own rulings. Most of the states provide fines of $10 to $100 for employers who fail to pay the minimum wage or who violate any sections of the act or any commission ruling. It has also been found necessary to penalize by a fine of $25 to $1,000 employers who discriminate against employees because they have testified in wage investigations or served on wage boards. In Massachusetts and Nebraska, however, the commission must rely on the compulsion of publicity to enforce its wage rulings. In these two states employers cannot be compelled to pay the minimum; and the mere publication in a given number of newspapers throughout the state of the names of those paying less than indicated as a minimum is mandatory in Nebraska but only optional in Massachusetts. Publishers in either state refusing to print the names of such employers are liable

to a fine of $100. In all other states, employees who have not been paid the legal minimum rate may recover the unpaid balance through a civil suit.

In America, then, the establishment of minimum wage rates is a long and fairly complicated process. First there is the investigation by the commission, then generally further investigations and deliberation by a representative wage board, next public hearings, and finally a possible court review before the minimum rate goes into effect.

5. Results

It is still alleged in some quarters that wages are fixed by economic laws, any legislative interference with which can result only in disaster. At present all that can be said is that experience covering twenty years in Victoria and shorter periods elsewhere has failed to confirm these dire predictions.

(1) *Changes in Wage Rates*

Perhaps the first question to be considered is whether the laws have succeeded in raising wage rates. Nearly all the evidence so far collected goes to show that they have. Some instances of failure are known. In Victoria, for instance, it has proved difficult to maintain the legal rate in the furniture trade among the Chinese, where neither employees nor employers welcomed the establishment of the wage board,[1] and in England the custom of distributing work through middlemen, and the depression of the industry, led to evasions in the lace-finishing trade.[2] Similar evasions have been suspected with regard to homeworkers in the British tailoring industry.[3] But on the whole, in the different countries and in the various industries, the awards of the wage boards have been found to be effective. In Victoria, official reports show,

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[1] M. B. Hammond, "Where Life Is More Than Meat," *The Survey*, February 6, 1915, p. 498.

[2] *Sixth Annual Report of the Anti-Sweating League*, p. 6.

[3] See R. H. Tawney, *Minimum Rates in the Tailoring Industry*, 1915, pp. 202–210.

average wage rates increased 7.6 per cent. in thirteen board trades in a period of about five years before awards were made, but 16.5 per cent. in these and in six additional board trades during a similar period after awards were made. In six trades a period of decline in wage rates became a period of advance after the making of awards. During the whole time wage-rate advances in twelve non-board trades amounted to 11.6 per cent.[1] In the English chain-making industry 56.7 per cent. of the male mastermen and 61.3 per cent. of the journeymen earned less than 15 shillings a week in 1911. In 1913, after the award by the trade board, only 1.3 per cent. of the mastermen and 0.7 per cent. of the journeymen earned so little.[2] In the branches of the English tailoring trade covered by the trade board, it is estimated that about one-third of the women and between one-fourth and one-fifth of the men have received increases in their earnings.[3] In Washington the industrial welfare commission states that in twenty-four stores, before the minimum wage award, 1,758 women received less than $10 weekly, while after the award only 561 women received less than $10 weekly, the number of workers remaining approximately the same.[4] A report of the United States Bureau of Labor Statistics on the effect of minimum wage determinations in Oregon retail stores indicated that average weekly earnings of women were 8.6 per cent. higher in the face of a business depression which caused an 8 per cent. decrease in the sales of these stores.[5] A year after its decree in the brush industry, the Massachusetts Minimum Wage Commission found that only five, or 1 per cent. of the employees whose wage records it took, were receiving less than the legal minimum.[6]

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[1] Ernest Aves, *Report to the Secretary of State for the Home Department on the Wages Boards and Industrial Conciliation and Arbitration Acts of Australia and New Zealand*, 1908, p. 30.

[2] R. H. Tawney, *Minimum Rates in the Chain-Making Industry*, p. 83.

[3] R. H. Tawney, *Minimum Rates in the Tailoring Industry*, p. 95.

[4] *First Biennial Report of the Industrial Welfare Commission, State of Washington*, 1915, pp. 13, 79.

[5] United States Bureau of Labor Statistics, *Bulletin No. 176*, July, 1915, p. 33.

[6] Massachusetts Minimum Wage Commission, *The Effect of the Minimum Wage Decree in the Brush Industry in Massachusetts*, 1915, p. 5.

(2) *Changes in Wages above the Minimum*

It is frequently declared that legal minimum wage rates tend to become maximum wage rates, thus injuring those whom they are expressly designed to benefit. This does not, however, appear to be generally the case. Both the chief factory inspector at Melbourne, Victoria, and the secretary of the British Board of Trade declare that as far as their experience goes current wages are not held down to the minimum set by law.[1] The former official even declares that "the average wage in a trade is invariably higher than the minimum wage." In one Victorian industry, clothing, after an award had been in force for six years, wages averaged nearly 20 per cent. higher than the legal minimum.[2] The establishing of minimum rates in the clothing trades in Great Britain led in several districts to trade union action which fixed standard rates considerably above the legal minimum.[3] In Portland, Ore., also, the United States Bureau of Labor Statistics found that the proportion of women getting more than the legal minimum increased after the law went into effect.[4]

(3) *Effect on Unemployment*

It is further argued against minimum wage laws that they force workers out of industry, either because the workers are considered by the employer unprofitable at the legal rate, or because they can be replaced by apprentices or by specially licensed workers at a lower rate, or perhaps because they have been active on the wage boards. While all three abuses have probably taken place at various times, they are not universal and are not inherent in the laws. On the first point, the testimony of the chief factory inspector at Melbourne, previously quoted, is that "this dislocation [of the less speedy workers] is not serious, and that as a rule things regulate

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[1] Irene Osgood Andrews, *Minimum Wage Legislation*, pp. 62–63, 77–78.
[2] Henry R. Seager, "Theory of the Minimum Wage," *American Labor Legislation Review*, February, 1913, p. 89.
[3] R. H. Tawney, *Minimum Rates in the Tailoring Industry*, p. 96.
[4] United States Bureau of Labor Statistics, *Bulletin No. 176*, p. 33.

themselves fairly satisfactorily."[1] The Oregon investigation made by the United States Bureau of Labor Statistics showed that experienced women workers were neither thrown out of employment by the operation of the law nor supplanted by men.[2] In sixteen brush factories in Massachusetts the total number of women increased from 332 to 334 between 1913 when the first wage investigation was made and 1915, the year following the minimum wage decree; the number of men decreased from 472 to 417.[3] The system of issuing special permits for less efficient workers to be employed at lower rates, which is provided for by most of the statutes, is undoubtedly helpful in making the adjustment. On the other hand, the displacement of adult skilled workers by apprentices or by defective workers at a lower rate can be checked by limiting the percentage of employees in any establishment who may work at such lower rates, as is already done in Minnesota with regard to defectives. The matter of discrimination against workers who serve on wage boards is more difficult to handle, although most American laws establish penalties for it. This discrimination is a severe handicap to securing a proper representation of the employees on wage boards. However, this is no serious argument against minimum wage legislation, as the same sort of discrimination often takes place against the leaders of the workers in any concerted movement for higher wages.

(4) *Effect on Industry*

From the side of employers it is frequently declared that minimum wage laws will put them under such a handicap that they will be forced to move to freer territory or be driven out of industry altogether. Neither seems to have taken place to any appreciable extent. The officials of the Victorian Chamber of Manufactures and of the Victorian Employers' Association, the two bodies which originally led the opposition to the wage-board system, now declare that

[1] Quoted by Irene Osgood Andrews, *Minimum Wage Legislation*, p. 63.
[2] United States Bureau of Labor Statistics, *Bulletin No. 176*, pp. 8, 9.
[3] Massachusetts Minimum Wage Commission, *Bulletin No. 7*, 1915, p. 11.

they have no wish to see the system abandoned.[1] In 1903 and 1904, eleven of the thirty-eight special boards then in operation in that country were established upon the application of employers.[2] Only a single instance is recorded of a plant leaving the state because of the minimum wage law.[3] In Great Britain, also, in the industries having wage boards, the "employers have not been ruined or even injured in their profits,"[4] and the board of trade reports that it is "not aware of any tendency of manufacturers to transfer their business to foreign countries, or in cases where lower wage rates have been fixed for Ireland than for Great Britain, to transfer their business from Great Britain to Ireland."[5] The actual cost of the necessary changes is, after all, not burdensome. In Oregon retail stores the increased labor cost was found to be only three mills on each dollar of sales.[6] In the Massachusetts brush industry both the amount of capital invested and the value of the product increased in the year following the decree.[7]

(5) *Effect on Trade Unionism*

Certain trade union officials, especially in the United States, have feared that minimum wage legislation would hinder the trade union movement by enabling the workers to secure wage gains without the aid of organization. Their fears have not proved true. Instead, the formation of wage boards has

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[1] M. B. Hammond, *American Labor Legislation Review*, February, 1913, p. 113.

[2] Victor S. Clark, *The Labor Movement in Australasia*, 1907, p. 147.

[3] "A brush manufacturer from England, who had recently come to Victoria to establish his business, was so enraged at the idea that the wages he was to pay were to be regulated by law that he moved across Bass Strait to Tasmania. What has happened to him since Tasmania has adopted the same system of wage regulation, I do not know."—M. B. Hammond, "The Minimum Wage in Great Britain and Australia," *Annals of the American Academy of Political and Social Science*, July, 1913, p. 32.

[4] John A. Hobson, "The State and the Minimum Wage in England," *The Survey*, February 6, 1915, p. 503.

[5] Quoted by Irene Osgood Andrews, *Minimum Wage Legislation*, p. 78.

[6] United States Bureau of Labor Statistics, *Bulletin No. 176*, p. 10.

[7] Massachusetts Minimum Wage Commission, *Bulletin No. 7*, p. 14.

often acted as a stimulus to the organization of unions, through which the workers have in some cases been enabled to make further gains above the legal minimum rate. This is the testimony of Australian observers and of the British Board of Trade, and it has been stated that in the brief experience of Massachusetts "the conspicuous feature is the impetus given to workers in the candy and brush trades to form organizations where none had been before." [1]

(6) *Effect on Efficiency*

A final point to consider is whether guaranteeing to every worker a legal minimum wage reduces incentive and output. The preponderance of evidence is that it does not, but that it even has the opposite effect, due in part to the employer's insistence on greater returns for increased wages, and in part to the workers' spontaneous response to the improved rate of remuneration.[2] Some employers in Australia feel that output has been reduced in recent years, but they ascribe the decline to trade union policy rather than to wage awards, while the employees deny the charge altogether.[3] In England and in the United States it is believed that efficiency has gone up rather than down. Thus the British Board of Trade declares that "there are indications that in many cases the efficiency of the workers has been increased," [4] and the Industrial Welfare Commission of Washington concludes that "the whole standard of efficiency and discipline has been raised." [5] In

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[1] Florence Kelley, "Status of [Minimum Wage] Legislation in the United States," *The Survey*, February 6, 1915, p. 489.

[2] "'Output per head has increased,' said another [firm]; 'as a general rule the girls work better if they are paid more.' Indeed, the psychological effect of relatively high and low rates on the workers would appear to be exactly the reverse of that often ascribed to them. So far from low rates 'making them work,' they often produce listlessness and despair. So far from high rates 'encouraging slackness,' they stimulate the workers to earn as much as possible while at work upon them." (R. H. Tawney, *Minimum Rates in the Tailoring Industry*, p. 133.)

[3] M. B. Hammond, "Where Life Is More Than Meat," *The Survey*, February 6, 1915, p. 502.

[4] Quoted by Irene Osgood Andrews, *Minimum Wage Legislation*, p. 78.

[5] *First Biennial Report of the Industrial Welfare Commission*, State of Washington, p. 13.

fact, it may be said that the beneficial results of minimum wage legislation have been largely due to the transfer of emphasis from competition for low wages to efficiency on the part of both employer and employee.

Among the better-established results of minimum wage legislation, therefore, may be mentioned (1) that it has raised wages; (2) that minimum wage rates do not in general tend to become maximum rates; (3) that it does not necessarily force workers out of industry; (4) that it does not unduly handicap employers; (5) that it does not undermine trade union organization; and (6) that it does not decrease efficiency.

6. Constitutionality

The constitutionality of minimum wage legislation involves a new application of the principle of the police power of the state. While it is an accepted constitutional principle that the employee's right freely to contract for the disposition of his own labor cannot be limited except by "due process of law," yet the police power of the state can restrict the freedom of contract for the protection or betterment of the public health, morals, peace and welfare. Enactments of the legislature which reasonably tend to that end have been commonly sustained by the courts. Are minimum wage laws a legitimate extension of this power?

The courts have already sanctioned under the police power principle state interference with the wage bargain by limiting working hours for all classes of employees, and by regulating certain conditions of the wage payment, such as the frequency of payment, store orders, or payment in cash.[1] Justification

[1] As early as 1859, in a wage exemption case, the court said: "The idea underlying the ultimately developed sentiment of the people upon that subject . . . is that the citizen is an essential elementary constituent of the state; that to preserve the state the citizen must be protected; that to live he must have the means of living; to act and to be a citizen he must be free to act and to have somewhat wherewith to act, and thus to be competent to the performance of his high functions as such. Hence it would seem, as no doubt it was, a matter of the gravest state policy to invest the citizen with, and to secure to him, those essential perquisites, without which the state could not demand of him at all times his instant service and devoted allegiance." Maxwell *v.* Reed, 7 Wis. 594 (1859).

for state interference to fix minimum wage rates has been sought on the same grounds on which other protective legislation has been upheld.

In public employment, indeed, it has been frequently decided that the legislature may rightfully regulate wage rates as well as other conditions of labor both on direct work and on work done by contractors. On work done by contract the wage regulation has commonly taken the form of stipulating that the current rate of wages shall be paid, and the constitutionality of this form of regulation is now well established.[1] In 1914, moreover, the Washington State Supreme Court sustained a more drastic wage regulation for public works. Spokane had fixed by ordinance a minimum wage rate of $2.75 a day for common labor on all public improvements. Though this rate was higher than the current rate for similar work, the court upheld the ordinance even when applied to work done by contractors, as neither unreasonable nor in violation of the public policy of the state.[2]

These cases, however, are based on the proprietary power of government, and not on the police power. The legality of state regulation of wage rates in private employments is less certain. The only minimum wage case in private employments which has yet reached a decision in a state supreme court is that involving the Oregon minimum wage law of 1913. In this case[3] the court took judicial notice of the "common belief" that many women are employed at excessively low wages and that health, morals, and the public welfare are injured thereby. Accordingly, the law was held constitutional on the same grounds on which laws restricting the hours of labor for women have been sustained. The court held that "Every argument put forward to sustain the maximum hours law or upon which it was established applies equally in favor of the constitutionality of the minimum wage law as also within the police power of the state and as a regulation tending to guard the public morals and the public health."

In the lower court this point was made even more forcibly

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[1] See Atkin *v.* Kansas, 191 U. S. 207, 24 Sup. Ct. 124 (1903).
[2] Malette *v.* City of Spokane, 77 Wash. 205, 137 Pac. 496 (1913).
[3] Stettler *v.* O'Hara, 69 Ore. 519, 139 Pac. 743 (1914).

when the judge said that the two classes of regulation were "inseparably linked together. . . . The purpose of the act in limiting the maximum hours of labor and the minimum wage for women, is evidently the same, *viz.*, to preserve and conserve their health and morals. Is the preservation and conservation of the health and morals of women workers a public concern, or is it merely a matter that concerns the individuals employed? If the enactment is for the public health, peace, morality, and general welfare, it falls within the police power of the state to regulate. The complexity and intimate relations of our present-day civilization are such that there is a necessary dependency of the public welfare upon the health, morality, and vigor of our women and children, when considered from physiological, sociological, and moral standpoints. The women are and are to be the mothers of our future citizens, and the children of to-day will be the citizens of to-morrow, and when any considerable number of them are employed at wages which reduce them to beggary or deny a sufficient compensation to preserve health, the insufficiency of such wages becomes a powerful factor in determining the social, moral, and physical status of the body politic and is a matter of public concern."[1]

In addition to the health argument the argument justifying state interference on account of inequality of bargaining power between the parties concerned in the wage bargain was emphasized by the Oregon Supreme Court. "The worker in such a case has no voice in fixing the hours or wages or choice to refuse it, but must accept it or fare worse." Therefore the law could be sustained on the same grounds as the women's ten-hour law had been as "within the police power of the state, and as a regulation tending to guard the public morals and the public health."

The method of establishing minimum wages has also given rise to constitutional uncertainty. In enacting minimum wage legislation the majority of the legislatures recognized the need of discovering the facts concerning wages and living conditions before wage rates could be reasonably and scientifically adjusted. They therefore established general standards

[1] Opinion of Judge T. J. Cleeton in Stettler *v.* O'Hara, Oregon Circuit Court, County of Multnomah, November 7, 1913.

for living wages and delegated to commissions and boards the work of ascertaining the facts, and, except on questions of law, made the findings of the commission conclusive. This procedure was also sustained by the Oregon Supreme Court when it held that the law does not "delegate legislative power to the commission. It is authorized only to ascertain facts that will determine the localities, businesses, hours, and wages to which the law shall apply." Nor is the fact that the findings of the commission are made conclusive on questions of fact denial of due process of law. "Reasonable notice and a fair opportunity to be heard before some tribunal before it decides the issues are the essentials of due process of law," and these are provided, the commission itself being an adequate tribunal "proper to deal with the subject in hand."[1]

In an opinion upholding the constitutionality of the minimum wage law of Minnesota, the state attorney-general pointed out that these powers are nearly equivalent to those given state railroad commissions, which are commonly held legal. For instance, the power to fix different minimum rates for different localities is paralleled by the power of railroads to fix different rates for different roads and for different classes of traffic.[2]

In recent years the courts have shown a marked tendency to recognize the fact that new conditions of life and labor require the new application of existing principles. While lower courts in Minnesota and Arkansas have declared minimum wage legislation unconstitutional, it is on the Oregon case that the future of this legislation in the United States probably hinges, for the favorable decision of the Oregon Supreme Court, returned March 17, 1914, was immediately appealed to the United States Supreme Court, where it was still pending in the autumn of 1915.

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[1] See also Louisville & N. R. Co. *v.* Garrett, 231 U. S. 298, 34 Sup. Ct. 48 (1913). The Oregon court pointed out that in the commission regulation held unconstitutional in the Minnesota rate cases there was no provision for hearings by parties affected, and that therefore due process of law was not provided for, "which is the principal ground upon which the state court was reversed" by the United States Supreme Court.

[2] Opinion of state attorney-general on constitutionality of Minnesota minimum wage law, p. 8. See also Minneapolis, St. Paul & Sault Ste. Marie R. R. Co. *v.* R. R. Commission of Wisconsin, 136 Wis. 146, 116 N. W. 905 (1908).

CHAPTER V

HOURS OF LABOR

In spite of the general tendency in this country toward a shorter workday, the old ideal of "eight hours for work, eight hours for rest, eight hours for what you will" has not yet been realized by the majority of American wage-earners. Out of the 6,615,046 wage-earners enumerated in 1909 by the Census of Manufactures, only 7.9 per cent. were employed in establishments where the eight-hour day prevailed.[1] "Prevailing hours" for three-quarters of them were from fifty-four to sixty weekly. But no fewer than 344,011, or 5.2 per cent. of the whole number, worked where prevailing hours were between sixty and seventy-two weekly; 116,083 worked in establishments where the seventy-two-hour week prevailed, and 114,118 where the prevailing hours were more than seventy-two. Out of the eighty-six principal manufacturing industries employing more than 10,000 wage-earners in 1909, twenty employed over 10 per cent. of their workers more than sixty hours a week. Among those exacting more than seventy-two hours weekly from several thousand employees were beet-sugar, cement, chemical, glucose, and sugar and molasses factories, coke-works, gas-plants, the manufacture of ice and lime, petroleum refineries, blast-furnaces, and rolling-mills. Among railroad employees, also, continuous service for long periods is very common. Records of the Interstate Commerce Commission show that during the year ending June 30, 1913, 261,332 railroad men were reported as on duty for periods exceeding the legal limit of sixteen hours, and that over 33,000 of them worked more than twenty-one

[1] See *Thirteenth Census of the United States*, Vol. VIII, "Manufactures," pp. 306–313.

hours continuously.[1] Hours of labor on street railways also extend over excessive periods through the swing run system which employs a man a few hours during the morning rush and then lays him off till the evening rush. During the interim he must be on call and usually cannot go home, so that his actual working day extends from the time he starts work in the morning till he is through with his last trip at night.

Then, too, many employees are working seven days a week. Investigations show that much of the present-day continuous operation of industries involves seven-day labor. For instance, in Minnesota in 1909, 98,558 men, or approximately 14 per cent. of the gainfully employed males in that state, were working every day in the week.[2] In New York in 1910, out of 179,000 union members in a number of specified industries, almost 20 per cent. were engaged in seven-day labor.[3]

Worst of all, many establishments which operate continuously, such as iron and steel plants, paper-mills, and glass and chemical works, combine the twelve-hour day with the seven-day week, and in not a few cases require their employees to alternate weekly or fortnightly between day and night shifts, working twenty-four hours without rest when the change is made. So glaring are the evils of this condition that under the auspices of the International Association for Labor Legislation a special conference on the subject was held in London in June, 1912, and resolutions were adopted favoring international action to secure eight-hour shifts in continuous industries.[4]

Under modern industrial conditions such excessive hours of work break down health. Even with short hours the strain of modern industry, with its speed, its piece-work, its division of labor, involving the monotonous repetition of the same process, sometimes even of the same movement, is a heavy tax on the worker. But with the eleven- or twelve-hour day

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[1] Interstate Commerce Commission, *A Statistical Analysis of Carriers' Monthly Hours of Service Reports*, 1913, p. 10.

[2] Minnesota Bureau of Labor, *Twelfth Biennial Report*, pp. 104–119.

[3] New York State Department of Labor, *Bulletin No. 45*, Sept., 1910, pp. 450, 451.

[4] *Report of Special Commission on Hours of Labor in Continuous Industries*, 1912, pp. 16, 17.

or the seven-day week, a man must go back to his job before he has had sufficient rest to recover from the excessive fatigue of the long work period, and a progressive decline in health results. "In my judgment," said a former official of a large steel company, "a large proportion of the steel-workers, who from early manhood work twelve hours a day, are old men at forty."[1]

Though it is the health dangers of long hours which are most often emphasized, the lack of leisure for family life, for recreation, for all the requirements of citizenship, is no less an evil. It should not be forgotten that the time spent in going and coming from work and the dinner hour often add two hours to the length of the workday proper, and that an eleven-hour day is likely to mean thirteen hours away from home. Said a Pittsburgh steel-worker of the results of such a workday, "Home is where I eat and sleep."[2] The ultimate effects of such hours of labor were thus summed up by the Supreme Court of Georgia in upholding a Sunday rest law: "Without specific leisure the process of forming character can only be begun; it can never advance or be completed; people would be merely machines of labor—nothing more."[3]

Aside from their weaker physique, the "long day" is especially onerous for women workers because of the double burden of domestic duties and wage work which many of them carry. Ordinarily men can rest when their day's toil is over, but there are few working-girls who do not have at least mending and laundering to do in the evenings, and many married women must take the entire care of their homes and children before and after work.

Moreover, long hours do not necessarily make for the greatest economy and efficiency in production. It is sometimes argued that if hours are reduced output will decline proportionately. This might be true if human beings were mere machines and not living creatures who grow tired. But as a matter of fact the law of diminishing returns operates

[1] William B. Dickson, former vice-president, United States Steel Corporation, *The Survey*, January 3, 1914, p 376.

[2] Quoted by John A. Fitch, "The Steel Industry and the Labor Problem," *The Survey*, March 6, 1909, p. 1091.

[3] Hennington *v.* State, 90 Georgia 396, 17 S. E. 1009 (1892).

nowhere more strikingly than in regard to hours of labor. Studies of output before and after a shortening of hours show that where the human element enters into production hour reductions by no means necessarily imply a decrease in output. For instance, the federal Industrial Commission of 1898 made special comparisons between the output of bituminous coal mines before and after the introduction of the eight-hour day, and found that output even increased under the shorter workday.[1] In Illinois in 1895 and 1896 under the ten-hour system, the average daily output for each mine employee was 2.53 to 3 tons; in 1898, 1899, and 1900 with an eight-hour day the average output was 3.11 to 3.21 tons, though the proportion of coal mined by machinery was not increased.

In the New England textile industry, also, it was found that the shorter workday consequent upon the enforcement of the ten-hour law improved either the quality or quantity of the output, or both.[2] Similar evidence has been gathered for a number of other industries, showing the beneficial effect of a full day's rest each week.[3] This increase of output through increased efficiency probably largely explains why wages have seldom fallen, but have frequently even risen after a reduction of hours, and why the industries in which wages are highest are often those in which hours are shortest. Practical experience, therefore, gives weight to the old eight-hour league slogan:

> Whether you work by the piece or the day,
> Decreasing the hours increases the pay.

Shorter hours likewise tend to steady employment. When no restrictions are placed on hours of work in a seasonal industry, the tendency is to concentrate the work in a brief busy season with long hours of overtime. Hour regulation, except in the case of perishable products and those subject to changes in fashion, forces a more even distribution of the work over a longer period. When the woman's eight-hour law

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[1] *Final Report of the Industrial Commission*, 1902, Vol. XIX, p. 770.

[2] See *Reports of the Chief of the Massachusetts District Police*, for the year ending December 31, 1883, pp. 17, 18; for the year ending December 31, 1886, pp. 71, 72.

[3] See *American Labor Legislation Review*, December, 1912, pp. 524–527.

was in force in Illinois factory inspectors noted "a greater uniformity of work and rest" as one of its results.[1] In certain occupations, also, where the time of attendance and not the speed of the worker is the essential factor (ticket-chopping and streetcar work, for example), the reduction of excessive hours would increase to a certain extent the demand for labor.

Aside from voluntary reductions by individual employers there are two methods by which the desirable goal of shorter daily and weekly hours has been reached, by labor organization and by labor legislation. Many workers, prominent among whom in this country are printers, granite-cutters, cigar-makers, and building-trades workmen, have gained the nine- or eight-hour day by organization. But the present prevalence of longer hours of labor in the United States shows that the unions alone have not been everywhere adequate to the task. It has so far proved difficult to form stable labor organizations among women and among some classes of unskilled men workers. In some cases, too, as in the Pittsburgh steel plants, large scale business has used its power to stamp out labor organization. After a century of effort probably four-fifths of those employed in trade, transportation, and manufacturing are still unorganized, and in recent years there has been a growing demand for the protection of unorganized workers by legislation.

1. Maximum Daily Hours

(1) *Children*

The first legislative regulation of the hours of labor in this country applied to children. In 1842 a petition was presented to the Massachusetts legislature by certain citizens of Fall River who pointed out that the existing hours of labor must be permanently injurious to the health of children and detrimental to their education, and prayed that prohibitory legislation be enacted. The agitation resulted in the passage during the same year of a ten-hour law for children under

[1] *Report of the Illinois Factory Inspectors*, 1893, p. 18.

twelve years of age in manufacturing establishments.[1] In the same year, also, Connecticut enacted a ten-hour law for children under fourteen in cotton and woolen mills.[2]

By the beginning of the Civil War laws limiting the hours of children in manufacturing establishments to ten a day had been enacted in the five additional states of New Hampshire,[3] Maine,[4] Pennsylvania,[5] New Jersey,[6] and Ohio.[7] The Connecticut statute of 1842 was, however, superseded thirteen years after passage by a new law which set back the limit to eleven hours,[8] followed within a year by an amendment which still further lowered the standard to twelve hours a day.[9] Like the first Connecticut law, the early Pennsylvania laws applied only to textile mills, but in the other states the acts covered manufacturing in general. The ages of the children affected varied from twelve in Massachusetts to twenty-one in New Jersey and Pennsylvania. In addition to the states already mentioned, Rhode Island enacted in 1853 an eleven-hour law for children from twelve to fifteen.[10]

These early laws were, however, to a great extent unenforced and even unenforceable. The still frequent provision, for example, that only violations committed "knowingly" are punishable, which, to quote a government report, has "put a premium on ignorance and . . . served to balk the intent of so much labor legislation," [11] originated in the Massachusetts law of 1842 and was copied in New Jersey and Rhode Island. In New Hampshire children under fifteen could work longer than the statutory ten hours if provided with the "written consent of the parent or guardian." [12] In New Jersey, and in

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[1] Massachusetts, Laws 1842, C. 60.
[2] Connecticut, Laws 1842, C. 28.
[3] New Hampshire, Laws 1846, C. 318. [4] Maine, Laws 1848, C. 83.
[5] Pennsylvania, Laws 1848, No. 227; Laws 1849, No. 415; Laws 1855, No. 501. [6] New Jersey, Laws 1851, p. 321.
[7] Ohio, Laws 1852, p. 187. [8] Connecticut, Laws 1855, C. 45.
[9] Connecticut, Laws 1856, C. 39. [10] Rhode Island, Laws 1853, p. 245.
[11] *Report on the Condition of Woman and Child Wage-Earners in the United States*, Senate Document No. 645, 61st Congress, 2nd Session, 1910, Vol. VI, "The Beginnings of Child Labor Legislation in Certain States," Elizabeth Lewis Otey, p. 78.
[12] Of this law Horace Greeley said: "Why should 'the consent of *the* (?) parent or guardian of such minor' 'be allowed to overrule the demands of Justice, Humanity, and the Public weal'? . . . We believe nothing less than a peremptory prohibition of the employment of Minors for more

Pennsylvania under the earliest laws, a child could not be "holden or required" to work more than ten hours a day, but if the child worked longer the employer, in order to escape all responsibility, needed only to declare that the extra labor was not required, but voluntary. Ohio even went so far as to legitimatize this subtle distinction by declaring that minors under eighteen might not be "compelled," but that minors under fourteen might not be "permitted," to work more than ten hours. Only in two states were any provisions made for enforcement: in Connecticut constables and grand jurors were to inquire after violations, and in Pennsylvania constables could take action—but only after complaint.

It is interesting to note that the early hour legislation for children resulted almost altogether from interest in education and from the efforts of adult male workers to secure such regulations as a first step toward obtaining similar laws for themselves. Sometimes, also, the men workers undoubtedly believed that restrictions on the hours of women and children would result in decreased employment of these classes of wage-earners, with consequent advantages to themselves. It was not until later that the main emphasis came to be put on the necessity of shortening children's hours to protect the health of the children.

The greatest progress in legislation regarding the hours of labor for children has been made in the last decade. Beginning with Illinois in 1903, the eight-hour standard for children under sixteen has been established in the majority of important industrial states.[1] Eighteen states and the District of Columbia allow no exemptions from their eight-hour laws for children; but in Washington the law applies only to girls; in Colorado children may be exempted by the judge of the juvenile court; and in Indiana children may be legally employed nine hours a day on affidavit of the parent, giving them

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than 10 hours per day, without regard to the consent of parents or guardians, will effect much, if anything. Still, we are willing to see a trial made even of this milk and water enactment." (New York *Tribune*, August 11, 1847.)

[1] This standard existed in 1915 in twenty-three jurisdictions, namely: Arizona, Arkansas, California, Colorado, District of Columbia, Illinois, Indiana, Iowa, Kansas, Kentucky, Massachusetts, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Jersey, New York, North Dakota, Ohio, Oklahoma, Washington, Wisconsin.

permission. Of the remainder of the states, about half have nine-hour laws and half allow work for ten hours a day or more. Only Montana, which forbids factory work for children under sixteen, and West Virginia, do not regulate hours. Some of the southern textile states, however, still allow children to work legally eleven hours a day, and because of lack of enforcement the hours in some of these states are reported to be even longer.

Legislation for shorter hours for children has sometimes been combined with that for women, but at present, except in states where there is an eight-hour law for females, the workday is nearly always shorter for children than for adult women. The child labor laws, however, not infrequently give more protection to young working-girls under sixteen or even eighteen or twenty-one than to working-boys of the same ages.[1] Hour limitations usually apply to all occupations except domestic service, agriculture, and frequently fruit and vegetable canneries. Occasionally the law covers factories, but not stores. The hours during which children may be employed are further regulated by the very common prohibition of night work.[2]

Opposition from employers against limitation of hours has been even stronger than against any other restriction on child employment, the common argument being that manufacturers will not be able to hold their own against competitors in neighboring states where longer hours are permitted. With regard to the eight-hour day, especially, an additional argument frequently advanced is that it would not be practicable to employ children for so short a period in a plant where adults work a longer day. After eight-hour legislation has been passed, however, it has usually been found that the industries soon adjusted themselves thereto.[3] Finally,

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[1] The absence of any hour restriction for boys along with an eight-hour law for all females in Washington has already been noted. Similarly in Texas there is a nine-hour law protecting all females, but no protection for working-boys.

[2] See "Night Work," pp. 248-251, for a fuller discussion of these prohibitions.

[3] In order to ascertain the grounds for the objection that children could not be worked shorter hours than adults in the same factory, a special investigation was made by an agent of the National Child Labor Committee in three states, Ohio, Illinois, and New York, where an eight-

partly in order to meet the interstate competition objection, and partly in the interest of more thorough enforcement, the trend is now toward federal regulation, through the power vested in Congress to regulate commerce between the states.[1]

Since all minors are for certain purposes wards of the state, which is empowered to act for their protection when necessary, the constitutionality of laws limiting their working hours is not questioned. As a minor is legally incapable of entering into a free contract, such laws cannot be said to abridge without "due process of law" his freedom to dispose of his labor. The broad power possessed by the state to regulate the working conditions of minors was thus summed up by the judge in the case of People *v.* Ewer: "So far as such regulations control and limit the powers of minors to contract for labor, there never has been and never can be any question as to their constitutionality." [2]

(2) *Women*

In this country agitation for the limitation of women's hours followed close on the heels of the movement to regulate the hours of children. As early as the 'thirties the labor press had protested against the long hours of work, and strikes for reduction of hours had been called.[3] Naturally enough the

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hour law for children had been in operation for several years. The report of the committee reads as follows: "Information was sought in factories representing the industries in which the largest numbers of children were employed. It was found that children were employed eight hours at the same kinds of work at which they had been employed before the law went into effect, while the adults continued to work for longer hours. With practical unanimity employers reported that they had found no difficulty in readjusting schedules to obey the law and the eight-hour day for children had not been a handicap upon business, and no cases of failure or removal from the state had resulted. On the contrary, the industries involved have steadily grown." (*Bulletin National Child Labor Committee*, Vol. II, No. 4, February, 1914, p. 44.)

[1] The federal child labor bill introduced in Congress in 1914 provided that no goods could be shipped in interstate commerce in the manufacture of which children under fourteen had been employed at any time or children between fourteen and sixteen had been employed more than eight hours a day or between 7 P.M. and 7 A.M.

[2] People *v.* Ewer, 141 N. Y. 129, 36 N. E. 4 (1894).

[3] *Report on Condition of Woman and Child Wage-Earners in the United States*, Vol. IX, "History of Women in Industry," Helen L. Sumner, p. 67.

agitation centered around the textile mills, as they were the earliest large factories and their working hours were twelve or more daily. In 1834 a delegate discussing the condition of women in factories before the Trades' Union National Convention in Boston, said of the mill-owners: "They must be forced to shut their mills at a regular hour; there must be a certain time over which they shall not work; that all the inmates may have an opportunity to rest their weary limbs, and to enjoy free and wholesome air."[1]

By the 'forties, when many humanitarian movements were rife, the ten-hour cause had made progress and legislative action was asked for. For example, in 1842, 1843, and 1844 petitions asking for a ten-hour law were presented to the Massachusetts legislature.[2] This early movement came almost entirely from the ranks of the workers themselves, who sought legislation limiting hours for both men and women. Organized working-women played a prominent part in the campaign. The New England Workingmen's Association, an organization of wage-earners, encouraged by a few public-spirited citizens, which soon became the New England Labor Reform League, was active in the agitation. Closely connected with it was the New England Female Labor Reform Association, formed in January, 1845, almost all of whose members were women workers in the textile mills and whose activities centered at Lowell. They organized meetings, wrote for the labor press, and petitioned the legislature for the ten-hour day. The association cooperated with other women workers and started branches in Fall River, Mass., Dover and Manchester, N. H., and perhaps other places. In 1845 the women textile workers of Pittsburgh were unsuccessful in a strike for a ten-hour day, but were told by their employers it would be given them when other localities also reduced their hours. Accordingly, the women wrote to New England for help. The girls of Lowell and Manchester responded and all resolved to work only ten hours after July

[1] National Trades' Union, September 13, 1834, p. 2. Quoted in *Documentary History of American Industrial Society*, John R. Commons and Helen L. Sumner, ed., Vol. VI, p. 219.

[2] Charles E. Persons, "The Early History of Factory Legislation in Massachusetts," in *Labor Laws and Their Enforcement*, Susan M. Kingsbury, ed., pp. 24–27.

4, 1846. But on account of the opposition of the manufacturers their efforts failed, and they once more tried to secure legislation. These organized women workers first succeeded in New Hampshire, where "by vigorous personal efforts they, more than any other group, secured the ten-hour law of 1847, the first of its kind in the country." [1] Similar acts were passed in Maine and in Pennsylvania in 1848, in New Jersey and in Rhode Island in 1851.[2] Massachusetts passed no ten-hour law until over twenty years later, perhaps partly because the leaders there insisted on effective legislation, which these earlier measures did not prove to be.

These first acts were all of a similar type. They set ten hours as the standard, generally for all workers, for "a day's work" in the absence of "an express contract requiring greater time." [3] In New Hampshire, three days before the law went into effect the manufacturers submitted such express contracts to their employees, and though meetings were held and active agitation carried on to prevent the operatives from signing, all who refused were discharged and their places were soon filled by new workers. In Pennsylvania and New Jersey, notably at Allegheny City, Gloucester, and Paterson, the operatives carried on severe and prolonged strikes to secure the enforcement of the laws. They were successful in some, though not in all factories, but where the hours were shortened they suffered a corresponding reduction in wages. On the whole these early acts "were practically dead letters, owing to their contracting-out clauses." [4]

From the 'fifties until after the Civil War, social reform was largely forgotten in absorption in the anti-slavery question. After the Civil War, when the movement for protective legislation revived, the laws asked for applied only to women and children, and were of the modern type, forbidding employment in excess of a specified number of hours. The first

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[1] *Report on Condition of Woman and Child Wage-Earners in the United States*, Vol. X, "History of Women in Trade Unions," John B. Andrews, p. 80.

[2] *Ibid.*, Vol. IX, "History of Women in Industry," Helen L. Sumner, p. 69.

[3] See, for instance, New Hampshire, Laws 1847, C. 488.

[4] *Report on Condition of Woman and Child Wage-Earners in the United States*, Vol. IX, p. 73.

of these had been passed by Ohio in 1852 [1] and set a ten-hour day for women workers, but was rendered unenforceable by penalizing only when a woman was *compelled* to work in excess of legal requirements. As most employees will voluntarily work for twelve or more hours a day when they cannot find any one to employ them for ten hours, the law became almost entirely inoperative. In Massachusetts, active agitation was recommenced by 1864. By that time the women in the mills were largely Irish and French Canadians who took little or no part in the movement. After strong opposition a bill was passed in 1874 [2] limiting the hours of women and minors in factories to ten daily and sixty weekly. But even this law was ineffective because only "wilful" violations were penalized. It was not till 1879,[3] when an amendment removed the "wilful," that an American state had an enforceable law limiting the hours of women's employment. By that time also state bureaus of labor and factory inspection were being created in the principal industrial states and were aiding in the enforcement of labor laws.

Since that time fairly enforceable hour limitation laws for women have been secured in one state after another. In 1908, when the Oregon ten-hour law for women was upheld by the United States Supreme Court, this legislation was placed upon a secure footing, and since that date the movement has gone steadily forward. By 1915 only seven states, in most of which comparatively few women were industrially employed, had placed no restrictions on women's hours of work,[4] many had limited hours to eight or nine a day and the majority had a weekly limit of less than sixty hours.

Present-day hour legislation for women runs in general along similar lines in the different states. Most statutes fix the same daily and weekly maximum hours for all occupations covered and generally include the principal industrial occupations for women. Thus in Pennsylvania hours in "any establishment" are limited to ten daily and fifty-four weekly, and "any establishment" is defined as "any place within this

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[1] Ohio, Laws 1852, p. 187. [2] Massachusetts, Laws 1874, C. 221.
[3] Massachusetts, Laws 1879, C. 207.
[4] These states were Alabama, Florida, Indiana, Iowa, New Mexico, Nevada, and West Virginia.

commonwealth where work is done for compensation of any sort, to whomsoever payable" [1] except homes and farms. In only a few cases, however, do the laws define the time during which the work period must fall, either by naming the spread of hours allowed, by fixing opening and closing hours, or by forbidding night work.

American laws, therefore, seem extremely simple when compared with the mass of detail found in European legislation on this subject. General laws exist in most European countries, but either by special statutes or by administrative orders work periods longer or shorter than those of the general law are fixed for many industries and occupations, and frequently even for special processes. This principle is often so far extended as to prohibit entirely the employment of women in kinds of work especially dangerous to their health or safety. For example, the English factory act of 1901 gives the home secretary power to make any limitation of hours whatever or to forbid the employment of any class of workers in dangerous trades.[2] On the other hand, in certain cases, as where perishable materials must be handled at once to prevent spoiling, special orders lengthening the permitted period of employment may be issued.[3] In addition, night work is, in general, forbidden, and opening and closing hours, not necessarily the same for every trade, are almost always fixed.

The number of employments covered by hour legislation in America appears to depend largely on what occupations public opinion considers dangerous to the health of women. Thus the exclusion of farm work and domestic service from regulation is at least in part due to the belief that they in no way endanger health. The earlier laws, both those passed before the Civil War to fix a standard of hours and the first acts of the modern type, applied mainly to manufacturing establishments. Such a limitation in the scope of the early laws was natural enough. At that time women were employed in large numbers outside the home only in textile factories. The Census of 1870 shows that but 1 per cent. of all the women "gainfully employed" were found in "trade and transportation." It was in the factories that complaint was made of

[1] Pennsylvania, Laws 1913, No. 466, Secs. 1 and 3.
[2] 1 Edw. 7, C. 22, Secs. 79–83.
[3] *Ibid.*, Secs. 49–52.

the overlong hours of work, and it was the factory operatives who carried on the bulk of the early agitation for legislation. Thus in New Hampshire the first hour limitation law, passed in 1847, applied only to manufacturing establishments,[1] and the Pennsylvania law of 1848 affected only "cotton, woolen, silks, paper, bagging, and flax factories." [2] Likewise the Massachusetts ten-hour law of 1874 covered only "manufacturing establishments." [3] It was not until the end of the 'seventies, when the number of saleswomen had largely increased, that the dangers of constant standing and long hours were noticed and agitation was begun for legislation covering this occupation.[4] In 1883 the Massachusetts law was amended to include "mechanical and mercantile establishments." [5] In the same way, as the field of women's employment broadened, the dangers of excessive hours and injury to health were discovered in one occupation after another, and the need for extending protective legislation became correspondingly apparent, until, in the laws passed in the last few years, practically every form of industrial employment has been covered at the same time and by the same restrictions.

The Illinois ten-hour law of 1909 was one of the first to do this. It includes not only factories, mechanical and mercantile establishments, but also any "laundry, or hotel, or restaurant, or telegraph or telephone establishment or office thereof, or any place of amusement, or by any person, firm, or corporation engaged in any express or transportation or public utility business, or by any common carrier, or any public institution, incorporated or unincorporated." [6] Similarly inclusive acts are found in half a dozen other states, and almost every act now covers at least "manufacturing, mechanical, and mercantile establishments."

There are also occasional instances of classification by cities, exempting the smaller places from the operation of the law. The Missouri law of 1909 [7] and the Texas law of 1913 [8]

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[1] New Hampshire, Laws 1847, C. 488.
[2] Pennsylvania, Laws 1848, No. 227.
[3] Massachusetts, Laws 1874, C. 221.
[4] *Report on the Condition of Woman and Child Wage-Earners in the United States*, Vol. IX, p. 238.
[5] Massachusetts, Laws 1883, C. 157. [6] Illinois, Laws 1909, p. 212.
[7] Missouri, Laws 1909, p. 616. [8] Texas, General Laws 1913, C. 175.

both applied only to cities of more than 5,000 population. The Minnesota law applies only to first and second class cities (over 20,000 population).[1] Establishments of various sorts employing fewer than three or five persons have also sometimes been excepted. Until 1914 the Louisiana law applied only to establishments employing more than five persons.[2]

Such exemptions may perhaps also be explained on health grounds. It might be expected that the need for legislation in smaller places would be lessened by a supposed easier pace of work and the greater personal contact between employer and employee. Investigation shows, however, that excessive hours are often worked in small establishments and out-of-the-way places where public opinion is not active, and such exceptions are becoming fewer.[3]

Certain exemptions have also been made because of special industrial requirements, the most important of which have to do with work in canneries. On account of the perishable nature of the materials, operators of canneries have vigorously opposed any legislation which would limit hours of work during the summer months, and because of this opposition a number of states, including most of those in which the industry is important, have allowed women and children to work unlimited hours in this industry.

In the degree of restriction placed upon hours of women's daytime labor, many American states have gone further than European countries. Most of the important industrial states still follow early English and American precedent and fix a daily limit of ten hours, though a majority have reduced the working week to less than sixty hours. In recent years, however, as the eight-hour day movement has spread and standards for protective legislation have risen, several progressive states have limited the workday to nine and even to eight hours. New York is the most important industrial state having the nine-hour day and the fifty-four hour week.

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[1] Minnesota, Laws 1913, C. 581, Sec. 1.

[2] Louisiana, Laws 1908, No. 301, Sec. 1.

[3] For instances of bad conditions in the smaller establishments see reports of the New York State Factory Investigating Commission, the Senate Wage Commission for Women and Children in the State of Missouri, the Oregon Social Survey, and similar investigations.

The eight-hour limits are found in a few western states and in the District of Columbia, but only California and the District have the forty-eight hour week as well as the eight-hour day.[1]

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[1] On January 1, 1916, the situation with regard to women's hours was as follows:

State	*Hours a Day*	*Hours a Week*
I. Eight-Hour States:		
California	8	48
District of Columbia	8	48*
Colorado	8	—
Washington	8	—
Arizona	8	56
II. States Allowing More than Eight but Less than Ten Hours:		
State	*Hours a Day*	*Hours a Week*
Oregon	8 1/3 mercantile 8 1/2 offices 9 any other industry (By rulings of Industrial Welfare Commission)	50 51 54
Arkansas	9	54
Maine	9	54
Missouri	9	54
Nebraska	9	54
New York	9	54*
Texas	9	54
Utah	9	54
Minnesota	9 manufacturing, etc. 10 mercantile, etc.	54 58
Idaho	9	—
Montana	9	—
Oklahoma	9	—
III. States Allowing Ten or More Hours:		
State	*Hours a Day*	*Hours a Week*
Connecticut	10	55, 58
Delaware	10	55
Massachusetts	10	54*
Michigan	10	54
Ohio	10	54
Pennsylvania	10	54*
Rhode Island	10	54
Wisconsin	10	55
New Hampshire	10 1/4	55
Wyoming	10	56
Tennessee	10 1/2	57
Vermont	11	58
Georgia	10	60
Kentucky	10	60
Louisiana	10	60
Maryland	10	60
Mississippi	10	60
New Jersey	10	60*
North Carolina	11	60

Most American laws omit one great aid to enforcement in failing to set a legal closing hour.[1] A few states fix the incidence of the working day indirectly through the prohibition of night work.[2] In Arizona and Wyoming the permitted hours must fall within a twelve-hour period, but as a general rule regulations of the sort are not found in America.

Though a number of states still permit overtime work, the general tendency seems to be toward doing away with all such exceptions. In 1909, half the state laws, fourteen out of twenty-eight, allowed a certain amount of overtime work. In 1915, similar exceptions were found in only about a third of the statutes. The actual working of the laws, both in this country and abroad, has shown that all such exceptions are often a decided handicap to the enforcement of the law, being used to cover violations, or that at best they often defeat its purpose by legalizing hours so excessive as to be a danger to health. Therefore, the tendency of recent legislation is against overtime work under any circumstances.

The conditions under which overtime work is still allowed seem to fall under three main heads. The overtime work on account of the stoppage of machinery, allowed in several states, and a few similar exceptions, are all permitted for the

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State	*Hours a Day*	*Hours a Week*
South Carolina	11,12	60
Illinois	10	—
North Dakota	10	—
South Dakota	10	—
Virginia	10	—
Kansas (By Industrial Welfare Commission)		

IV. States Having No Laws Regulating Hours of Labor for Women: Alabama, Florida, Iowa, Indiana, Nevada, New Mexico, West Virginia.

In the states marked with an asterisk work is limited to six days a week.

[1] In a few states the danger that a woman may be employed by two or more establishments a total length of time in excess of the legal maximum is recognized. In Massachusetts, for instance, until recent years, it was not uncommon in the textile mills for a woman to work ten hours during the day in one mill, and then for several hours in the evening in another. The practice was called "swapping." The Delaware statute (Laws 1913, C. 175, Sec. 2) contains a prohibitive provision in effective form, applying to all classes of work and placing the responsibility for discovering any previous employment in the same day entirely on the employer.

[2] See "Night Work," pp. 248-251.

purpose of making up lost time. Several states allow overtime to meet the pressure of special industrial requirements, notably the Christmas rush in retail stores, where all hour limitations may be removed during that period, as in New Jersey,[1] or a limited amount of overtime may be allowed as in Montana.[2] Finally, a very few states fix the amount of overtime, but not the conditions under which it may be worked, for example New York, which allows an hour of overtime in factories on each of three days a week, provided the weekly total of hours is not exceeded thereby.[3]

As previously stated, American statutes usually set the same daily hour limit for a large and varied group of industries. That the requirements and the strain of various occupations may differ widely, and that the same limitation of hours may not equally well meet the needs of the workers in all of them, has been given but little consideration. For example, while it is apparent that in some occupations eight or even ten hours a day may not be physically injurious, in others, such as those involving exposure to poisons, extremes of temperature or humidity, or excessive nervous strain, a much shorter work period may be seriously harmful to health. In certain brancehs of the telephone service, for example, the nervous strain is particularly severe. In 1907, in Toronto, Canada, a royal commission was appointed to investigate a dispute between the Bell Telephone Company and its operators. From the evidence given by physicians, the commission decided that if the health of the workers was to be preserved, the workday should not be more than six hours, spread over a period of about eight hours.[4] Yet no American state has on account of special dangers placed the statutory restriction for any selected occupation in which women are employed below that stated in the general law.

But very recently a few states have adopted a new method of regulating women's hours, together with minimum wages and working conditions. These states lay down in their

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[1] New Jersey, Laws 1912, C. 216, Sec. 1.
[2] Montana, Laws 1913, C. 108, Sec. 1.
[3] New York, Laws 1909, C. 36, Sec. 78 (1).
[4] *Report of the Royal Commission on a Dispute Respecting Hours of Employment between the Bell Telephone Company of Canada, Ltd., and Operators at Toronto, Ontario*, 1907.

statutes the general principle that a woman is not to be employed for any period of time dangerous to her health, safety, or welfare. A commission is then given the power to determine after investigation maximum periods for different industries and even for different localities, if desired. Such a law may become an instrument for the protection of the worker's health much superior to the ordinary flat rate law. A commission regulating hours, through its powers of investigating and setting standards, can take account of special factors in certain lines of work which might cause serious injury to the workers in the usual work period, and can adjust hours according to the strain of each specific occupation.

While all laws of this type conform to this same general principle, they differ in one important provision. California [1] and Oregon permit their commissions to fix only shorter hours than those established by the general statute. "No such order of said commission shall authorize or permit the employment of any woman for more hours per day or per week than the maximum now fixed by law." [2] But in Ohio and Wisconsin the hours fixed may be either above or below those of the general law. Kansas has no law limiting hours for women except the act empowering the commission to make regulations.

In Oregon and Washington, the only states in which really important action on hours of labor has been taken by these commissions, a considerable amount of flexibility has been secured in the determination of daily hours by commission rulings. In Oregon, for example, where the statutory limit for females over sixteen is ten hours a day, the industrial welfare commission has fixed women's daily hours for the city of Portland at nine in manufacturing, and at eight and a third in stores. Even in canneries, which are often excluded altogether from maximum hour laws, the commission permits overtime in excess of nine hours, for only one hour daily and six hours weekly, for not more than six weeks during the year, and all such overtime must be paid for at increased rates.

The possibilities of still more detailed adjustment to the needs of specific industries are evident, and therefore the

[1] California, Laws 1913, C. 324.
[2] Oregon, Laws 1913, C. 62, Sec. 9.

method of regulating hours through administrative rulings, provided the precaution is taken of preserving a statutory limit of hours, marks a decided advance toward accomplishing the real purpose of hour limitation, the prevention of fatigue by forbidding excessive hours of work.

Most of the special problems in the administration of woman's work laws center about the enforcement of hour legislation. Violations of laws regulating a continuing condition like hours of work are obviously more difficult to detect than violations of safety or sanitary laws which can be discovered by a single inspection. Therefore, various aids to enforcement have long been found necessary. The most common of these is the posting of notices, stating the permitted hours of work, a requirement which the United States Supreme Court sustained as constitutional in 1914.[1] Such a provision had long been in the laws of a number of states. Massachusetts, following English precedent, had found it necessary to require the posting of notices as early as 1880.[2] The law stipulated that printed notices containing the daily hours of work should be posted "in a conspicuous place" in every room where employees coming under the ten-hour law were at work. Immediately an attempt was made to evade the intent of the act. A report of the enforcing authority, the chief of the district police, says that notices were found illegibly written, "on cards four or five inches square, sometimes without a single break between the words, and placed over a doorway or some other inaccessible place."[3] Extra time was also worked on the pretense that it was necessary to stop and start the machinery. Two amendments, in 1886[4] and 1887,[5] were necessary in order to overcome these difficulties. The law then provided that the notices must be put on forms approved by the attorney-general and supplied by the enforcing authority, and must contain the hours of beginning and ending work and of meal-times, as well as the number of hours worked each day. Similar provisions as to the posting of notices have been found essential in other states.

[1] Riley *v.* Commonwealth, 232 U. S. 671, 34 Sup. Ct. 469 (1914).
[2] Massachusetts, Laws 1880, C. 194.
[3] *Report of the Chief of the District Police*, 1884, pp. 14–18.
[4] Massachusetts, Laws 1886, C. 90.
[5] *Ibid.*, Laws 1887, C. 280.

A more recent device which provides additional help in enforcing the law is that of a record book, open to inspection by the authorities and containing the actual hours worked each day by each female. Few states rely exclusively on this device for help in enforcing the law.[1] Several states, however, require the keeping of record books in addition to posting notices,[2] or as a substitute where daily hours are so irregular that they cannot be determined in advance.[3]

Even the wording of the penalty clause is of importance in relation to the enforceability of the law. Massachusetts's first ten-hour law could not be enforced as long as only "wilful" violations were penalized. Several states still render their laws inoperative by similar clauses. For instance, in South Dakota only the employer who "compels" a woman to work overtime is responsible.[4] Experience shows that it is practically impossible to prove such compulsion and that convictions can be secured only when "permitting" excessive hours is also a violation of the law. The enforceability of the laws in a few southern states, which penalize only "contracting" to work overtime, also seems doubtful.[5] Even among the enforceable laws there is a difference in effectiveness. It is clearly easier to obtain proof of violation in a state like New Hampshire,[6] where the employment of a woman "outside" the posted hours is a violation of the law, than where the inspector must prove that she worked "longer" than the posted number of hours, as in Tennessee.[7] It may also be of importance in successful prosecutions to note whether the employer alone, "his agent" or "any person" may be held responsible, and whether only the working of excess hours is penalized or, in addition, a failure to post notices, the making of false statements in notices and time-books and the like.

Equitable and necessary as legal limitations on the daily hours of working-women are generally recognized to be, they have frequently been contested as out of harmony with our

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[1] One of these is Illinois, Laws 1911, p. 328.
[2] See New York, Laws 1913, C. 200, Sec. 5.
[3] See Kentucky, Laws 1912, C. 77, Sec. 5.
[4] South Dakota, Laws 1913, C. 240, Sec. 1.
[5] See Virginia, Laws 1914, C. 158, Sec. 1.
[6] New Hampshire, Laws 1913, C. 156, Sec. 3.
[7] Tennessee, Laws First Extra Session, 1913, C. 121.

state and federal constitutions. Clearly, limiting the hours during which a woman may be employed does abridge her freedom to use her capacity for work to its utmost extent. The courts seem to hold in general that such a limitation may be made through the state's exercise of its police power only if excessive hours involve some appreciable danger to the class of workers involved or to the community.

The conflict of judicial decisions on the subject appears to arise from differing opinions as to the existence of such danger. Opinions opposed to legal restriction emphasize the interference with woman's freedom to contract to work each day as long as she pleases, implying that employer and employee stand on an equal footing in determining working conditions and that an employee works long hours of her own free will. Such a restriction of freedom of contract, they hold, deprives a woman worker without due process of law of the valuable property right of disposing of her own labor as she sees fit, and furthermore is class legislation because it denies her privileges accorded to men workers. The favorable decisions take cognizance of actual industrial conditions and point out that the labor contract is not freely made between equals, but that its terms are settled largely by the employer and that the state may therefore interfere in the interests of the public welfare.

The first important decision on the constitutionality of hour legislation for women was rendered in Massachusetts in 1876, upholding the ten-hour law. In this case, says Professor Ernst Freund,[1] "the court was obviously a good deal puzzled how to deal with the objections raised, disposing of them in a rather offhand and not altogether satisfactory fashion." In a brief opinion [2] the court pointed out that the legislature had evidently considered factory work "to some extent dangerous to health," and that the statute was therefore a health or police measure. This decision, however, held that the legislation did not prevent women from working as long as they saw fit, but only from working more than ten hours continuously in a factory.

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[1] Freund, "Constitutional Limitations and Labor Legislation," in *Third Annual Meeting* of the American Association for Labor Legislation, p. 51.

[2] Commonwealth *v.* Hamilton Mfg. Co., 120 Mass. 383 (1876).

The next important decision on the constitutionality of hour legislation for women was not rendered until 1895, almost twenty years later. During the interval the principle of entire freedom of contract between capital and labor had been developed.[1] This doctrine was reinforced by the idea that the right to dispose of one's labor freely is a property right, not to be abridged—according to the fourteenth amendment to the constitution of the United States—"without due process of law." It was on this ground that in 1895 the Illinois Supreme Court declared invalid an eight-hour law for women in factories.[2] The court could see no "fair, just, and reasonable connection between such limitation and the public health, safety, or welfare proposed to be secured by it."

But three years later, in 1898, the United States Supreme Court showed the fallacy of the doctrine of freedom of contract between employer and employee,[3] and within the next few years, in 1900 and 1902, three decisions by state courts[4] brought out in addition reasons why women as a special class of workers particularly need protection. These decisions took into account the fact that women are physically weaker than men and that therefore their health is more likely to suffer from excessive hours of work. Any injury to the health of women workers is of particular social importance, since it is on their health that the vigor of the next generation directly depends.

The year 1908, however, finally settled the question as far as the restriction of daytime hours to a maximum of ten was concerned. The United States Supreme Court unequivocally upheld the constitutionality of the Oregon ten-hour law as a health measure.[5] "As healthy mothers are essential to vigorous offspring, the physical well-being of women becomes an object of public interest and care in order to preserve the

[1] First laid down in 1886 in Godcharles *v.* Wigeman, 113 Pa. St. 431, 6 Atl. 354; Millet *v.* People, 117 Ill. 294, 7 N. E. 631 (1886).

[2] Ritchie *v.* People, 155 Ill. 98, 40 N. E. 454 (1895).

[3] Holden *v.* Hardy, 169 U. S. 366, 18 Sup. Ct. 383 (1898). See "Hours of Labor, Men," p. 240.

[4] Commonwealth *v.* Beatty, 15 Super. Ct. (Pa.) 5 (1900); Wenham *v.* State, 65 Neb. 395, 91 N. W. 421 (1902); State *v.* Buchanan, 29 Wash. 603, 70 Pac. 52 (1902).

[5] Mueller *v.* Oregon, 208 U. S. 412, 28 Sup. Ct. 324 (1908).

strength and vigor of the race. . . . The limitations which this statute imposes upon her contractual powers, upon her right to agree with her employer as to the time when she shall labor, are not imposed solely for her benefit, but also for the benefit of all." In this case and succeeding ones of a similar nature the influence of the method by which the legislation was defended should not be overlooked. Exhaustive briefs were prepared by Mr. Louis D. Brandeis and Miss Josephine Goldmark, not so much emphasizing the legal aspects of the case as presenting a mass of extracts to show the actual effects of excessive hours of work on the health of women. In 1909, Illinois, whose working-women had been left unprotected from excessive hours since its eight-hour law was overthrown in 1895, passed a ten-hour bill. The constitutionality of the statute was immediately attacked. This time, however, the Illinois Supreme Court did find a clear connection between the measure and the protection of the public health. It recognized not merely a theoretical freedom of contract, but, as well, the facts as to the effects of excessive hours on the health of women. "What we know as men," said the court, "we cannot profess to be ignorant of as judges." [1]

The constitutionality of a ten-hour workday was now established, but the reasonableness of further restriction was still in doubt. In 1915, however, the United States Supreme Court upheld the constitutionality of the California law which fixed an eight-hour day as the maximum for women workers. The court said that the same principles were at stake as in the previous cases, and that while "a limitation of the hours of labor of women might be pushed to a wholly indefensible extreme . . . there is no ground for the conclusion here that the limit of the reasonable exertion of protective authority has been overstepped." [2]

Hour legislation for women has also been attacked on the ground that it is class legislation, discriminating unreasonably between various classes of workers, and denying that "equal protection of the laws" which was promised to all persons by the fourteenth amendment. The statutes have been

[1] Ritchie *v.* Wayman, 244 Ill. 509, 91 N. E. 695 (1910).
[2] Miller *v.* Wilson, 236 U. S. 373, 35 Sup. Ct. 342 (1915).

attacked both because they included certain employments and because they failed to include certain others. The constitutionality of the Illinois law was questioned because it included employees in hotels and in public institutions. One of the chief points raised against the constitutionality of the California law was its inclusion of student nurses. On the other hand, different laws have at various times been called "class legislation" because they included only factories and laundries, and because they excluded mercantile establishments, canneries, stenography, and domestic service. The courts have given but little weight to this type of objection, asserting the freedom of the legislature either to use discretion in enlarging the scope of the laws [1] or to single out those groups of workers most in need of protection.[2]

In an Oregon case the constitutionality of regulation of women's hours by a commission has been attacked on the ground that substituting commission for court authority on questions of fact takes property without "due process of law." The state supreme court sustained the method, holding that it contained the essentials of due process, which it defined as "reasonable notice and a fair opportunity to be heard before some [proper] tribunal." [3] The case was appealed to the United States Supreme Court where in the fall of 1915 it was still pending.

Thus the working-woman's theoretical freedom of contract to dispose of her labor under whatever conditions she pleases has been restricted by the state through its police power. Such a limitation is rightfully applied to women workers as a class, because as workers they do not stand on equal footing with their employers in bargaining and because as women their health is more quickly injured by excessive hours of work. Furthermore, the community suffers if the health of any large number of women is endangered, for on the health of women depends the vigor of the race. The reasonableness of the range of employments included in the laws has been affirmed, and hours may now be limited to as few as eight in daytime work.

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[1] People *v.* Elerding, 254 Ill. 579, 98 N. E. 982 (1912).
[2] See Withey *v.* Bloem, 163 Mich. 419, 128 N. W. 913 (1910).
[3] Stettler *v.* O'Hara, 69 Ore. 519, 139 Pac. 743 (1914).

(3) *Men*

In contrast with the considerable development of hour regulations for women and children is the fragmentary condition of legislation affecting the working hours of adult men. One of the main reasons for the halting growth of this type of law has been the doubtful attitude of the courts. In this matter, however, the courts merely reflect prevailing public opinion, which is as yet hardly awake to the need of restricting men's hours in general employments. Even trade unionists are sometimes opposed to shortening hours for men by the legislative method, through fear that it will weaken union organization.

Most men's hour laws cover employees on public works or in transportation. In the former case the state is merely fixing the working conditions of its own employees; in the latter, the element of public safety is involved. Where public safety is not directly concerned, legislation is common only for the peculiarly hazardous occupation of mining. As with other forms of protective legislation, however, and in view of our increasing knowledge of the dangers of overwork, especially in continuous industries, the principle of hour restriction, first established for women and children, may eventually be extended to cover all wage-earning men. The new laws for one day of rest in seven, and recent legislation in Mississippi and Oregon for ten hours in manufacturing, make it not unlikely that a period of hour regulation for adult male workers has begun.

a. Public Work. The first attempt legally to regulate the working hours of men in the United States was the executive order of President Van Buren in 1840, stipulating a ten-hour day in government navy-yards.[1] Since the early 'thirties special pressure had been brought to bear upon the federal government to shorten the working day, partly because it was felt that the short workday in public employments would have a strong influence in reducing hours in private employments, and partly because there was little doubt of the government's right to regulate the hours of its own employees.

[1] *Documentary History of American Industrial Society*, John R. Commons, ed., Vol. VIII, p. 85.

In 1840, therefore, while the eleven- and twelve-hour days were the rule in private industry, Van Buren was induced to issue the order referred to. Although this was done at a time of industrial depression, he requested that no corresponding reduction in wages be made.

It was not, however, until 1868 that Congress took action on the question and provided that "eight hours shall constitute a day's work for all laborers, workmen, and mechanics who may be employed by or on behalf of the government of the United States." [1] The law did not work as well as its advocates had hoped. Although it applied to contractors and subcontractors, it failed to prohibit agreements for overtime work. Its ineffectiveness in actually reducing the hours of any considerable number of government employees soon became apparent, but it was not until August 1, 1892, that a more effective law covering these classes of employees was passed. This act[2] was mandatory, applied to contractors and subcontractors, and provided a heavy penalty for violations. It did not, however, apply to work done on that very large class of goods or materials purchased by the government, such as army and navy equipment, vessels of war, clothing, boots, shoes, and paper. The attorney-general also ruled that the act did not apply to work done on materials purchased by contractors. Moreover, contractors themselves were constantly making use of the undefined term "emergency" as an excuse for working employees overtime.[3] Agitation for a more inclusive measure was initiated and continued for twenty years before the law was rewritten. Finally the act of June 19, 1912, provided that an eight-hour provision must be inserted in all contracts which may involve the employment of laborers or mechanics when made by, for, or on behalf of the federal government, its territories or the District of Columbia. Exception was made in the case of contracts for transportation by land or water, for the transmission of intelligence or for the purchase of supplies which could be bought in the open market, except armor and armor plate.[4] Provision was also

[1] United States, Revised Statutes, 1878, Title 43, Sec. 3738. See United States Commissioner of Labor, *Second Special Report*, 1896.

[2] United States, Compiled Statutes, 1901, Sec. 3738.

[3] *Report of Industrial Commission*, 1902, Vol. XIX, p. 792.

[4] See opinions of attorney-general since 1912. One opinion held that

made for "emergencies caused by fire, famine, or flood, by danger to life or property," or by any other extraordinary event or condition on account of which the President shall subsequently declare the violation to have been excusable. One year later dredging and rock excavating in rivers and harbors of the United States, which had been excluded from the eight-hour law of 1892 by a Supreme Court decision,[1] were specifically brought under the operation of the new federal act.

Effective restriction of hours of labor was secured for certain groups of post office employees before it was for federal laborers and mechanics. As early as 1888 hours of city letter-carriers were reduced from ten to eight, with the proviso that pay be not reduced and that extra remuneration at the new rate be given for overtime. In 1912 the eight-hour day was extended to clerks in first and second class post offices, work to be performed within ten consecutive hours.

In 1915 legislation to restrict the amount of work which might be exacted of federal employees took a new turn. In addition to the earlier laws limiting the number of hours a day that could be worked, clauses were enacted tending to limit the speed and intensity of the labor. In the appropriation bills for both the army and the navy, provisos were inserted that none of the money was to be used to pay any officer "while making or causing to be made, with a stop-watch or other time-measuring device, a time study of any job of any . . . employee . . . or of the movements of any such employee while engaged upon such work." It was also stipulated in both bills that money was not to be used to pay bonuses or cash rewards, except for suggestions resulting in improvements in the service.[2]

The movement for a shorter workday on public employments was early taken up by the various states, until by the

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under the appropriation act of June 6, 1912, where contracts for ammunition are made, the eight-hour provision relates to employees only when they are engaged on that particular government work and that they may work longer hours for their employers (when contractors) on non-government work.

[1] Ellis *v.* United States, 206 U. S. 246, 27 Sup. Ct. 600 (1907).

[2] United States, Laws 1914–1915, C. 83, section on Increase of the Navy; C. 143, section on Ordnance Department.

end of the 'nineties a dozen states and several cities had eight-hour enactments.[1] But the early state laws, like those of the federal government, were often faulty and unenforceable. The turning-point was the Kansas law of 1891, which contained practically all of the essentials of an enforceable act. This measure not only fixed hours of labor on direct work for the state, but also extended its provisions to municipal corporations and to contractors for public works, and imposed a penalty for violations by any public official or contractor.

At present over half of the states have eight-hour laws for employees on public works.[2] In practically all cases the laws apply to both direct and contract work, to "the state or any political subdivision thereof," and cover "all manual laborers" or all "laborers, workmen, and mechanics," and occasionally all classes of labor. Frequently certain classes of employees are excepted, as firemen, policemen, and certain classes of workmen in state institutions. Provision is almost always made for overtime in case of "emergencies," frequently defined as "imminent danger to property, life, or limb"; but unless a clear definition of the term is given, advantage may easily be taken of the exception to permit unnecessary overtime.

Massachusetts adopted a somewhat different principle when the legislature in 1909 fixed a nine-hour day for cities and towns, but gave them the privilege of changing to the eight-hour day by popular vote. Four years later the legislature provided that in any city or town which had not yet accepted the eight-hour day the question must be submitted to referendum at the next municipal election, and if defeated must be resubmitted every two years upon securing a given number of petitioners.[3]

In addition to the state laws regulating hours on public works, a large number of cities have embodied eight-hour provisions in their charters or have enacted eight-hour ordi-

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[1] Baltimore (1866) was the first city, and California (1868) perhaps the first state, to adopt this legislation.

[2] One of the latest of these went into effect in Ohio on July 1, 1915, and during the last few weeks before that date contracts aggregating millions of dollars were let by state and city departments in order to take advantage of the lower cost possible under the old ten-hour system.

[3] Massachusetts, Laws 1913, C. 822.

nances to cover municipal work. These measures follow the main lines of the state laws and in addition frequently specify, among other things, the kinds of work which may be done directly by the city and those which must be done by contract, rates of wages, the method of selecting employees, whether by civil service, citizenship, or trade union membership, and occasionally provide for physical examination of applicants.

b. Private Employments. In private employments the movement for legislative restrictions upon the length of the working day for men, although associated with the ten-hour campaigns in the interests of both men and women in the reform agitations of the 'forties, did not attain national importance before the period of the Civil War, when Ira Steward, a Boston machinist, inaugurated a nation-wide movement for the universal eight-hour day by law.[1] Scores of eight-hour leagues sprang up, the National Labor Union, the predecessor of the Knights of Labor, indorsed Steward's plan, and during the next few years laws were actually passed by a number of states. First among these was Illinois in 1867. These laws were not enforceable, and the movement died down until it was revived by the growing Knights of Labor, which, however, soon turned the course of action away from the legislative to the trade union method.

During the past generation progress has been made mainly through collective bargaining instead of by legal enactment.[2] There have been, however, important exceptions. Over half the states have enacted laws shortening the hours of employees

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[1] For a full description of the history and philosophy of this movement see *Documentary History of American Industrial Society*, Vols. IX and X, John R. Commons and John B. Andrews, ed.

[2] At the November elections of 1914 in the Pacific coast states of Washington, Oregon, and California, the Socialists secured a vote on initiated measures for the universal eight-hour day. All of these measures were defeated, largely through the opposition of the farmer vote. The Alaska legislature of 1915 referred the question to the voters at the next election. Resolutions favoring the legal eight-hour day for men were defeated at both the 1914 and 1915 conventions of the American Federation of Labor, although the vote on the second occasion was closer. This action was taken largely on the alleged ground that if the legislature may fix maximum hours of work it will also fix minimum hours. The real basis of opposition appeared to be the fear that legislative action would weaken the movement for trade organization.

on steam and on electric railways, and more than a dozen states have eight-hour laws for the protection of workers in mines and smelters. In two states, also, Mississippi and Oregon, ten-hour laws were passed in 1912 and 1913 for workers in manufacturing industries.

(*a*) *Transportation.* The regulation of hours of labor on railroads presents peculiar difficulties. Almost invariably employees in other industries live sufficiently near their work to enable them to return home at night. But the engineer or fireman may find himself several hundred miles away from home or even away from food and shelter at the end of a stated number of hours' work. The problem therefore is to arrange "runs" so that employees may at the end of their work period find themselves in habitable quarters. The length of the "run" must, of course, depend somewhat upon the length of the railway division and upon the character of the country through which the road extends.

One of the early court decisions dealing with hours on railroads involved the case of an engineer who, after he had been on duty for nearly seventeen hours, was summoned by the master mechanic of the road to take out another train which it was assumed would require only five or six hours of work. In reality the second run lasted for a much longer time, and on his return after thirty-one hours' service his train collided with another train on the company's road. On the ground of contributory negligence the court denied the engineer's claim for damages for injuries he sustained.[1] Such situations have not been infrequent and runs of thirty-six, fifty, seventy, and at times even 100 hours have been recorded.[2] These excessive hours have often resulted in serious accidents and great loss of life, and accordingly the first decade of the twentieth century saw the enactment, under the influence of the powerful railroad brotherhoods, of many laws regulating the length of the working day for railroad employees.

Although the legislation is of comparatively recent date,

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[1] Smith *v.* Atchison, Topeka and Santa Fe Railway Co., 39 Tex. Civ. App. 468, 87 S. W. 1052 (1905).

[2] For a vivid description of this subject see paper by A. B. Garretson, *American Labor Legislation Review*, Vol. IV, No. 1, pp. 120–128.

already over half of the states of the union have placed such acts upon their statute books. This legislation relates usually to two classes of employees, those directly connected with the handling of trains, such as engineers, firemen, conductors, and brakemen, and those connected with directing the movements of trains, such as despatchers, telegraphers, and signal-men.

Considerable uniformity exists in these legal restrictions. For men actually handling the trains the majority of states make sixteen hours the maximum limit for a day's work, to be followed by eight or ten consecutive hours of rest. Certain classes of employees, such as those on sleeping-cars, baggage-cars, or wrecking-trains, are frequently excluded, while a few roads under a specified length are exempted, as in New York, where the law applies only to lines of thirty or more miles. Practically all states make exceptions in case of "emergencies," a necessary exemption, but one which, if not defined, can easily be used as an excuse for disregarding all legal limitations.

The second class of railroad employees for whom hour limitations have been established by law are those connected with the movement of trains, such as telegraphers, despatchers, and signal-men. Great irregularity of employment exists among this class of workers, since an operator's work and distribution of time will depend entirely upon the frequency of train service at his particular station. Here again legal hours depend upon whether or not employment is continuous. In the case of continuous employment hours are usually limited to eight a day, and frequently the three-shift system is used, particularly in the larger railroad centers. If employment is not continuous, or if offices are open only in the daytime, hours are usually limited to twelve or thirteen a day, to be followed by a rest period of eight or ten hours, as with trainmen. Most states make a few exceptions or allow overtime for limited periods, while two or three restrict hours only where a certain number of trains, as eight passenger or twenty freight-trains, pass daily.

Railroad employees on interstate lines are protected by a federal statute, enacted on March 4, 1907, applying to all "persons actually engaged in or connected with the movement of any train" in the District of Columbia, or in any

territory of the United States, or on interstate lines.[1] By this act hours are limited to sixteen a day, with certain provisions for rest periods;[2] but no train-despatcher, telegrapher, or any employee who transmits messages or orders by telegraph or telephone "shall be required or permitted to be or to remain on duty for a longer period than nine hours" in places continuously operated day and night, nor for more than thirteen hours in places operated only during the daytime. Overtime in cases of emergency, which is carefully defined in the act, may be permitted for four additional hours on not more than three days a week. The Interstate Commerce Commission is charged with the duty of enforcing the act, and it may require reports of violations and of the causes for overtime, and may after full hearing extend the period of permitted overtime in special cases. By the operation of the federal act the great majority of railroad employees, even in states without hour limitation laws, are protected, since but few employees are engaged in intrastate train service exclusively.

Somewhat akin to the problem of the trainman is that of the motorman and conductor on street railways. Until the early 'eighties, hours for streetcar employees were commonly from twelve to fourteen a day, and often ran as high as sixteen to eighteen. In 1864 a coroner's jury in the city of Philadelphia, passing upon a fatal accident, said: "Nor should we expect vigilance and attention from employees worn out by seventeen hours of incessant labor. . . . The constant occurrence of passenger railway accidents demands from this jury an unequivocal condemnation of the companies who compel men to do work to which the bodily and mental frame is not usually equal."[3]

During the 'eighties the states began to enact legislation on the subject, until now about a dozen laws have been passed limiting hours usually to ten or twelve a day. Most of these acts provide for overtime in case of unexpected emergencies, and many require extra compensation for such emergency

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[1] United States, Laws 1906–1907, C. 2939.

[2] See "Rest Periods," p. 247.

[3] United States Bureau of Labor, *Bulletin No. 57*, March, 1905, "Street Railway Employment in the United States," Walter E. Weyl, p. 610.

work, but very few give adequate attention to the equitable distribution of working time. Although streetcar service is one of the most constant forms of employment, the public demands not only regularity, but also additional service at the rush periods of the day, on Sundays and holidays, after the theater, for excursions, public games, or special celebrations, and on many other occasions, most of which do not occur with any degree of regularity. Men must be employed to meet these irregular and often unexpected demands. For this purpose a long waiting-list is usually kept, and men are employed and paid often for only two or three hours at a time. The presence of these extra men acts as a stimulus to the regular men, who for fear of losing their jobs will work for a longer time than the normal period. This situation furnishes an additional reason for the enactment of legislation in several states definitely fixing the maximum number of hours within which the legal day's work must be performed. Rhode Island in 1902 provided that a day's work should not be longer than ten hours, completed within twelve consecutive hours' time.[1] Although this measure specifically permitted contracts for overtime, the supreme court of the state held the ten-hour day binding upon all companies, since the legislature had expressly stated its intention to limit the hours of all employees covered by the act.[2] Massachusetts is among the more recent states which have attempted to meet effectively the problem of proper distribution of time. In 1913 the legislature limited working hours to nine a day and set eleven consecutive hours as the maximum time within which the labor must be performed.[3] Moreover, this act specifically provides that threat of loss of employment or refusal of future work or hindering an employee in securing other work will be considered as "requiring" overtime, which is punishable by a heavy penalty.

Another method of regulating hours of service on street railways is by the insertion of labor clauses in franchises

[1] Rhode Island, Laws 1902, Cs. 1004, 1045.

[2] Opinion to the governor (*In re* Ten-Hour Law for Street Ry. Corporations), 24 R. I. 603, 54 Atl. 602 (1902). "The law before us is more clearly within such power, for the triple reason that it deals with public corporations, the use of a public franchise, and a provision for public safety."

[3] Massachusetts, Laws 1912, C. 533, as amended by Laws 1913, C. 833.

granted to railway companies. This method is much less common in America than in European cities. In Paris, for instance, one of the labor conditions stipulated in the franchise for the subway was that daily hours should not exceed ten. Among the few American cities which have adopted this plan are Dallas, where a twelve-hour day, and Cleveland and Detroit, where a ten-hour day were secured on local car lines.

Regulation of hours in water transportation is found in a federal act of 1913, limiting hours of deck officers to nine out of twenty-four while in port, and, except in emergencies, to twelve out of twenty-four while at sea.[1] The federal law of 1915 regulating the working conditions of seamen provides that when a vessel is in a "safe harbor, nine hours, inclusive of the anchor watch, shall constitute a day's work." [2]

(*b*) *Mines and Tunnels.* During the past generation several states have taken still another step and have enacted legislation regulating the hours of labor for men in private employments where the safety or welfare of the general public is not involved. This class of legislation has been applied particularly to mines, smelters, and related industries.

The mining industries occupy an important position in the industrial life of this country, since they employ over one and one-half million workmen, practically all being adult males. Coal-mining alone claims nearly one-half the total number. Trade union organizations in both the coal and the metalliferous branches of this industry have been among the largest and most powerful in America.

The special dangers of mining have been frequently pointed out, as well as the greater hazard in American than in foreign mines. It has been shown, for instance, that the average fatality rate in coal-mining in the United States during the ten years ending with 1910 was 3.74 a 1,000, in comparison with a rate of 2.92 for Japan, 2.11 for Germany, 1.69 for France, 1.36 for Great Britain, 1.04 for Austria, and 1.02 for Belgium.[3]

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[1] United States, Laws 1912–1913, C. 118.

[2] Ibid., Laws 1914–1915, C. 153.

[3] United States Bureau of Mines, *Bulletin No. 69*, 1913, "Coal-Mine Accidents in the United States and Foreign Countries," Frederick W. Horton, p. 87.

The speed of the American miner is indicated by the fact that he produces about five times as much coal in a day as does the miner of either France or Belgium. This is partly due, however, to greater use of machinery and to the more recent development of American mines, which permits a greater proportion of work to be done near the surface. These latter conditions are, however, partly offset by the fact that American miners work about eighty days less a year than do the French and Belgian miners.[1] Investigations of health conditions in the various branches of this industry have revealed the presence of injurious and explosive dusts, noxious gases, poisonous metals or chemicals, sudden and wide variations of temperature and moisture, and impure air often vitiated by powder smoke; in addition miners are commonly exposed to diseases arising from soil pollution due to inadequate sanitary facilities.[2]

Safety and health dangers in the mining industries have become so well known that at the present time over a dozen states, including practically all in which the mining industry is important, limit hours in the various classes of this work to eight in one day. Many mines operate on the two-or three-shift system and a few of the laws make special provision for additional hours at the time of changing shifts. These eight-hour laws very frequently apply to all underground workings, to smelters, or to any employment, including that of hoisting engineers, involved in the mining, smelting, or refining of ores or metals.[3] Surface excavations, and work carried on at less than a specified depth, such as 150 feet in shaft work or 200 feet in tunnel work, are occasionally exempted. Although in some of the deeper mines the heat, moisture, and the difficulties of proper ventilation make even eight hours of work a positive menace to health,[4] no mining

[1] United States Bureau of Mines, *Bulletin No. 69*, 1913, "Coal-Mine Accidents in the United States and Foreign Countries," Frederick W. Horton, p. 88.

[2] S. C. Hotchkiss, "Occupational Diseases in the Mining Industry," *American Labor Legislation Review*, February, 1912, p. 131. See also publications of the United States Bureau of Mines, Washington, D. C.

[3] See Arizona, Laws 1912, C. 28.

[4] In the Comstock silver mines in Nevada, at a depth of 2,000 feet, work has been carried on in short shifts at a temperature of 150° F., the men being freely supplied with ice-water.

law in this country has attempted to make any scientific adjustment of hours based on the degrees of danger in different classes of mines.

The beginnings of such adjustment are, however, to be seen in the laws of New York and New Jersey governing work in compressed air. Under both of these statutes not only are daily working hours regulated by the degree of pressure under which the work is done, but they are divided into two equal periods, the rest interval between which also varies according to the pressure, as follows:

If the pressure exceeds:	*But does not exceed:*	*Number of hours' work in 24:*	*Interval between working periods:*
Normal	21 pounds	8 hours	½ hour
21 pounds	30 "	6 "	1 "
30 "	35 "	4 "	2 hours
35 "	40 "	3 "	3 "
40 "	45 "	2 "	4 "
45 "	50 "	1½ "	5 "

(*c*) *Factories and Workshops.* As indicated in the preceding section, when legal restrictions do not directly affect public health or safety, but apply mainly to the health of the individual adult male workers, we find fewer legal regulations. The general declarations that eight or ten hours shall constitute a day's work in the absence of special contracts or agreements, found in the constitutions or statutes of about half the states, amount merely to a statement of principles. They have practically no effect upon the actual length of the working day, since they do not attempt to prevent either implied or written contracts for overtime, nor do they often provide a penalty for violation.

Only about a dozen states have succeeded in regulating by legislation the hours of adult males in one or more employments in factories and workshops. Eight-hour laws are found for laundries and electric plants in Arizona, for stationary firemen in Louisiana, for plaster and cement mills in Nevada, while a ten-hour limit is placed in saw- and planing-mills in Arkansas, in bakeries in New Jersey, in brick-yards in New York, in certain textile mills in Georgia, North and South Carolina, and in a few states in drug and grocery stores.

Only two states, Mississippi in 1912,[1] and Oregon in 1913,[2]

[1] Mississippi, Laws 1912, C. 157. [2] Oregon, Laws 1913, C. 102.

have limited hours for all classes of employees in general manufacturing industries. Both states adopted the ten-hour day (with certain exceptions), but the Oregon statute allows three hours' overtime provided a 50 per cent. increase in pay is given, while the Mississippi act as amended in 1914 [1] permits twenty minutes' overtime on each of the first five days of the week, this time to be deducted from the last day of the week.

c. Constitutionality. The two main legal principles involved in the constitutionality of maximum hour laws for women are equally important in connection with hour legislation for men. There is, on one side, the right of free contract for the disposal of one's own labor, and on the other the possible limitation of this right by the police power in the interests of social welfare. While it is now definitely settled that hour legislation for women is a rightful exercise of the police power of the state, the question is somewhat more uncertain in regard to hour laws for men. The constitutional status of the latter type of laws seems to depend on the purpose of the restriction and the class of workers covered. The courts usually uphold hour legislation which applies to public work, and to private business if the public safety is directly concerned, as with railroad trainmen, but opinions are conflicting on hour legislation for private employment where the safety, health or welfare of the employees alone is involved.

Although several earlier decisions were unfavorable, in 1903 the United States Supreme Court upheld the Kansas act of 1891, which established the eight-hour day in public employment both for direct and for contract work. "It belongs," said the court, "to the state, as guardian and trustee for its people, and having control of its affairs, to prescribe the conditions upon which it will permit work to be done on its behalf, or on behalf of its municipalities." [2]

But while this decision supported the right of the state to control the action of its political subdivisions, state courts have not always followed its precedent on this point. In New York, for instance, this right was denied on the ground that municipal corporations are local bodies supported by local

[1] Mississippi, Laws 1914, C. 169.
[2] Atkin *v.* Kansas, 191 U. S. 207, 24 Sup. Ct. 124 (1903).

taxes, and are therefore on the same footing as private corporations.[1] In order, therefore, that there might be no future question on these points, the people of the state in 1905 amended their constitution expressly giving the legislature the power to fix all conditions of labor on public work, whether done directly by the state or through contractors.[2] A similar amendment to the Pennsylvania constitution was voted down by the people in 1913. But on the whole, decisions have in recent years followed the main principles of the decision in Atkin *v.* Kansas.

In private employments, when the element of public safety is clearly and directly involved, as in legislation regulating working hours in transportation, the courts have raised but few objections. Though during the early days of this class of legislation opinions varied considerably, the close connection between the safety and welfare of the traveling public and the physical condition of these employees has now been so well established that recent decisions almost invariably uphold the main principle of hour limitation as a valid exercise of the police power. In a decision given in 1911 the United States Supreme Court said: "The length of hours of service has direct relation to the efficiency of the human agencies upon which protection to life and property necessarily depends. . . . In its power suitably to provide for the safety of employees and travelers, Congress was not limited to the enactment of laws relating to mechanical appliances, but it was also competent to consider, and to endeavor to reduce, the dangers incident to the strain of excessive hours of duty on the part of engineers, conductors, train-despatchers, telegraphers, and the persons embraced within the class defined by the act." [3]

Various related questions arise from time to time involving such points as the definition of emergency,[4] and the liability

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[1] People *v.* Grout, 179 N. Y. 417, 72 N. E. 464 (1904).

[2] New York, Laws 1906, C. 506. Upheld in People *ex rel.* Williams Eng. Co. *v.* Metz, 193 N. Y. 198, 85 N. E. 1070 (1908).

[3] Baltimore and Ohio Railroad Co. *v.* Interstate Commerce Commission, 221 U. S. 612, 31 S. C. 621 (1911).

[4] United States *v.* Chicago, Milwaukee and Puget Sound R. R. Co., 197 Fed. 624 (1912); United States *v.* Kansas City Southern R. R. Co., 202 Fed. 828, 121 C. C. A. 136 (1913).

of the railroad company in case of accidents connected with overtime work. The courts have also had to consider the legality of the so-called "split trick." They have held that under the federal law the permitted hours of service may be divided into two parts within the same twenty-four hours.[1] In some cases this rule has led to much practical difficulty in the enforcement of the law, and a number of cases have been brought into court in which train crews have had their time of service extended beyond the maximum sixteen hours by temporary "releases" at places where trains were delayed *en route*. In a recent case the United States Circuit Court of Appeals for the ninth circuit guarded against an abuse of this practice by ruling that such a "release," to constitute a break in the continuity of service, must be sufficiently long to insure "a substantial and opportune period of rest" under all circumstances. Whether or not a "release" was for such a period was a question for the jury to decide in each case.[2]

Another important point frequently raised is the division of jurisdiction between state and federal laws. In case of conflict between the provisions of a state law and the federal act, the higher courts have practically always given precedence to the federal act, largely because of the difficulty of separating interstate from intrastate operations. But where no conflict exists both laws may operate at the same time. Among the later decisions on this subject is a New York case, carried to the United States Supreme Court, involving the validity of the New York eight-hour law for train-despatchers. In this case the New York court held that the act was a valid exercise of the police power, and that no conflict existed between state and federal authority since the federal law limiting hours to nine a day "prescribed a general minimum limit of safety applicable to average conditions throughout the country," whereas the New York statute limiting hours to eight a day "simply supplemented" the federal act by raising the limit of safety in response to conditions prevailing within the limits

[1] United States *v.* Atchison, Topeka and Sante Fe R. R. Co., 220 U. S. 37, 31 Sup. Ct. 362 (1911). In this decision the United States Supreme Court upheld the practice of a railroad company in requiring telegraph operators to be on duty from 6.30 A.M. to 12 M. and again from 3 to 6.30 P.M.

[2] United States *v.* Southern Pacific Co., 220 Fed. 745 (1915).

of the state.[1] On appeal the United States Supreme Court on May 25, 1914, gave a unanimous opinion denying the constitutionality of the New York act, as in direct conflict with the federal act, holding that "Where there is conflict the state legislation must give way. Indeed, when Congress acts in such a way as to manifest its purpose to exercise its constitutional authority the regulating power of the state ceases to exist."[2] On the point made by the New York court that the state law merely supplemented the federal act, the federal court said: "It is not that there may be a division of the field of regulation, but an exclusive occupation of it when Congress manifests a purpose to enter it. . . . It [the federal act] admits of no supplement; it is the prescribed measure of what is necessary and sufficient for the public safety and of the cost and burden which the railroad must endure to secure it." Another contention made by the New York court was that in any case the federal law had not become operative at the time of the alleged violation, November 1, 1907. But the federal court said that it "considered it elementary that the police power of the state could only exist from the silence of Congress upon the subject and ceased when Congress acted or manifested its purpose to call into play its exclusive power."[3] The important question as to whether the New York act was a valid exercise of the control reserved by the state over corporate charters was also raised in these cases, but no conclusive decision was reached in either court.

The right to limit the working hours of men in mines has been practically undisputed since the case of Holden *v.* Hardy in 1898 upholding the Utah eight-hour law for this group of workers.[4] This case has such an important bearing upon the

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[1] People *v.* Erie R. R. Co., 198 N. Y. 369, 91 N. E. 849 (1910). See also Smith *v.* Alabama, 124 U. S. 465, 8 Sup. Ct. 564 (1888).

[2] Erie R. R. Co. *v.* New York, 233 U. S. 671, 34 Sup. Ct. 756 (1914). See also Minnesota Rate Cases, 230 U. S. 352, 33 Sup. Ct. 729 (1913).

[3] See also Northern Pacific Ry. *v.* Washington, 222 U. S. 370, 32 Sup. Ct. 160 (1912).

[4] Holden *v.* Hardy, 169 U. S. 366, 18 Sup. Ct. 564 (1898). Immediately after this favorable decision by the United States Supreme Court, Colorado enacted a law identical with the Utah statute. One year later the Colorado Supreme Court in an elaborate opinion refused to conform to the opinion of the United States Supreme Court and declared the act unconstitutional on the ground that public welfare was not involved, since only the employee himself is injured by long hours (*In re* Morgan,

right to limit the hours of adult men in general employments that it should be given special attention at this point. In connection with the custom of passing upon the validity of state legislation under the fourteenth amendment to the federal constitution, the court said: "This court has not failed to recognize the fact that the law is, to a certain extent, a progressive science; that in some of the states methods of procedure which, at the time the constitution was adopted, were deemed essential to the protection and safety of the people, or to the liberty of the citizen, have been found to be no longer necessary; that restrictions which had formerly been laid upon the conduct of individuals, or of classes of individuals, had proved detrimental to their interests, while, on the other hand, certain other classes of persons (particularly those engaged in dangerous or unhealthful employments) have been found to be in need of additional protection."

Two far-reaching conclusions were set forth in the opinion given in this case. The first involved the question, Are the health dangers connected with the occupation of mining sufficiently serious to justify the legislature in separating out this class of employees and interfering with the right of free contract under the police power of the state? On this point the court said: "But if it be within the power of a legislature to adopt such means (provisions for proper ventilation, speaking-tubes, protection of cages, etc.) for the protection of the lives of its citizens, it is difficult to see why precautions may not also be adopted for the protection of their health and morals. It is as much for the interest of the state that the public health should be preserved as that life should be made secure. . . . While the general experience of mankind may justify us in believing that men may engage in ordinary employments more than eight hours per day without injury to their health,

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26 Colo. 415, 58 Pac. 1071 (1899). So determined were the miners of Colorado to have the shorter workday guaranteed them by legislation that they succeeded in 1902 in securing an amendment to the constitution providing for the eight-hour day (Art. 5, Sec. 25a). Despite this fact, it was not until 1905 that the legislature finally enacted an eight-hour law. But not until 1911 was an enforceable act passed which was, however, immediately subjected by the efforts of the operators to a referendum vote. Not until 1913 was the question finally settled and an effective act in force. These unfortunate events have played no small part in creating the notorious situation recently existing in Colorado.

it does not follow that labor for the same length of time is innocuous when carried on beneath the surface of the earth, where the operative is deprived of fresh air and sunlight, and is frequently subjected to foul atmosphere and a very high temperature, or to the influence of noxious gases generated by the processes of refining or smelting."

The second conclusion relates to inequality of bargaining power, already treated in Chapter I.

As to regulation of men's hours in general factory employments, before further widespread gains can be secured through the legislative method more definite information as to the health dangers of excessive hours must be obtained, so that greater encouragement will be given to legislators by the higher courts of the land. Up to the present time court decisions have been so varied that great uncertainty exists as to the possibilities of the legal limitation of hours for adult males.

The early unenforceable eight- and ten-hour laws were generally upheld by the courts, but when Nebraska in 1891 attempted to make such a law enforceable by requiring double pay for all work in excess of eight hours, farm and domestic labor being excluded, the law was declared unconstitutional by the supreme court of the state in 1894 both on the ground of class legislation and as an interference with the right of free contract.[1]

The only case directly concerned with the work of adult males in factories or workshops to reach the United States Supreme Court is the bakers' case of Lochner *v.* New York.[2] The decision in this case overthrew an earlier decision of the New York Court of Appeals[3] upholding the constitutionality of a ten-hour law for all bakery employees. In upholding the act as a legitimate use of the police power in protecting the welfare of the state, the New York court said: "Again, many medical authorities classify workers in bakeries or confectioners' establishments with potters, stone-cutters, file-

[1] Low *v.* Reese Printing Co., 41 Neb. 127, 59 N. W. 362 (1894).
[2] Lochner *v.* New York, 198 U. S. 45, 25 Sup. Ct. 539 (1905).
[3] People *v.* Lochner, 177 N. Y. 145, 69 N. E. 373 (1904). It is interesting to note that in both courts the decisions were reached by majorities of only one, making altogether eight judges in favor of the constitutionality of the law and eight against it.

grinders, and other workers whose occupation necessitates the inhalation of dust particles and hence predisposes its members to consumption. The published medical opinions and vital statistics bearing upon that subject standing alone fully justify the section under review as one to protect the health of the employees in such establishments."

A careful reading of the opinion of the federal court discloses the fact that the court did not feel that sufficient evidence was presented to it indicating the injurious effects upon the health of the men who work long hours in bakeries to justify the state in singling out bakers and interfering with their freedom of contract. "Viewed in the light of a purely labor law," said the court, "with no reference whatever to the question of health, we think that a law like the one before us involves neither the safety, the morals, nor the welfare, of the public, and that the interest of the public is not in the slightest degree affected by such an act. The law must be upheld, if at all, as a law pertaining to the health of the individual engaged in the occupation of a baker. . . . We think that there can be no fair doubt that the trade of a baker, in and of itself, is not an unhealthy one to that degree which would authorize the legislature to interfere with the right to labor, and with the right of free contract on the part of the individual, either as employer or employee." In view of more recent decisions of the federal court the opinion has frequently been stated that a similar case might now be decided in the affirmative, particularly if sufficient evidence concerning health dangers of the trade existed and were presented to the court in a thorough and scientific manner.[1]

In 1912 the Supreme Court of Louisiana declared an hour law unconstitutional on the grounds of unwarranted classification of industries. This act limited the hours of stationary firemen to eight a day in manufacturing or business establishments, offices, or warehouses operating day and night, but exempted certain other industries, as the petroleum, sawmill, and cotton-gin industries, and sugar plantations.[2] This classification of industries appeared to the court to be purely

[1] On the subject of judicial investigation, see Chapter IX, "Administration."

[2] Louisiana, Laws 1912, No. 245.

arbitrary, since it was difficult to see why long hours were not as injurious in sawmills as in warehouses or offices. On this point the judge said: "There is no suggestion in the record that the occupation of stationary firemen is dangerous or unhealthy to such a degree as to warrant the interference of the state. . . . The toil *per se* could not have warranted the interference of the legislature because it permitted unlimited toil in the plants excepted from the operation of the act. Whatever may have been the motive for the passage of the act, we are satisfied that it was not based on health considerations."[1]

Here again the court did not feel that sufficient evidence was presented to justify the classification of industries as contained in the law, and after this decision the legislature amended the original law, making it apply to all stationary engineers in cities with a population of 50,000 or more.[2]

The Mississippi law of 1912,[3] limiting hours of all employees engaged in manufacturing or repairing to ten a day, but excepting cases of emergency or public necessity, was taken to the state supreme court three different times and was each time upheld. The court held that it was not bound by Lochner *v.* New York, since in the law decided against in that case no provision was made for emergencies under which the "lightest violation of the provisions of the act would be innocent." The court also called attention to the physical and mental strain of present-day industry as compared with earlier methods and declared: "It is also well known that in the progress of society the relations between employer and employee have changed. Such law as that before us in the instant case may not have been needed half a century ago, but may be needed at the present time. . . . It is well known that, in the work connected with the running of machinery, the operator is subjected to a mental as well as physical strain. In many cases the nearness to machinery makes the work dangerous in case of an overtaxing of the strength of the worker, or any lessening in his alertness. We can readily understand that all this was in the minds of the legislature

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[1] State *v.* Barba, 32 La. 768, 61 So. 784 (1913).
[2] Louisiana, Laws 1914, No. 201.
[3] Mississippi, Laws 1912, C. 157.

when the law now under discussion was considered. Besides, it would not be unreasonable for the legislature to decide that it would promote the health, peace, morals, and general welfare if they were not permitted to extend their labor over ten hours a day, and the legislature could also decide that the best interests of the people in the state would be promoted by limiting the time of work of this numerous class of its citizens to the time mentioned. In fact, when we consider the present manner of laboring, the use of machinery, the appliances, requiring intelligence and skill, and the general present-day manner of life, which tends to nervousness, it seems to us quite reasonable, and in no way improper, to pass such a law so limiting a day's labor."[1]

One of the few instances where a court has specifically recognized the right to leisure occurred in this case, when the court said: "We pause here to remark the notable fact that it is rare for the seller of labor to appeal to the courts for the preservation of his inalienable rights of labor; this inestimable privilege is generally the object of the buyer's disinterested solicitude. Some day, perhaps, the inalienable right to rest will be the subject of litigation, but as yet this phase of individual liberty has not sought shelter under the state or federal constitutions."

In 1914 the Oregon Supreme Court upheld the state ten-hour law for adult males in factories.[2] The case was then appealed to the United States Supreme Court, but was still pending in the autumn of 1915. The decision will be the first by this court on an hour law for men in general employments, and will to a large extent define their constitutional status. If it follows its own opinion in the case of Holden *v.* Hardy,[3] declaring the inequality of bargaining power between employer and employee, the way is probably opened for much greater regulation of the work of adult males than has heretofore been undertaken in this country. Equality of bargaining power may be secured in some cases by freeing labor or-

[1] State *v.* J. J. Newman Co., 103 Miss. 263, 59 So. 923 (1912).
[2] State *v.* Bunting, 71 Ore. 259, 139 Pac. 731 (1914).
[3] See p. 27. See also Adair *v.* United States, 208 U. S. 161, 28 Sup. Ct. 277 (1908); State *v.* Browne and Sharpe Mfg. Co., 18 R. I. 16, 25 Atl. 246 (1892); Knoxville Iron Co. *v.* Harbison, 183 U. S. 13, 22 Sup. Ct. 1 (1901).

ganizations from existing restrictions upon acts, not in themselves unlawful, which are necessary to carry out effectively the purposes of organization.[1] But where organization fails to protect any considerable group of workers or where this protection is not provided in a reasonable manner, the substitution of the power of the state becomes a justifiable and necessary interference with the right of free contract, for the protection of health, welfare, and citizenship. Such interference, an analysis of the various decisions shows, has been generally held legitimate by the courts.

2. Rest Periods

In spite of the considerable development of maximum hour legislation in this country, only slight attention has been paid—except for the recent agitation for one day of rest in seven and some efforts to exclude women and children from night work—to the important question of legal rest periods.

(1) *Daily Rest and Meal-times*

The most common form of legal requirement for daily rest periods in private employments is found in the laws regulating hours of labor for women. A number of states merely specify that from one-half hour to one hour shall be allowed for the noon meal. Under such laws, which do not restrict the number of hours of continuous employment, women have been employed with no time for rest and meals for periods so long as to be definitely harmful to their health. Several states therefore make the provision more effective by prescribing that the noon rest period shall be given after six or six and one-half hours' work. If overtime is worked in the evening, a few states require a rest period of twenty or thirty minutes after 6 or 7 P.M. Most of the laws apply to all females and a few apply both to boys and to girls, but the inclusion of adult men workers is very rare.

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[1] See "Justification of True Collective Bargaining," pp. 115-118.

In addition to the noon rest period a few employers have voluntarily granted to employees, especially to women, a fifteen- or twenty-minute rest in the middle of the morning and again in the afternoon; but no legal regulations to this effect exist in America. In European countries, however, the beneficial effects of these shorter breaks in the workday have been recognized in legislative enactments. In Belgium, for instance, women in fruit-preserving must be allowed at least fifteen minutes' rest in every five-hour work period in addition to the noon rest. In the chocolate and confectionery industry a second rest period of fifteen minutes in addition to the noon rest must be allowed if the working day is between nine and ten hours long, and a third rest period of the same length must be given if the hours exceed ten. Such rest periods may, under the increasing strain and complexity of modern industry, add much to both the physical welfare and the efficiency of the worker.

For men workers in America a daily rest period is occasionally required by laws in the interest of health or public safety. Thus a daily rest period as well as the maximum limit of daily hours is fixed by law for railroad employees. Trainmen must be allowed ten hours' rest after sixteen hours' consecutive employment, but if they have been at work for an aggregate of sixteen hours with brief intervals between, the rest period need be only eight hours. Several states make no distinction between consecutive and aggregate employment, but set a fixed period of eight or ten hours' rest after sixteen hours of work, while a few other states require this rest period after thirteen, fourteen, or fifteen hours on duty. In addition a few states, including Massachusetts, Maryland, and New York, have enacted laws requiring that telegraphers, switchmen, and others directing the movement of trains be given a rest period of twenty-four consecutive hours twice each month, without reduction of pay.[1] In New York and New

[1] The New York law was, however, held unconstitutional by the state appellate division, third department, in People *v.* N. Y. C. & H. R. R. R. Co., 163 App. Div. 79 (1914), on the ground laid down by the United States Supreme Court in Erie R. R. Co. *v.* New York, 233 U. S. 671, 34 Sup. Ct. 756 (1914), that "there can be no valid state legislation covering the same field where the federal authority has asserted its right to act." (See p. 239.)

Jersey, where tunnel and caisson operations have been scientifically regulated, the hours of workers in compressed air must be equally divided by a rest period varying in length from one-half hour to five hours, according to the degree of air pressure.[1]

(2) *Night Work*

Night work legislation applies only to women and minors, there being no regulation of the work of adult men in this respect.

The investigations of the International Association for Labor Legislation, begun in 1901, showed that serious physical and moral dangers surrounded the work of women at night. It was clearly demonstrated that recovery from fatigue is obtained mainly through rest and sleep, and that sound sleep can rarely be secured in the daytime, especially in the noisy and crowded homes of many working people in industrial cities. The lack of sunlight tends to produce anæmia and tuberculosis and to predispose to other ills. Night work brings increased liability to eye strain and accident. Serious moral dangers also are likely to result from the necessity of traveling the streets alone at night, and from the interference with normal home life. From an economic point of view, moreover, the investigations showed that night work was unprofitable, being inferior to day work both in quality and in quantity. Wherever it had been abolished, in the long run the efficiency both of the management and of the workers was raised.[2] Furthermore, it was found that night work laws are a valuable aid in enforcing acts fixing the maximum period of employment.

As a result of these investigations, the association called, through the Swiss Federal Council, in Berne, in 1906, a conference on woman's night work. This conference was attended by representatives of fourteen leading European powers,[3] and an international convention was drawn up by which

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[1] See table, p. 236.

[2] See the brief in the case of People *v.* Charles Schweinler Press, by Louis D. Brandeis and Josephine Goldmark, pp. 260–307.

[3] Austria, Hungary, Belgium, Denmark, France, Germany, Great Britain, Italy, Luxemburg, Portugal, Spain, Sweden, Switzerland, and the Netherlands.

the various countries agreed to provide as soon as possible that women industrial workers over eighteen be allowed at least eleven consecutive hours of rest at night, seven of which must fall between 10 P.M. and 5 A.M. In practically all of the signatory countries the necessary legislation was enacted and the prohibition was in force by January 1, 1912. A number of other states and dependencies have passed similar legislation. Even in India the night work of women in factories is forbidden between 7 P.M. and 5.30 A.M.; Argentina forbids it between 9 P.M. and 6 A.M. Several of the signatory states have enacted legislation far beyond the provisions of the treaty. France, Belgium, and Spain, for instance, have forbidden many kinds of industrial work between 9 P.M. and 5 A.M., and in Holland the prohibited hours are between 7 P.M. and 6 A.M. Most of these European countries permit exceptions under certain conditions, especially when a delay in handling perishable materials would cause great financial loss, but such exceptions are as a rule very carefully safeguarded.

The backwardness of America in prohibiting night work forms a striking contrast to the activity of Europe, the American states forbidding such work by women being less than ten in number.[1] Massachusetts was the pioneer, forbidding in 1890 the employment of women in manufacturing and mechanical establishments between 10 P.M. and 6 A.M.[2] In 1907 the law was extended to forbid work in textile mills between 6 P.M. and 6 A.M.[3]—the strictest regulation found in the United States. Not one of these statutes, however, is an inclusive night work prohibition. The Indiana law, for example, applies only to factories,[4] while the South Carolina law applies only to stores.[5] New York, by two separate statutes, covers both stores and factories,[6] while Nebraska covers a wider range of employment by including also laundries, hotels, restaurants, and offices.[7] There is no statute

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[1] Connecticut, Indiana, Massachusetts, Nebraska, New York, Oregon, Pennsylvania, and South Carolina.

[2] Massachusetts, Laws 1890, C. 183. [3] *Ibid.*, Laws 1907, C. 267.

[4] Indiana, Annotated Statutes 1908, Sec. 8021.

[5] South Carolina, Code 1912, Sec. 430.

[6] New York, Laws 1913, C. 83; Laws 1914, C. 331.

[7] Nebraska, Statutes 1907, Sec. 6940 (as amended by Laws 1913, C. 151).

law in Oregon forbidding night work, but the industrial welfare commission, by administrative order, has forbidden it in stores, factories, and laundries.[1]

In some cases, however, these laws are so worded as to prove unenforceable. In Connecticut, for example, the law simply forbids the employment of women in certain lines of work "after ten o'clock in the evening." [2] Therefore a manufacturer believed that he was observing the letter of the law by requiring women to stop work at 10 P.M., but putting them to work again from midnight till early morning.[3] It is necessary that the law to be effective specify the entire period during which work is forbidden.

Another small group of states recognize the strain of employment at night for women and seek to discourage it by shortening the period which may be so worked. The Maryland statute is typical of this class of legislation. While by day women may work up to ten hours, if any part of their work falls between 10 P.M. and 6 A.M. the hours of employment are limited to eight.[4] With these exceptions, which are confined to a few states and a few industries, the night work of women is entirely unregulated in America.

Perhaps the slow progress of American laws forbidding night work of women may be in part accounted for by the unfavorable attitude of certain of the courts. In 1907, eight months after the international agreement to forbid night work, the New York State Court of Appeals declared such a prohibition unconstitutional.[5] The doctrine of entire freedom of contract between employer and employee applying alike to men and to women was emphasized and the court was unable to trace any connection between the law and the promotion of health. No account was taken of inherent sex differences between men and women. Since this decision legislatures have naturally been reluctant to pass night work laws. However, as the dangers of night work for women become more widely

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[1] Industrial Welfare Commission of Oregon, Orders No. 3 and 5.

[2] Connecticut, Laws 1913, C. 179.

[3] See *Report of the State Factory Inspector*, 1914, p. 29. It is reported that this practice became general in munition plants during the boom of 1915.

[4] Maryland, Public General Laws 1911, Sec. 14.

[5] People *v.* Williams, 189 N. Y. 131, 81 N. E. 778 (1907).

known, judicial opinion seems to be changing in respect to the constitutionality of prohibiting it. A brief by Mr. Brandeis and Miss Goldmark, bringing out the facts, was presented in defense of the new night work law passed by New York in 1913. The highest state court, the court of appeals, unanimously reversed its former decision, and taking cognizance of the facts presented to it in regard to modern industrial conditions, upheld the law as a necessary protection to the health of women, both for their own sakes and for the sake of posterity.[1] The case was then carried to the United States Supreme Court, where it was pending in the fall of 1915.

The injurious effects of night work are even more pronounced on children, whose strength and powers of resistance are not fully developed, than they are on women workers. Children are, however, fortunately better protected in this respect than women, there being no constitutional difficulty in their case. About forty states have prohibited the night work of children under sixteen, generally between 7 P.M. and 6 A.M., and in addition, in Washington, where there were no statutory restrictions except in bake-houses, the industrial welfare commission by administrative orders forbade the night work of minors under eighteen in laundries and telephone and telegraph offices. The greatest abuses in connection with the night work of children have been found in textile mills and glass works, and on account of the strong opposition of the manufacturers the states where conditions were worst have frequently been the last to pass the necessary legislation. However, by 1915 all the northern textile states forbade the work of children at night, and West Virginia was the only important glass-manufacturing state which still allowed children under sixteen to work on night shifts.

(3) *Saturday and Legal Holidays*

While more than a dozen states have made Saturday afternoon a legal holiday, few, if any, have made effective pro-

[1] People *v.* Charles Schweinler Press, 214 N. Y. 395 (1915). See also Chapter IX, "Administration."

vision for the enforcement of this or other laws fixing legal holidays. The extension of the Saturday half-holiday in private employment during recent years is often due to voluntary action by employers. The short workday on Saturday is more often found in summer than in winter, and more often among clerical and mercantile [1] than among industrial workers. Occasionally strong labor organizations, such as those in some of the building trades, have secured the forty-four hour week, which means the Saturday half-holiday.

But probably women's hour laws have been one of the strongest single influences in securing, though indirectly, a shorter workday on Saturday to certain workers. During the past decade many efforts to improve standards took the form of cutting down the sixty-hour week, though still retaining the ten-hour day; this in actual operation often meant a Saturday half-holiday. Over a dozen states are still found which allow ten or eleven hours of work daily, but set a weekly limit of fifty-four to fifty-eight hours.[2] Several laws also permit an increase in daily hours to secure a shorter workday one day in the week.

In public employment, as in private, the Saturday half-holiday has become a common custom for clerical employees. In addition, a few laws are found extending it to laborers as well. For instance, Massachusetts in 1914 by popular vote provided a Saturday half-holiday without loss of pay for all laborers, workmen, and mechanics employed permanently by the state or by any of its boards or commissions.

In continental Europe the working week of five and a half days is generally known as "the English week" because it is more widely enforced by law in England than in any other country. Thus in Great Britain laws are found forbidding the employment of women and young persons on Saturday after 1 P.M. in textile mills, and for more than eight hours in

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[1] The Consumers' League has been especially active in securing the Saturday half-holiday for salesgirls. In 1914 it for the first time induced most of the large New York stores to close all day Saturday during July and August.

[2] Connecticut, Delaware, Massachusetts, Michigan, Minnesota (mercantile), New Hampshire, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Wisconsin, Wyoming. See "Women's Hours," p. 215.

non-textile factories and workshops. So important is the Saturday half-holiday considered in Europe that it was proposed as a subject for international treaty at the latest meeting of the International Association for Labor Legislation in 1912.

(4) *One Day of Rest in Seven*

It has been pointed out[1] that under modern industrial conditions many thousands of wage-earners are obliged to work seven days a week, a practice which deprives them of proper leisure and tends to break down their health. Remedial legislation in the United States has been of two kinds. The type of law found in nearly all the states is a descendant of the old Puritan "blue laws" and attempts to forbid all Sunday work, primarily from religious motives. Such laws, however, drafted before the rise of modern industry, generally fail to protect either the worker or the Sabbath. Many of them are meaningless because filled with exceptions; others remain dead letters on the statute books; all fail to provide proper means of enforcement. A few enforceable laws have been passed prohibiting Sunday employment in a single occupation, generally that of bakers or barbers, but have generally failed in their purpose because the courts have tended to declare them unconstitutional as making an arbitrary classification of industries, which violates the equal protection clause of the fourteenth amendment to the federal constitution.[2] But it is hardly practicable or desirable, at the present day, to realize the aim of the old-time Sunday law and stop all Sunday work. Public necessity demands the continuous operation of such services as telephone and telegraph lines, heat, light and power plants, steam and electric railways, and hotels and restaurants. Another large group of industries, important among which are iron and steel works, cement factories, paper and pulp, flour and grist mills, usually operate continuously on account of technical requirements or sometimes simply for

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[1] See p. 201.

[2] See Lindley M. Clark, "Labor Laws Declared Unconstitutional," United States Bureau of Labor, *Bulletin No. 91*, November, 1910, pp. 951–952.

economy. To remedy this situation an entirely new form of law has been devised which recognizes that much seven-day work is a necessity and that the objectionable feature is the seven-day worker. This type of law, therefore, simply requires that all employees be given a weekly day of rest, those employed on Sunday being given a free day at some other time in the week. Since such a law generally necessitates an addition of one-sixth to the working force, it tends to eliminate all unnecessary seven-day labor at the same time that it secures to every workman a weekly rest day.

This modern legislative movement began in Switzerland, where a law was passed in 1890 requiring each railway employee to be given, without loss of pay, fifty-two weekly rest days each year, seventeen of them to fall on Sunday. Beginning at about 1905 enforceable rest-day measures were enacted in almost all the leading European countries.[1] These laws generally name Sunday as the day of rest, but permit the operation of continuous industries on that day provided every employee gets some other day in the week free. As with many other classes of European labor legislation, only the general principle is laid down in the laws and special extensions or exceptions are largely determined by administrative rulings.[2]

In America four states and the federal government have passed laws embodying this principle of one day of rest in seven. The federal law applies only to post office employees.[3] The California and Connecticut statutes are nullified by exempting "any case of emergency,"[4] and in addition the Connecticut law specifically excepts a long list of occupations. There remain the Massachusetts and New York acts of 1913,[5] which are similar in character and represent the most effec-

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[1] The list of foreign countries with such laws includes Austria, Bosnia and Herzegovina, Denmark, France, Germany, Italy, Portugal, Roumania, Spain, Switzerland, British India, Canada, Cape of Good Hope, Chile, and Argentina. (See New York State Department of Labor, *Bulletin No. 49*, December, 1911, "Rest-Day Legislation Abroad," John A. Fitch. See also *Bulletins of the International Labor Office.*)

[2] These orders and decrees may be found in detail in the *Bulletins of the International Labor Office.*

[3] United States, Laws 1911–1912, C. 389, Sec. 5.

[4] California, Code 1906, p. 722; Connecticut, Laws 1911, C. 162.

[5] Massachusetts, Laws 1913, C. 619; New York, Laws 1913, C. 740.

tive rest-day legislation yet passed in the United States. Both apply to factories and mercantile establishments only, but exclude janitors, watchmen, superintendents, foremen in charge, employees caring for live animals, maintaining fires or making repairs to boilers or machinery, and employees working not more than three hours on a seventh day in setting sponges in bakeries. In addition Massachusetts excludes a long list of such occupations as those connected with newspaper work, restaurants, drug stores, livery stables or garages, the sale or distribution of gas, electricity, or milk, or any emergency which could not reasonably have been expected, and New York excludes workers in milk and cheese plants with not more than seven employees. New York furthermore provides that if there are practical difficulties or unnecessary hardships in carrying out the law, the industrial commission may make variations "if the spirit of the act be observed and substantial justice done," and if the variations apply to all cases in which conditions are substantially the same.[1] An earlier amendment giving the commissioner of labor power to exempt necessarily continuous processes in which no one was employed for more than eight hours a day was declared unconstitutional by the court of appeals on the ground that it constituted a delegation of legislative power.[2] As an aid to enforcement employers in both states must post a schedule containing a list of employees who are to work on Sunday and designating the day of rest given them.

Investigations carried on by the American Association for Labor Legislation [3] in these states after the law had been in force a year showed that its provisions were being generally observed and that many employees who had previously been obliged to work seven days a week were obtaining a weekly rest day without undue hardship to industry.

Women and children are also sometimes protected from seven-day labor through the provisions of those maximum hour laws which limit work to six days a week; other statutes seek to insure a weekly rest day by fixing weekly hours at six times daily hours or less. A few women's hour

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[1] New York, Laws 1915, C. 648.
[2] People *v.* Klinck Packing Co., 214 N. Y. 121, 108 N. E. 278 (1915).
[3] *American Labor Legislation Review*, December, 1914, pp. 615–626.

laws, however, leave the way open for seven-day labor by setting a daily but not a weekly limit, and one state, Arizona,[1] invites it by making the weekly working period seven times the permitted daily hours.

It has been pointed out that Sunday laws applying to single occupations have sometimes been set aside as class legislation. General Sunday laws, however, have almost universally been upheld by the higher courts. Two distinct lines of reasoning have been followed. In the first half of the nineteenth century, beginning with a New York case in 1811,[2] the constitutionality of the laws was seldom directly involved, but was assumed on religious grounds in connection with the settlement of such questions as the scope of their application, the validity of contracts made on Sunday, the definition of "works of necessity or charity," or the classification of employments. In 1844 in North Carolina a case first came up which was sustained on the grounds of the police power of the state. For the next twenty years both lines of reasoning found their way into court decisions, but since 1866 the state courts in sustaining these laws have relied almost entirely upon the police power, and all acts passed upon by the federal Supreme Court have been upheld on this same ground.[3]

Representative of the reasoning by which Sunday laws have been held a legitimate exercise of the police power is the opinion of the state supreme court in Hennington *v.* Georgia,[4] later quoted by the United States Supreme Court:

"There can be no well-founded doubt of its being a police regulation, . . . for the frequent and total suspension of the toils, cares, and strain of mind or muscle incident to pursuing an occupation or common employment is beneficial to every individual, and incidentally to the community at large, the general public. Leisure is no less essential than labor to the well-being of man. Short intervals of leisure at stated

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[1] Arizona, Penal Code 1913, Sec. 717.

[2] People *v.* Ruggles, 8 Johnson's Rep. (N. Y.) 290 (1811).

[3] As late as 1915 a general Sunday law was attacked in Oregon as class legislation and as a violation of the fourteenth amendment, but was upheld by the state supreme court (State *v.* Nichols, 151 Pac. 473).

[4] Hennington *v.* State, 90 Ga. 396, 17 S. E. 1009 (1892); Hennington *v.* Georgia, 163 U. S. 299, 16 Sup. Ct. 1086 (1896).

periods reduce wear and tear, promote health, favor cleanliness, encourage social intercourse, afford opportunity for introspection and retrospection, and tend in a high degree to expand the thoughts and sympathies of people, enlarge their information, and elevate their morals.

"If a law which, in essential respects, betters for all the people the conditions, sanitary, social, and individual, under which their daily life is carried on and which contributes to insure for each, even against his own will, his minimum allowance of leisure, cannot be rightfully classed as a police regulation, it would be difficult to imagine any law that could."

The new one-day-rest-in-seven laws have been so recently passed that in only one state has a test case reached a higher court. *A priori* it would seem that these laws could be sustained as police power regulations as the Sunday laws have been, and in the main such a position was taken by the New York State Court of Appeals on February 5, 1915. The court said:[1] "Can we say that the provision for a full day of rest in seven for such employees is so extravagant and unreasonable, so disconnected with the probable promotion of health and welfare, that its enactment is beyond the jurisdiction of the legislature? . . . We have no power of decision of the question whether it is the wisest and best way to offset these conditions and to give to employees the protection which they need, even if we had any doubt on that subject. Our only inquiry must be whether the provision on its face seems reasonable, fair, and appropriate, and whether it can fairly be believed that its natural consequences will be in the direction of the betterment of public health and welfare, and therefore that it is one which the state for its protection and advantage may enact and enforce." The classifications made by the act have likewise been upheld, as meeting the actual conditions of modern industrial life. Its limitation to employees of factories and mercantile establishments was reasonable because "We know as a matter of common observation that such labor is generally indoors and imposes that greater burden on health which comes from confinement

[1] People *v.* Klinck Packing Co., 214 N. Y. 121, 108 N. E. 278 (1915).

many times accompanied by crowded conditions and impure air." The exemption of dairies, creameries, and similar plants employing not more than seven workers was also reasonable, because of the perishable nature of the product, the heavier burden of the necessary increase in the force of a small establishment, and because of the closer personal relation between employer and employee and lessened strain in such small establishments. The power given to the commissioner of labor to exempt continuous industries in which daily hours were not more than eight, was, however, held to be an unconstitutional delegation of legislative power. Thus the attitude of the courts is apparently favorable to the extension of laws securing industrial workers a weekly day of rest.

(5) *Annual Vacations*

The average salaried worker would consider himself ill-used if he failed to receive an annual paid vacation of two weeks or more. But ordinarily no such provision is made for the wage-earner.[1] In this respect employees of state and federal governments fare better than workers in private employment. About half a dozen states have laws providing annual vacations for several classes of employees. Representative of these is the California statute, which allows an annual vacation of fifteen days with pay to all regular employees of state hospitals, state commissions and boards, and the state printing-office.[2] The federal government likewise provides annual paid leaves of absence for several classes of employees, including the employees of the Bureau of Engraving and Printing, and the Government Printing Office, workers in navy-yards, gun factories and arsenals, and railway postal clerks. In Massachusetts in 1914 an act providing a fortnight's paid vacation for laborers employed by cities and towns was submitted to popular vote and accepted by over half of the cities and towns of the commonwealth. Another method some-

[1] In May, 1915, the Milk Wagon Drivers' Union of Chicago signed an agreement with their employers which included a provision for two weeks' annual vacation with pay. This is said to be the first such provision in a signed trade agreement.

[2] California, Laws 1909, C. 250, Sec. 1.

times used to secure vacations to city employees is that of inserting such provisions in city charters. For example, the New York City charter gives executive heads at their discretion power to grant employees annual vacations of not less than one week, but *per diem* employees may not be given more than two weeks.

Laws requiring annual vacations have in this country covered only public employment, but in Europe they have sometimes been extended to private industry as well. Thus in the canton of Berne, Switzerland, every woman who has been employed on time rates in the same business for more than one year must be given six consecutive holidays with pay, after the second year's work eight holidays, after the third year ten days, and after the fourth year twelve days. Another method of providing vacations sometimes used abroad is the insertion of labor clauses in public service franchises. For instance, the subway franchise in Paris requires that all employees be given ten days' vacation annually with pay.

The foregoing discussion indicates that legal regulation of the working hours and of the rest periods for the different classes of employees in America has tended toward uniform provisions, the same limitations usually being applied to all industries covered by the law. In European countries, on the other hand, in addition to broad maximum and minimum regulations, frequent use is made of the method of determining the length of the work and rest periods in accordance with the special hazards of each industry or occupation. Scientific adjustment of hours of labor requires thorough and often continued investigations of actual conditions, and should combine the practical knowledge of workers and employers with the technical knowledge of experts. In many occupations dusts and gases, poisons, or extreme temperatures, make it safe to work consecutively for only short periods.[1] The presence in America of hazardous industries fraught with danger to the life and health of thousands of employees working long hours and frequently seven days a week, but as yet unregu-

[1] The strike in the oil plants of Bayonne, N. J., for instance, during the summer of 1915, brought to public knowledge the work of the still-cleaners who must toil in a temperature of 200° F. cleaning the huge vats in which oil is refined.

lated either by trade organizations or by state control, indicates the need for a system whereby permanent bodies will be authorized to investigate scientifically such conditions of employment and fix varying hours of labor on a basis which will adequately protect the health and welfare of the employees and the state. The fact already noted, that in some of the leading states of the country industrial boards or commissions have lately been created with authority to make special investigations and to regulate hours in the various industries, is significant of the direction which future progress may be expected to take.[1]

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[1] See Chapter IX, "Administration."

CHAPTER VI

UNEMPLOYMENT

A careful canvass in March and April, 1915, of about 400,000 families in fifteen American cities showed 11.5 per cent. of the wage-earners unemployed and an additional 16.6 per cent. working only part time. A similar investigation in New York City earlier in the year indicated that 18 per cent. of the wage-earners were unemployed, and it was estimated that the total army of unemployed wage-earners in New York City at that time numbered about 442,000.[1] The United States Census for 1900 showed that 6,468,964 working people, or nearly 25 per cent. of all engaged in gainful occupations, had been unemployed some time during the year. Of these, 3,177,753 lost from one to three months' work each; 2,554,925 lost from four to six months each; 736,286 lost from seven to twelve months each.[2]

The employee's loss from this irregularity of work is two-fold. Besides his enormous immediate loss in wages and the resulting distress, there is the equally serious loss in the weakening of moral fiber which comes with uncertainty, habits of irregular work, and occasional lapses into destitution. Unemployment is a culture bed for pauperism and all its accompanying evils.

Moreover, in addition to the losses by employees is the direct financial loss to employers through the expense of "hiring and firing." A number of employment managers recently estimated the cost of hiring and "breaking in" a new employee at from $50 to $200; in only one case was the

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[1] United States Bureau of Labor Statistics, *Bulletin No. 172*, 1915, p. 7.

[2] Similar data were collected by the government in 1910, but are still unpublished.

estimate as low as $30. A machine-tool builder to whom the matter had been suggested declared after a careful study of his plant that the hiring of 1,000 new persons in one year, while the permanent additions to his force were fewer than fifty, had reduced his profits by at least $150,000, or about $150 for each new worker hired.[1] When many factories are known to hire as many as 1,000 men a year to keep up a permanent force of 300, the magnitude of the resulting waste becomes apparent.

Even this general statement of the wastes of unemployment indicates the imperative need of preventive measures. Hence we are asking with increasing insistence, is unemployment a necessary evil? If not, to what extent is legislation a solution?

In Chapter I it was suggested that unemployment may be defined as the failure to make a labor contract. This failure may be traced to one of three causes: (1) cessation of work arising from trade disputes; (2) unemployability, or disability, owing to sickness, old age, or other personal conditions; and (3) inability of men who are willing and able to work to find employment.

The present discussion relates only to the third part of the whole problem of idleness. Legislation intended to minimize idleness due to labor disputes is discussed in Chapter III. The problems of unemployability and unemployment are by no means identical, but are related to the extent that much chronic unwillingness to work has resulted from the demoralizing influence of unemployment, and therefore a reduction of unemployment may decrease the additions to the ranks of the unemployable. How to provide satisfactory means of caring for the shiftless and the criminal is primarily problem of charity and correction, but the prevention of unemployment is a problem of industrial organization. In this chapter the purpose is to describe the more direct legislative remedies for unemployment due to the inability of normal workers to obtain employment. These remedies may deal either with (1) the regulation of private employment offices, (2) the establishment and operation of public employ-

[1] Magnus W. Alexander, "Hiring and Firing: The Economic Waste and How to Avoid It," *American Industries*, August, 1915, p. 19.

ment offices, (3) systematic distribution of public work, or (4) the regularization of industry. A fifth important legislative remedy, unemployment insurance, will be discussed in the chapter on "Social Insurance."

A study of the comparative possibilities of the various proposed or attempted remedies for unemployment would be much facilitated by statistics indicating the total amount of involuntary idleness and what proportion is due to each one of the several factors, such as cyclical and seasonal fluctuations, unnecessarily frequent changes in the personnel of the working force and other preventable irregularity in employment, and, lastly, to the lack of a centralized market for labor. But accurate and comprehensive figures of this nature are not available in the United States. The existence of unemployment to a significant degree is undoubted, but unfortunately it is impossible at the present time to make more than a rough guess as to the relative proportion of unemployment due to each of the several causes mentioned.

In New York and Massachusetts, however, the state labor departments regularly collect fairly reliable statistics in regard to unemployment among organized workers. The mean percentage of idleness in New York among the members of "representative unions" [1] at the end of each month from 1904 to 1914, due to causes other than labor disputes or disability, ranged from 6.8 to 28 per cent.[2] In all but two years the percentage was over 12. In the same period the unemployment resulting from other causes was comparatively small, ranging from 0.3 to 4.2 per cent. for labor disputes and from 1 to 1.4 per cent. for disability. Of the 18.3 per cent. of members of local trade unions reported as unemployed in Massachusetts on December 31, 1914, all but 3.4 per cent. were unemployed because of "lack of work" rather than because of labor disputes or disability.[3]

It should also be noted that there is a wide seasonal varia-

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[1] In 1914 these representative trade unions numbered 232 and had 140,406 members or 25.4 per cent. of the total union membership in the state of New York.

[2] New York Department of Labor, *Bulletin No. 69*, 1915, "Idleness of Organized Wage Earners in 1914," p. 6.

[3] Massachusetts Bureau of Statistics, *Twenty-eighth Quarterly Report on Unemployment.*

tion in the demand for labor. Statistics collected in New York as to idleness of the members of labor organizations indicate that the mean percentage of idleness during the period 1897 to 1913 was, in all but three years, over 5 per cent. at the end of September, and over 15 per cent.—that is, three times as large—at the end of March. The federal Census of Manufactures for 1905 showed from the manufacturers' records that in one month 7,017,138 wage-earners were employed, while in another month there were only 4,599,091, leaving a difference of 2,418,047. That is to say, nearly two and a half million fewer workers were employed at one period of the year than at another.

In addition to the irregularity of employment due to cyclical fluctuations in the demand for labor, or industrial "crises," and that due to seasonal variations, a third important type of idleness results from the casual or short time nature of many occupations. The New York commission which studied unemployment reported in 1911 that two out of every five wage-earners are obliged to seek new places one or more times every year.[1] In brief, the best available evidence indicates that unemployment is chronic and the amount never insignificant, even when industrial conditions are at their best.

1. Regulation of Private Employment Offices

To the extent that there is somewhere a suitable "manless job" for each "jobless man," the solution of unemployment is simply the proper distribution of the labor supply. Perhaps the commonest method of seeking to bring about this distribution is by unsystematic individual search. A man not recommended for a position by a relative or friend often follows the easiest course, that which involves the least immediate expenditure of money and thought. He starts from home and drops in at every sign of "Help wanted."

"Help wanted," scrawled on a piece of cardboard, is the symbol of inefficiency in the organization of the labor market. The haphazard practice of tramping the streets in search of

[1] New York Commission on Employers' Liability and Other Matters, *Third Report: Unemployment and Lack of Farm Labor*, 1911, p. 38.

work is no method at all. It assures success neither to the idle worker in his search for work, nor to the employer in his search for labor. On the contrary, by its very lack of system, it needlessly swells the tide of unemployment, and through the foot-weary, discouraging tramping which it necessitates often leads to vagrancy and to crime.

Another common method of connecting employer and employee is through the medium of advertising. Every large newspaper in the country carries yearly hundreds of columns of "Help wanted" and "Situations wanted," at a cost to employers and employees estimated at about $5 for every worker. If the money spent brought commensurate results, there would be less ground for complaint. But at present an employer advertises for help in several papers, because not all the workers read the same paper. The employee lists the positions advertised and then starts on the day's tramp. At one gate fifty or a hundred men may be waiting for a single job, while in other places a hundred employers may be waiting each for a single employee. Unnecessary duplication of work and expense by both parties is evident. In addition to the expense, newspaper advertising also possesses inherent possibilities of fraud. It is difficult for the newspaper, even if it always tries, to detect misrepresentations, and the victimized employee very rarely seeks legal redress.

In recognition of the need of more systematic means of connecting the man with the job, private employment offices of various sorts have long been established. Private bureaus which charge no fees are conducted by various philanthropic and semi-philanthropic agencies in all cities of importance, but their activities consist largely in finding casual employment for near unemployables. In addition, many trade unions and employers' associations maintain employment bureaus for workers in special occupations. Some of them are very efficiently organized and conducted. Notable examples are the printers' union "day rooms," and the chain of employment bureaus conducted by the National Metal Trades Association in fourteen principal cities of the United States. The latter offices charge no fees, their registrations number into the hundreds of thousands, and it is claimed by the employers that they are not strike-breaking or blacklisting

institutions.[1] Nevertheless, the usefulness of employment bureaus under the partisan control of either trade unions or employers is limited by their potential or actual use as weapons in a trade dispute. They lack the neutrality essential to the satisfactory organization of the labor market.

(1) *Abuses of Private Agencies*

Private employment agents, doing business for profit, have sprung up in all large centers. In 1912 there were 249 of them licensed and in operation in Chicago; in New York they number about 700; and in all the states, probably about 5,000. Aside from a few specialized agencies, they handle chiefly unskilled, domestic, and theatrical labor.

Many abuses are charged against the commercial agencies, particularly misrepresentation of wages and conditions of work, exaction of extortionate fees, sending applicants to immoral resorts, and "splitting fees" with foremen and thus inducing frequent discharges in order to get fees from men employed to fill the vacancies. In the testimony in the hearing on the petition for an injunction against the Washington referendum practically abolishing commercial agencies, it was stated that some of the private offices were so conducted as to "have three men for one job; one upon the job, one going to the job, and one coming from the job, and receiving compensation from all." There are frequent instances, also, where the commercial agencies accept fees and send the workmen to distant points where there is no demand for laborers. For example, in Kansas, the director of employment bureaus states that during the harvest rush it became known that "private employment agents were imposing upon men who came to the state in search of work in the harvest fields, exacting a fee from men seeking employment and then directing them to parties who had not authorized the employment agent to engage hands." [2] In the year ending May 1, 1913, the

[1] A. J. Allen, secretary of the Associated Employers of Indianapolis, in address before the American Association of Public Employment Offices, 1914.

[2] *Twenty-ninth Annual Report of the Kansas Department of Labor and Industry*, 1913, p. 220.

commissioner of licenses of the city of New York reported the investigation of 1,932 complaints against registered employment agents, resulting in nine convictions, the refunding of more than $3,000 to victimized applicants, and the revocation of thirteen licenses.[1] Among the charges for which licenses were revoked were fraudulent conduct, misrepresentation, failure to refund fees, and sending girls to questionable places.

(2) *Restrictive Legislation*

In the majority of states the abuses of the profit-making agencies have brought about restrictive legislation designed to prevent fraud and extortion and to insure moral surroundings. Under this legislation no one may carry on an employment office for profit without depositing a bond with the state department of labor or the city authorities and securing a license. The amount of the bond varies from $100 to $5,000, and the annual license fee from $10 to $100, often both being graded according to the size of the city or the sort of labor handled. Licenses are issued only if the premises are found proper, and may, together with the bond, be forfeited for violation of the law. About a dozen states prohibit the location of agencies in saloons. Association with lodging-houses or restaurants is also frequently prohibited, and Colorado extends the prohibition to gambling-places. In several states the sending of minors or women to immoral resorts is forbidden. In many jurisdictions the law fixes a maximum charge, usually either a certain per cent. of the first month's wages or a fixed amount. Other related provisions are requirements as to form of receipt, and provisions for return of all or part of the fee if work is not soon obtained or if a workman is discharged in a short time. In California and the District of Columbia traveling expenses as well as the fee must be returned. Frequently it is specified that all advertisements or other information shall be truthful.[2] In a number of states a record of all applicants registered is required, but rarely are the requirements comprehensive enough to give informa-

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[1] *Report of the Commissioner of Licenses*, New York City, 1913, p. 19.

[2] Wisconsin (Laws 1915, C. 457) specifies in addition that advertisements of private bureaus must state the existence of a strike or lockout.

tion valuable for statistical purposes. Among the notable exceptions is New York, where to assist in the publication of a labor market bulletin by the department of labor, private employment agents must keep their records "in such form as may be required by the commissioner of labor in order to supply the same information as that supplied by state offices."

The validity of state regulation of private employment agencies has seldom been denied by the courts. A California statute limiting the amount of charges was declared an unconstitutional infringement on the right to contract,[1] but similar provisions in other states have, as far as is known, been uniformly upheld. The requirement of a license has been sustained, even when the license fee was placed so high as to be practically prohibitive. Thus a Georgia law, fixing a fee of $500 for each county in which the agent operated, was upheld by the supreme courts both of the state [2] and of the United States,[3] the latter decision being followed in other southern jurisdictions.[4] The prevailing view is that license regulations have for their object the promotion of public health, safety, morals, and convenience, that they tend to prevent fraud and extortion, and hence that they are within the police power of the legislatures even though they may somewhat restrict the right to carry on a lawful business without legislative interference.[5]

The almost unanimous testimony of investigators and public officials, however, is that these provisions have not been successful in stamping out the abuses of private offices, and the result has been a widespread movement for the abolition of such offices altogether. Complete suppression of private employment bureaus was recommended by the Trades and Labour Congress of Canada at its annual meeting in 1913,[6] and a

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[1] *Ex parte* Dickey, 144 Cal. 243, 77 Pac. 924 (1914). The statute invalidated was California, Laws 1903, C. 11.

[2] Williams *v.* Fears, 110 Ga. 584, 35 S. E. 699 (1900).

[3] Williams *v.* Fears, 179 U. S. 270, 21 Sup. Ct. 128 (1900).

[4] State *v.* Napier, 63 S. C. 60, 41 S. E. 13 (1902); State *v.* Roberson, 136 N. C. 587, 48 S. E. 595 (1904).

[5] People *ex rel.* Armstrong *v.* Warden of the City Prison of N. Y., 183 N. Y. 223, 76 N. E. 11 (1905); Price *v.* People, 193 Ill. 114, 61 N. E. 844 (1901).

[6] *Dominion of Canada Labour Gazette*, Vol. XIV, p. 448.

resolution of similar tenor was adopted at the 1914 convention of the American Association of Public Employment Offices. The popular protest against the abuses of private commercial agencies was voiced by the adoption in the state of Washington of an initiative measure prohibiting the collection of fees from workers by an employment agent. The reason assigned in the measure is that "The system of collecting fees from the workers for furnishing them with employment . . . results frequently in their becoming the victims of imposition and extortion and is therefore detrimental to the welfare of the state."[1] This measure was expressly based on the police power, and the United States District Court upheld the prohibition inasmuch as "The state, under its police power, can adopt any act which reasonably protects its citizens, or a class of citizens, from fraud and extortion."[2] A similar law was passed by the Idaho legislature in 1915, forbidding private employment offices except philanthropic or professional agencies.[3]

In a number of other countries also, dissatisfaction with the private commercial agencies has led to more or less complete steps for their repression. A German act of 1910 states that licenses must be refused to private employment agencies when there is no absolute need for them, and further declares that the need does not exist when a public exchange is working normally in the locality.[4] Licenses in Austria are conditioned on the absence of a public employment office in the vicinity. The province of Quebec seeks to restrict the number of private employment offices by charging a fee of $200 where there is a public office, otherwise only $25. A French law of 1904 authorizes the establishment of public offices by the communes and at the same time authorizes the closing of the private registry (commercial) offices upon payment of damages.[5] The actual achievements under this law have, however, been slight.

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[1] Initiative Measure No. 8, adopted November 3, 1914.
[2] Wiseman *v.* Tanner, 221 Fed. 698 (1915).
[3] Idaho, Laws 1915, C. 169.
[4] Report of the Union of German Employment Offices, International Conference on Unemployment, 1910, *Report No. 3*, p. 31.
[5] Law of March 14, 1904, Art. 11. See *Bulletin of the International Labor Office*, 1904, French edition, p. 48.

2. Public Employment Exchanges

The agitation for public employment offices has been due partly to the search for a remedy for the abuses of private agencies and partly to a deepening conviction that it is a proper function of the state to help the unemployed find work. The first American state to make provision for employment offices was Ohio in 1890, followed by Montana in 1895, and New York in 1896.[1] The majority of the present laws have been enacted since 1900.

(1) *State and Municipal Offices*

There were in existence in the country in 1915 between eighty and ninety state and municipal employment exchanges, maintained by some twenty-three states [2] and by more than a dozen cities.[3]

Some few states create a state employment office, but make no provision for local branches. Since the work of such an office must be conducted almost entirely by the slow and unsatisfactory "mail order" method, this type of law has not yielded very important results. The West Virginia bureau at Wheeling placed about 2,000 applicants each year [4] in the

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[1] The original Montana and New York laws were soon repealed.

[2] By the end of 1915 provision for state employment exchanges had been made in California, 1915; Colorado, 1907; Connecticut, 1905; Illinois, 1899; Indiana, 1909; Iowa, 1915; Kansas, 1901; Kentucky, 1906; Maryland, 1902 and 1914; Massachusetts, 1906; Michigan, 1905; Minnesota, 1905; Missouri, 1899; Nebraska, 1897; New Jersey, 1915; New York, 1914; Ohio, 1890; Oklahoma, 1908; Pennsylvania, 1915; Rhode Island, 1908; South Dakota, 1913; West Virginia, 1901; and Wisconsin, 1901.

[3] In 1915 public employment exchanges maintained by municipalities were to be found in Phœnix, Ariz.; Los Angeles, Sacramento, and San Francisco, Calif.; Kansas City, Mo.; Butte, Great Falls, and Missoula, Mont.; Newark, N. J.; New York, N. Y.; Portland, Ore.; Pittsburgh, Pa.; Richmond, Va.; Aberdeen, Everett, Hoquiam, Seattle, Spokane, and Tacoma, Wash.; and perhaps in a few additional cities. The three states of Montana, Louisiana, and Idaho respectively authorize, encourage, and require cities to set up such agencies, but provide for no central administrative control.

[4] United States Bureau of Labor Statistics, *Bulletin No. 109*, 1912, "Statistics of Unemployment and the Work of Employment Offices," p. 137.

eleven years following its establishment, but the office conducted in Baltimore, Md., under the law of 1902 has had only a nominal activity,[1] and the Nebraska law establishing a public employment office in the bureau of labor has, because of lack of funds, been practically a dead letter.[2] So ineffective was the Maryland office that in 1914 a special department was created in the local immigration bureau, for the purpose of securing "efficient farm help to meet the demands for such labor in the agricultural communities of the state."

The remaining states which have legislated upon this subject authorize the establishment of local offices, usually under control of the bureau of labor. This is the most important type of public employment bureau law in this country, and is well exemplified by the New York statute of 1914.[3]

By this statute a bureau of employment is established in the state department of labor, under the immediate charge of a director, who must be under civil service and who must have "recognized executive and managerial ability, technical and scientific knowledge upon the subject of unemployment and administration of public employment offices and recognized capacity to direct investigations of unemployment and public and private agencies for remedying the same."[4] The commissioner of labor may establish such local offices as he deems necessary, each to be in charge of a superintendent under the general supervision of the director. These local offices are to register applications from those seeking employment or employers seeking employees, and make periodic reports to the director. Any office may be subdivided into separate departments for men, women, and juveniles, or other class of workmen, as farm laborers. The service is to be free and penalties are prescribed for the acceptance of fees by the officials. A coordination of the activities of the local bureaus

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[1] United States Bureau of Labor Statistics *Bulletin No. 109*, 1912, "Statistics of Unemployment and the Work of Employment Offices," pp. 127–129.

[2] *Ibid.*, p. 131.

[3] New York, Laws 1914, C. 181.

[4] The desire of the framers of the New York law to assure the selection of specially trained men for the work of managing the state employment bureau resulted in the appointment of a director who had many years of experience as an investigator of the organization and methods of employment bureaus.

is to be facilitated by a labor market bulletin and the interchange and publication of lists of vacancies. Partial recognition is given to the common European policy of joint control by directing the commissioner of labor to appoint for each office a representative committee composed of employers and employees, with a chairman agreed upon by the majority. On the request of a majority of either side the voting on any question must be so conducted that there shall be an equality of voting power between employers and employees, notwithstanding the absence of any member. Similar committees have under the Wisconsin Industrial Commission been for years an indispensable adjunct to the public exchange at Milwaukee, and are provided for in the 1915 laws of Illinois[1] and Pennsylvania.[2]

Perhaps the most controversial point in the administration of a bureau is the policy to be pursued in time of strike or lockout. The first Illinois law establishing state exchanges in 1899[3] was four years later declared unconstitutional because of the provision that applications to fill places vacant because of a strike were not to be received.[4] The court held that this provision deprived citizens of the equal protection of the laws guaranteed by the fourteenth amendment, inasmuch as it discriminated between employers whose men were on strike and other employers, and also between workmen who wished to take places vacant because of a strike and workmen who did not. Wisconsin had a similar experience. The healthy instinct of which this prohibitory clause was an unskilful manifestation has been satisfied in most American exchanges by publicity. Under the New York law, for instance, either party to a trade dispute may file a statement, which, with any answer, must be exhibited at the exchange. The prospective employee is informed of the statements at the same time that he is informed of the position, and it is left for him to decide whether or not to take the work. In Massachusetts it is even the practice in case of an industrial dispute to stamp the introduction card which the employee

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[1] Illinois, Laws 1915, p. 414.
[2] Pennsylvania, Laws 1915, No. 373.
[3] Illinois, Laws 1899, p. 268.
[4] Mathews *v.* People, 202 Ill. 389, 67 N. E. 28 (1903).

is to present to the employer with the words, "There is a strike on at this establishment." Under the publicity policy very few applicants take strike-breaking jobs. Employers and labor union representatives are thoroughly satisfied, and consequently the exchange escapes the rocks of disaster on either side. As an important corollary to this method of handling a strike situation, the New York law includes the further stipulation that no applicant is to suffer any disqualification or prejudice at an exchange if he refuses to accept an offered job on the ground that a strike or lockout exists or because the wages offered are lower than those current in the district for the same work.[1]

Careful registration of all applicants is provided for, and the commissioner of labor may also specify the form of registers for private agencies, which must furnish information on request. Five per cent. of the annual appropriation for the bureau may be spent in advertising.

A special feature of the law is the provision for assistance to juveniles somewhat similar to the English system. Children of working age may register at the schools, and a subcommittee composed of employers, workmen, and persons familiar with education or other conditions affecting juveniles, must be appointed by the advisory committee to advise in regard to the management of the juvenile department of the employment offices and otherwise to assist parents and children with respect to the choice of employment. No other American law contains an exactly similar provision, though in a few offices energetic superintendents are endeavoring to develop this side of their work, and in the Pennsylvania act of 1915 special arrangements are made for cooperation with school placement bureaus and with the school authorities generally.

Often, as has been recognized in the British and German systems, lack of railroad fare to reach an offered position is

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[1] The Illinois court, however, following its line of argument in the Mathews case (see p. 272), has declared even the requirement of publicity on labor disputes to be unconstitutional, on the ground of threefold discrimination between certain employers and others, between certain workmen and others, and between employers and other persons making contracts. (Josma *v.* Western Steel Car & Foundry Co., 249 Ill. 508. 94 N. E. 945 (1911).)

a serious obstacle to a willing but moneyless worker, yet no American state authorizes its employment bureau officials to advance the needed transportation. A few superintendents do, however, advance fares in exceptional cases, and the Wisconsin exchanges frequently turn over to applicants the transportation advanced by the prospective employer, checking the man's baggage to the employer as a safeguard.

In Wisconsin and Ohio a merging of the state and city plans has been arrived at, in accordance with which the state pays the salaries and administrative expenses while the town provides the premises, both governmental units being represented on the joint board. The success of this method in securing both local interest and efficient administration is marked, and the next few years may see its adoption in a number of states.

Of the exchanges initiated by municipalities under their own charters, the Seattle office established in 1894 has been among the most successful, filling 33,342 positions in 1913.[1] An important part of the activity of this office has been the shipment of unskilled workers to hop-fields and lumber-camps in large groups, which has helped to keep the per capita cost of filling positions down to the phenomenally low figure of 4 cents.

The public employment offices now in operation in the United States are filling thousands of positions yearly at a cost ranging, according to official reports, from 4 cents to $2 apiece. In Wisconsin, where there are four state exchanges, well organized on the most approved lines, the cost in 1911 was about 35 cents per position filled. In Illinois, during the twelve years, 1900–1911, there were 589,084 applications for employment, 599,510 applications for workers, and 512,424 positions filled. Illinois now appropriates over $50,000 a year for direct support of its state labor exchanges, of which eight have already been established, and a similar sum is expended in New York.

During the winter of 1914–1915, also, several public employment bureaus and labor department officials in the grain-raising states organized, in cooperation with the United States Departments of Labor and of Agriculture, the National

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[1] *Twentieth Annual Report of Public Employment Office*, Seattle, 1913.

Farm Labor Exchange for the efficient placing of harvest hands. Since harvesting begins two months earlier in the southern than in the northern part of the country, and furnishes at most only a few weeks' work in any one place, it was felt necessary to develop some means for more carefully directing the large numbers of workers who "follow the crops," and for preventing hardship to them by loss of time and by congestion in districts already flooded with workers. The work of the exchange is carried on from the offices of the labor officials interested, and farmers, civic, and business associations are associated with it. Further beginnings of interstate cooperation are to be seen in the Eastern Labor Clearing House, initiated in the same winter through the New York City municipal exchange, and in the American Association of Public Employment Offices, organized in 1913 to promote closer connections and uniform methods.

Notwithstanding the good work of a few, however, the state and municipal bureaus are still far from furnishing an adequate medium for the exchange of information on opportunities for employment. Only about half the states are represented. Due to lack of civil-service requirements, many of the managers are political place-holders of worse than mediocre attainments. Some of the offices exist, as has been seen, only on paper, others are poorly located, in out-of-the-way places, and inadequately heated, lighted, and ventilated. Many have therefore driven away the better class of workers, and deal only with casuals. Appropriations are usually too small for efficiency. A uniform method of record-keeping has yet to be adopted. Statistics are non-comparable, and frequently unreliable, if not wholly valueless.[1] There is practically no interchange of information between various offices in a state or between states. In short, workmen are still undergoing want, hardship, and discouragement even though often within easy reach of the work which would support them, if they but knew where to find it.

Nor does the evil end there. Every one who has studied the problem realizes that method and system in putting men

[1] For a full discussion of these statistics, see "Operation of Public Employment Exchanges in the United States," *American Labor Legislation Review*, May, 1914, pp. 359–371.

and opportunities for work in touch with each other will not of themselves prevent oversupply of labor or of jobs. They will do so no more than the cotton exchange guards against an over- or an undersupply of cotton. They will serve merely as levelers in the scales of labor supply and labor demand. Besides the unemployment which is due to the failure of men and jobs to find each other, there is much due to other causes which even the best system of employment exchanges would not directly eliminate.

But close students agree that these other causes of unemployment cannot be successfully attacked without a basis in comprehensive, conscientiously collected information such as cannot be furnished by our present machinery for dealing with the problem. Under present methods there exists no automatic, cumulative means for collecting the facts. This results, of course, in exaggerated statements in both directions. Our paucity of information on this complex and vital question has continued, even though labor problems in one form or another have taken the lead as subjects for legislation. Any scientific lawmaking on the programs of social insurance—especially unemployment insurance—and of vocational guidance must be grounded on facts of relative employment and unemployment of the workers, by trades, by sexes, and by ages. Without a nation-wide system of labor exchanges, no basis can exist for anticipating in an accurate manner the ebbs and flows of the demand for labor. Without concentration of the information now collected and now held separately in thousands of separate organizations throughout the land, the possibility of looking into the future, or of profiting by the past, is out of the question.

(2) *Federal Activity*

Growing realization of the foregoing facts has led to the demand for a federal system of public employment bureaus. Such a system would cover the whole country. Without superseding either the state or the municipal exchanges, it would supplement and assist the work of both, dovetailing them into an efficient whole. Country-wide cooperation and

exchange of information would then be an accomplished fact instead of merely a hope. Statistics for the study of unemployment and for the progressive development of new tactics in the campaign against it would be coextensive with the national boundaries and comparable between different parts of the nation. Regulation of private agencies doing an interstate business would be an additional function of a federal system.

There was in 1915 no direct or adequate federal legislation for a national system of employment offices, but the participation of the federal government in the National Farm Labor Exchange has already been mentioned, and in addition promising activities on a growing scale had been initiated by cooperation between the Department of Labor and the Post Office Department. A clause of the immigration act of 1907 created in the Bureau of Immigration a Division of Information, which was to secure and publish information "to promote a beneficial distribution of aliens." Misapprehension and antagonism hampered the early work of the division, but since the passage of the act of March 4, 1913, creating the Department of Labor, a new start has been taken. The new department was required, among other duties looking to the benefit of the country's wage-earners, to "advance their opportunities for profitable employment," and the Division of Information, together with the whole Immigration Bureau, was transferred to its jurisdiction. Under the system which has been developed, the country is divided into eighteen zones. Each zone has its headquarters, in charge of an immigrant inspector and one assistant, and usually one or more subbranches.[1] In cooperation with the Departments of Agriculture, Interior, and Commerce, information is secured as to opportunities for work, and the Post Office Department assists by displaying in the local post offices placards calling attention to the work of the division and bearing instructions for applying. The form postal cards requesting information are transmitted through the post office free.

This expansion of work was begun in February, 1915. During the six years just preceding, the Division of Informa-

[1] See *Monthly Review of the United States Bureau of Labor Statistics*, Vol. I, No. 1, July, 1915, p. 9.

tion used to receive from 19,000 to 30,000 applications for positions annually. In the first nine months of the new system the number of applications rose to 137,858, and positions were found for 34,142 persons.[1] Steps are under way for the further development of the plan.

(3) *European National Systems*

In a number of European countries a national network of employment offices is much further developed than in the United States. By 1910, for instance, there were in Germany 444 public labor exchanges, 325 of which were maintained by municipalities and the remainder by voluntary associations, with a government subsidy.[2] Over 200 of the more important exchanges are affiliated in a loose voluntary federation, the Union of German Employment Offices, founded in 1898. The member exchanges vary considerably as to control, organization, and methods. The majority are under the joint management of employers and workmen, usually with the chairman of the governing board appointed by the municipal authorities. The number of these jointly managed exchanges has been on the increase, and by 1910 eighty-four of the 131 municipal exchanges affiliated with the federation were jointly controlled.

Similar local federations exist in most of the states of the empire. Until recently, however, the organization of the labor market in Germany was still very imperfect. Two essential principles of a national system of labor exchanges—neutrality and centralization—were far from being realized. The principle of neutrality was broken down particularly by the employment bureaus of employers and of employees,[3] and it was realized that for the success of their work the federations needed to be established by law and given power to inspect and to establish employment bureaus.[4] Shortly after

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[1] *Monthly Review of the United States Bureau of Labor Statistics*, November, 1915, p. 20; December, 1915, p. 5.

[2] International Conference on Unemployment, 1910, *Report No. 1*, p. 6.

[3] The trade unions alone had about 1,000 exchanges in 1910.

[4] *Quarterly Bulletin of the International Association on Unemployment*, July–September, 1913, pp. 689–690.

the outbreak of the war in 1914 greater centralization was obtained by the creation of an imperial employment bureau to cooperate with the municipal exchanges, the trade unions, and other interested bodies.[1]

The subsidies to German labor exchanges are given by cities, states, and the imperial government, the amount received in 1908 by the offices in the national federation being $62,500. To this sum should be added subsidies in other forms, as free telephone service, especially in the southern part of the empire.

National subsidies play an important rôle in European employment bureau legislation. Several countries try to raise the efficiency of local public employment bureaus by granting subsidies only to "recognized" offices, that is, offices which have conformed to the standards fixed by the national government. Switzerland, Belgium, and the three Scandinavian countries have legislation of this character. In the Swedish law subsidies were authorized to meet the expense of special measures adopted to place workmen on the land, and the public bureaus have in consequence been especially useful in agriculture, drawing back into the country the superfluous labor of the towns. In 1912 of the 105,000 positions filled by the thirty-two bureaus, 26,000 were in agricultural pursuits.[2] The Danish act of April 29, 1913, is one of the most important of European laws relating to public employment offices.[3] It provides for the establishment of a central exchange at Copenhagen, and authorizes branch exchanges to be conducted by towns, counties, or groups of towns. The minister of the interior is authorized to designate some of the recognized offices to act as central exchanges for sections of the country. To supervise the entire system the king must appoint a director of labor exchanges, among whose duties is that of maintaining cooperation among the recognized local exchanges.

The first legislation to establish a well-unified and distinctly national system of employment bureaus, however, was the

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[1] Alix Westerkamp, *The Survey*, January 23, 1915, p. 441.
[2] Erik Sjostrand, *Quarterly Bulletin on Unemployment*, July–September, 1913, p. 885.
[3] *Bulletin of the International Labor Office*, 1914, pp. 1–5.

British labor exchanges act of September 20, 1909.[1] Earlier efforts at establishing such bureaus were made by the Central Unemployed Body for London in 1906, under authority of the unemployed workmen act of 1905, and the resulting offices, for which the German exchanges were taken as models, supplied the main essentials of the present British system.

The act of 1909 gives to the board of trade, a body corresponding somewhat to our federal Departments of the Interior, Commerce, and Labor, large discretionary powers as to the details of the system. The board is authorized to establish or take over labor exchanges wherever it thinks fit, to make regulations for the management of these agencies, to assist bureaus maintained by any other authorities, and to establish advisory committees to assist in the management of the exchanges. With the approval of the treasury, it may authorize loans to cover traveling expenses of workers for whom employment has been found through an employment exchange.

The general regulations[2] made by the board under authority of the act set forth in great detail the rules of organization and management of the offices. Registrations of applicants must usually be made in person and renewed after seven days if employment is not obtained. In conformance with the practice followed in the majority of the German offices, during a labor dispute the parties are permitted to file statements in regard to the dispute and applicants are to be informed of its existence. Applicants who refuse positions because of labor disputes, or because the wages offered are lower than those current in the trade, do not sacrifice any of their privileges to future services of the exchanges. The offices "shall undertake no responsibility with regard to wages or other conditions" beyond supplying what information may be in their possession.

The general regulations also prescribe the conditions on which railroad fares may be advanced as loans to workmen who are sent to other towns to take employment. No advances are to be made unless the distance to be traveled is

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[1] 9 Edw. 7, C. 7. For full text see *Bulletin of the International Labor Office*, 1910, p. 21.

[2] General Regulations for Labour Exchanges Managed by the Board of Trade, January 28, 1910.

more than five miles, nor to points where a labor dispute is in progress or when the wages offered are below the current rates. Care is also to be taken to avoid "unduly encouraging rural laborers to migrate from the country to towns." In the first thirty-eight months of the operation of the exchanges they made advances to 28,321 workmen, totaling $40,360, of which sum only 1.6 per cent. had been written off as irrecoverable.[1]

The general regulations also provide in some detail for the constitution, procedure, and functions of the advisory committees. These are to consist of equal numbers of persons representing employers and workmen, appointed by the board of trade, with a chairman agreed upon by a majority of representatives of the employers and of the representatives of workmen, or, in default of such agreement, appointed by the board. On request of a majority of the representatives of either, there shall be equality of voting power on the part of employers and workmen, and in such cases the chairman is to have no vote. In practice, these advisory committees are not attached to individual exchanges, but are appointed for large areas. One or more have been appointed in each of the eight main districts of the system. The subjects referred to them are mainly questions of principle, affecting the exchanges generally, rather than questions of detail affecting any particular exchange or branch of the work.

Special recognition has been given in Great Britain to the need of agencies for assisting juvenile workers in choosing an occupation, finding employment in that occupation, and avoiding frequent changes in the early years of their working experience. Under the labor exchanges act and under the education (choice of employment) act of 1910 two distinct methods for the organization of juvenile exchanges have been developed.

Under the labor exchanges act the board of trade issued in April, 1913, its special rules with regard to the registration of juvenile applicants. These rules provide that the board may appoint, after consultation with the local advisory trade committees, special advisory committees for juvenile employ-

[1] W. H. Beveridge and C. F. Rey, *Quarterly Journal on Unemployment*, July–September, 1913, p. 77.

ment, to be composed of persons representing employers and workmen, and of persons familiar with education and other conditions affecting juveniles. In addition to advising the board with regard to juvenile employment, the committees assist boys and girls with respect to their choice of occupation. Thus the juvenile exchange is made an integral part of the adult exchange, cooperation with the schools is secured through the special advisory committee, and duplication of effort is avoided. This system is perhaps the one best adapted to American needs.

Under the education act, on the other hand, the situation is reversed. The law authorizes "local education authorities to give girls and boys information, advice, and assistance with respect to the choice of employment," [1] if such work is not being done by any other agency. Under this system, accordingly, the juvenile labor exchange is a part of the school system, frequently its offices are in the education building, and cooperation with the adult exchange established by the board of trade is secured through the advisory committee. The system has many good features, such as the close supervision of the educational authorities over the placement work, but is weakened by imperfect correlation between the two exchanges. Liverpool furnishes a good example of this method, while the London offices typify the first.[2]

The exchanges in the British system number over 400. Although the area of the country is only one twenty-fifth of ours, the kingdom has been divided for their better administration into eight districts—six for England and Scotland, one for Wales, and one for Ireland. Each district has its divisional office or clearing house, which is in turn coordinated with the central office in London, thus connecting all the exchanges in one national system. In addition, the exchanges proper are linked with over 1,000 local agencies which assist in the administration of unemployment insurance. In this way the exchanges are brought in close touch with workers in all parts of the kingdom.

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[1] Quotation from title of act, 10 Edw. 7 & 1 Geo. 5, C. 37. For full text see *Bulletin of the International Labor Office*, Vol. VI, p. 36.

[2] See Elsa Ueland, "Juvenile Employment Exchanges," *American Labor Legislation Review*, June, 1915, pp. 203–237.

The beneficial results of the exchanges are undoubted. Excluding certain occupations of a peculiarly casual nature, they were filling before the war over 17,000 vacancies weekly, most of which were vacancies for skilled labor,[1] and the number has since increased. The following table shows the number of applications for employment, the number of vacancies notified by employers, and the number of vacancies filled, for the month of March during each of the first six years:

OPERATIONS OF BRITISH LABOR EXCHANGES, BY SPECIFIED MONTHS

Month	Applications for Employment	Vacancies Notified by Employers	Vacancies Filled
March, 1910	126,119	.....	20,395
March, 1911 [1]	142,382	47,811	37,711
March, 1912	178,317	72,650	55,650
March, 1913	209,901	95,862	68,783
March, 1914	222,204	99,089	74,578
March, 1915	213,464	137,908	99,188

[1] Five weeks.

The following table shows the usefulness of the exchanges for the first five years of their existence:

OPERATIONS OF BRITISH LABOR EXCHANGES, BY YEARS

Year	Applications for Employment	Vacancies Notified by Employers	Vacancies Filled
1910 [1]	1,590,017	458,943	374,313
1911	2,010,113	886,242	719,043
1912	2,423,213	1,286,205	1,051,861
1913	2,739,480	1,158,391	874,575
1914	3,251,646	1,425,174	1,076,575

[1] Eleven months.

The proportion in 1914 of vacancies filled to vacancies notified was 76 per cent.

3. Systematic Distribution of Public Work

A well-developed system of labor exchanges cannot, of course, create jobs, but in addition to bringing the jobless

[1] Pamphlet on *Board of Trade Labour Exchanges*, issued by Board of Trade, May, 1914.

workers quickly and smoothly in contact with such opportunities as exist it can register the rise and fall in the demand for labor. This knowledge would make possible intelligent action for the prevention and relief of unemployment through the systematic distribution of public work and the pushing of necessary projects when private industry's demand for labor is at a low level. Public work would then act as a sponge, absorbing the reserves of labor in bad years and slack seasons, and setting them free again when the demand for them increases in private business.

(1) *Emergency Work*

Probably ever since unemployment became a modern industrial problem there have been more or less insistent demands that the machinery of government be used for putting temporarily to work those who were displaced from private industry during a period of depression. It was felt that supporting the unemployed in this way, or, rather, thus giving them the chance under community direction to support themselves, was preferable to supporting them either by public relief or by private charity. It was not likely to cost any more, the stigma of pauperism would not be fastened upon self-respecting persons out of work through no fault of their own, and, finally, some improvement of permanent value to the community would have been furthered.

As early as the panic year of 1857, when 70,000 were estimated to be unemployed in New York alone, Mayor Wood of that city sent to the common council a message in which he said:

"I recommend that the comptroller be authorized to advertise for estimates for furnishing the corporation with 50,000 barrels of flour and a corresponding quantity of corn-meal and potatoes, to be paid for by the issue of a public construction stock redeemable in fifty years, and paying 7 per cent. interest; these provisions to be disposed of to laborers to be employed upon public works, at their cost price to the corporation, all these works to be commenced forthwith under the proper departments. Twenty-five per cent. should be

paid in cash. Every man who will labor should be employed at a fair compensation, and the supplies thus provided be distributed in return." [1]

Apparently the mayor's suggestion was not acted upon, but Central Park was then under construction and the city comptroller arranged to advance to the park commissioners $1,000 a day until such time as the city should take $25,000 of the bonds. The commissioners agreed in return to select not exceeding 1,000 of their workmen proportionally from the residents of each ward.[2] In this way a considerable portion of the work was made available when it could exert the largest influence in preventing destitution and demoralization.

During the severe unemployment crisis of 1914–1915 over 100 cities throughout the country made special provision for carrying on public work of various sorts, such as sewer-building, street and road-making, quarrying, forestry, drainage, waterworks, building, painting, and even clerical duties. The work was maintained for periods ranging from less than a month to more than six months, thousands of men were employed in from two-day to two-week shifts, and hours and rates of pay were as a rule the same as for regular employees on the same grade of labor. In the majority of cases the officials in charge declared that they had secured full efficiency from the workmen, and some even stated that necessary work had been done at a distinct saving.

Experiences with emergency work have not always been gratifying. Poor work, increased expense to the community, and political favoritism in the selection of applicants are among the faults which have frequently interfered with its accomplishing what was expected of it. On the whole, however, the opinion has been growing that these flaws are not inherent, but due to poor administration, and that, if properly managed, emergency work can be made an important agency in maintaining during slack periods the labor reserves needed when industry is booming.

The policy of giving temporary relief employment is embodied into law in the English unemployed workmen act of

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[1] *Report of the Massachusetts Board to Investigate the Subject of the Unemployed*, 1895, Part IV, pp. 7–8.

[2] *Ibid.*, pp. 9–10.

1905, by which the central administrative body for London was authorized to provide temporary work for the unemployed.[1] An attempt was made in this statute to differentiate relief employment from charity by stipulating that laborers accepting work were not to be disfranchised.

In Germany relief work for the non-resident unemployed is often associated with hotels for itinerant workers. Several hundred of these, known as *Herbergen*, are private enterprises, but a more modest type of relief stations, or "home shelters," is conducted by the public authorities. Legislation has been enacted in Prussia looking to the establishment of a system of these smaller relief stations (*Verpflegungsstationen*) throughout that kingdom.[2] The Prussian provinces may require rural and urban districts to establish "labor homes for itinerant workmen," [3] a portion of the expense to be borne by the provinces and the state. These labor homes are to act as employment registries for destitute men seeking work outside their places of abode and to provide temporary board and lodging in return for work done.

There is no similar legislation in this country, but some experiments, notably that of the city of Seattle during the winter of 1914–1915, may lead to further development of agencies for caring for the itinerant worker. In Seattle public funds were advanced to maintain an itinerant workers' home, popularly known as "Hotel Liberty," and arrangements were made for work in clearing grounds, grading roads, and work on the pipe-line right-of-way. For two days' work on one of these jobs a man, registered at the hotel, was given a ticket good for twenty-one meals. The work was rotated so as to give all a chance to earn their board. The hotel was ably managed and more than repaid expenses. The Seattle Chamber of Commerce has recommended that the institution be made permanent, and it has been suggested that a chain of similar hotels for itinerant workers might be established along the coast.

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[1] 5 Edw. 7, C. 18, Sec. 1 (5).

[2] United States Bureau of Labor, *Bulletin No. 76*, May, 1908, "What Is Done for the Unemployed in European Countries," W. D. P. Bliss, p. 742.

[3] Act of June 29, 1907, *Bulletin of the International Labor Office*, 1907, p. 184.

(2) *Adjustment of Regular Work*

It is fast becoming recognized, however, that to wait until the emergency has overtaken the community before the movement to provide public work is set on foot is wasteful and productive of unnecessary hardship. Public officials are therefore more and more turning their attention to preparing in ordinary times for the period of stress which experience has shown is likely to follow in a few months or a few years.

One of the earliest American experiments in this direction grew out of an attempt to meet a specific emergency. In the winter of 1910–1911 the city of Duluth, Minn., confronted by an unusual number of seasonal workers turned adrift by the closing of transportation on the Great Lakes, decided to anticipate its need and cut through a wall of rock which blocked the chief thoroughfare. Drilling and blasting were done by regular city employees, but preparation of the rock for the crusher was assigned to the unemployed, who were given an average of three days' work each. Applicants were hired and retained only if they were fit and willing to work, and wages were set at $1.20 a day, a little less than the current rate in order not to attract those who could find employment elsewhere. Payment in meals, clothing, employment agency fees or railroad fare was given by the associated charities, which referred the men to the work and was reimbursed by the city.[1] The plan worked so successfully that it was followed in subsequent years, and in addition the city has shifted much of its sewer building to the winter season to assist in equalizing the amount of employment.

Such foresighted arrangement of public work is capable of considerable extension, and may be efficaciously used to counteract cyclical as well as seasonal fluctuations. The English statistician Bowley estimates that if in the United Kingdom a fund were set aside for public work to be pushed ahead in times of depression, an average of $20,000,000 yearly, or only 3 per cent. of the annual appropriation for public works and services, would be sufficient to balance the wage loss from

[1] W. M. Leiserson, "The Duluth Rock Pile," *The Survey*, September 20, 1913, pp. 729–731.

commercial depression.[1] If his suggestion were generally accepted, in each community or country a program of the amount of public work contemplated for several years in advance would be laid out and then carefully planned to be executed in the lean years. Thus public work, instead of declining and thereby accentuating the depression, as is now often the case, would exert a strong influence toward stability. European experience shows that it is essential to the success of such a program that the work be done in the ordinary way, the workers being employed at the standard wage and under the usual working conditions and hired on the basis of efficiency, not merely because they happen to be unemployed.

Within the last few years the number of American cities acting upon this principle has steadily grown. Several progressive communities have made definite plans to reserve work on unimproved parks, sewers, and streets for future dull periods. Several, also, without planning definite undertakings, have issued bonds or established contingent funds to provide the resources when needed. In Alameda, Calif., a special annual tax of 1 cent on each $100 of taxable property was established in 1915 to provide a relief fund for hiring on public work "unemployed or indigent residents."

One of the most interesting developments, however, is the Idaho law of 1915[2] which, for probably the first time in the history of the country, recognizes the "right to work." Every United States citizen who has been a resident of the state for six months, and who does not possess more than $1,000 worth of property, is guaranteed sixty days' emergency employment on the highways or other public work yearly. Application is made through the county commissioners, who must fix the rate of compensation and may deduct half of the total expenditure annually from the county taxes due the state. Careful records must be kept, and persistent shirkers are disqualified for a year.[3]

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[1] Great Britain, Royal Commission on the Poor Laws, *Minority Report*, 1909, p. 1195.

[2] Idaho, Laws 1915, C. 27.

[3] For further details on the activity of American cities in 1914–1915 to adjust their public work in preparation for future crises, see *American Labor Legislation Review*, November, 1915, pp. 573–581.

As the use of public work as a means of relieving unemployment has spread, city officials have increasingly felt the hampering effect of charter limitations on the expenditure of money. Many makeshift devices have been adopted for defeating these restrictions, such as raising money by public subscription, borrowing without interest, or transfer of funds between departments, and in some cases business men have had to furnish bonds to save the city officials from liability. Consequently the conviction has been growing that budgetary methods and, if need be, city charters must be modified to permit greater freedom in the use of money for these undertakings.

For some years the policy of consciously planning ahead and reserving necessary public work for periods when the wheels of private industry slacken has been finding favor with European administrative bodies. Perhaps the most significant results have been achieved in Germany, where as early as 1894 this procedure was recommended by a Prussian decree. Now nearly half a hundred German cities make a practice of systematically adjusting their public work so as to come in the slack seasons. At Nuremburg, for example, between 800 and 900 men have been employed through the winter on public developments held in reserve for that season.[1] The same policy is followed by the government departments, particularly the railway administrations. In France, also, public work to alleviate unemployment has had considerable development, and the prefects of the various communes must report annually thereon to the minister of commerce.

In Great Britain the use of public work on a national scale as an equalizing reservoir for the labor market is partially authorized by the development and road improvement funds act of 1909.[2] This law sets aside sums of money which may be advanced either as grants or as loans to associations not organized for profit, for the purpose of aiding and developing agriculture and rural industries, forestry, land reclamation

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[1] M. W. F. Treub, "L'adjudication des travaux publics et la lutte contre le chômage," *Quarterly Bulletin on Unemployment*, January–March, 1914, p. 249.

[2] 9 Edw. 7, C. 47.

and drainage, rural transportation, harbors, inland navigation and fisheries. The act was not passed primarily as an unemployment measure, but contains the provision that when the execution of any work involves the employment of labor on a considerable scale the commissioners must take into consideration "the general state and prospects of employment." Under this clause a certain amount of influence can be exerted toward the timely initiation of public improvements, but its scope is usually overestimated.[1]

The principle under discussion has, however, taken firm hold among those interested in combating involuntary idleness, and in 1913, as the result of careful studies in many countries, the following recommendations were laid before the International Conference on Unemployment: (1) That public works be distributed, as far as possible, in such a way that they may be undertaken in dull seasons or during industrial depression; (2) that budget laws be revised to facilitate the accumulation of reserve funds for this purpose; (3) that permanent institutions be created to study the symptoms of depression in order to advise the authorities when to initiate the reserved work; (4) that such work as land reclamation and improvement of the means of communication, which would tend to increase the permanent demand for labor, be especially undertaken; and (5) that in order to secure the fullest benefits from the reserved work, contracts should be awarded not as units but separately for each trade.

4. Regularization of Industry

While methods of utilizing public work to counteract the fluctuations of employment in private industry have for some time occupied the attention of lawmakers, recently the demand has found legislative expression that private industry turn some attention to solving the problem at its source by reducing, if not eliminating, these fluctuations. Regulariza-

[1] A. D. Hall, "The Development Act and Unemployment," National Conference on the Prevention of Destitution (Great Britain), *Report of the Proceedings of the Unemployment Section*, 1911, p. 245.

tion of industry is demanded by the interests of employer and employee alike. The employer, with an expensive plant, requires steady production to keep down overhead expenses and to secure the best returns from the business; the employee needs steady work to prevent destitution and consequent demoralization. It is not surprising, therefore, to find government exerting pressure to the end that, as far as possible, every job be made a steady job. Society has in the past attempted to adjust itself to the ups and downs of business; it is now beginning to insist that business avoid ups and downs.

Methods of regularization are as various as the industries concerned, if not as various as the individual establishments. Many employers have found it economical to organize employment departments for the purpose of studying and remedying fluctuations in the size of the working force, and in Boston, New York, and Philadelphia associations of employment managers have been formed to discuss their common problems. Through these departments considerable hardship has been avoided by reducing excessive "turnover" of labor, by transferring workers from slack departments to busy ones instead of discharging them, and by employing the whole force on part time rather than part of the force on full time. Careful planning of output for months or even for a year ahead, the development of supplementary lines such as tennis shoes and rubber tires in a rubber-shoe factory, and special measures to overcome weather conditions, such as the introduction of artificial drying in the brick industry, have also been found helpful. Through cooperation with other employers for the maintenance of a common reserve of labor instead of a separate supply for each firm, the intermittent character of such occupations as the building trades and dock work has been effectually reduced.

Employers, however, are frequently no more far-sighted than are other persons in the community, and may neglect what is obviously to their own and other persons' economic advantage if it requires much additional exertion or forethought. Hence arises the need for governmental stimulus toward regularization which is found in some of the newer legislation on unemployment.

(1) *The Liverpool Dock Scheme*

Perhaps the most striking illustration of what can be done to "decasualize" casual employment is the system now in operation on the Liverpool docks, where thousands of men used to eke out a precarious and irregular 'longshoreman's livelihood. Each ship company sought to attract enough men every day to meet the need on the busiest days, and it has even been alleged that some employers deliberately parceled out the work so that many more than the usual number employed were encouraged to be on hand and available when wanted.[1]

To counteract the demoralizing results of this chronic underemployment, what is known as the Liverpool dock scheme was inaugurated by the British Board of Trade in July, 1912, under authority of the unemployment insurance part of the national insurance act. In the first year of its operation sixty-eight employers became parties to the plan, and 31,000 dockers were registered.[2] A metal tally was issued to each man; only men holding tallies are employed, and new tallies can be issued only with the approval of the joint committees of workmen and employers which are assisting to administer the scheme. Workmen who fail to be hired at the employers' regular stands go to one of fourteen "surplus stands," which are in communication by telephone with one another and with the six sectional clearing houses that have been established in connection with the government labor exchange. The system makes it possible to do the same work with fewer men, but these are employed much more regularly. The adjustment is said to have caused temporary hardship for some workmen, but it is hoped that in time each employer will keep the nucleus of a force on regular wages and rely for extra men on a fluid reserve to be maintained jointly by all the employers of the port.[3] The advantages of maintaining one reserve for the industry as a whole instead of separately for each employer, are obvious. Somewhat

[1] R. Williams, *The Liverpool Docks Problem*, 1912, pp. 10–12.
[2] Beveridge and Rey, "Labour Exchanges," *Quarterly Bulletin on Unemployment*, July–September, 1913, p. 789.
[3] See R. Williams, *First Year's Working of the Liverpool Dock Scheme*, 1914.

similar schemes are in force among the dockers of Goole and of Sunderland, the cloth porters of Manchester, and the ship-repairers of Cardiff and Swansea.[1]

Headway can be made to some extent against seasonal fluctuations also, under the proper encouragement of an efficient labor exchange system. During the winter, for instance, it has been suggested that building laborers could be assisted to take up ice-cutting or logging, or to secure some of the less skilled work in shoe, textile, or other factories which are busier at that season. Through the London employment exchanges women's work in ready-made tailoring, which is busiest in the spring and fall, has been dovetailed with hand ironing in laundries, which is heaviest during the summer.

(2) *Recent Progress*

Distinct progress is shown in the laws of 1915 establishing state employment bureaus in Illinois and Pennsylvania, both of which instruct the administrative authorities to take steps toward the regularization of employment. The Illinois statute is particularly comprehensive on this point, reading as follows:[2]

"The said general advisory board in cooperation with the secretary of the bureau of labor statistics and the local advisory boards shall place themselves in communication with large employers of labor, including municipal and other public authorities, and attempt to bring about such cooperation and coordination between them by the dovetailing of industries, by long-time contracts, or otherwise, as will most effectively distribute and utilize the available supply of labor and keep it employed with the greatest possible constancy and regularity. They shall devise plans of cooperation with this object in view and shall seek to induce the organization of concerted movements in this direction. They shall also endeavor to enlist the aid of the federal government in extending these movements beyond the state."

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[1] Beveridge and Rey, *Quarterly Bulletin on Unemployment*, July-September, 1913, pp. 795–799.

[2] Illinois, Laws 1915, S. B. 24, Sec. 1 (c).

It will be noticed that this clause contemplates the adjustment of public as well as of private work. Much good should come of it, if properly administered, and its operation will be watched with close interest. A more definite inducement to the regularization of industry on a comprehensive scale is offered through the establishment of unemployment insurance.[1]

[1] See "Unemployment Insurance," p. 409.

CHAPTER VII

SAFETY AND HEALTH

Prominent among the problems which the industrial revolution brought in its wake is that of maintaining safety and health in work-places. As long as industry was chiefly agricultural, or carried on about the family hearth, with tools relatively few and simple, the individual laborer might control the physical conditions under which he worked. But the drift during the late eighteenth and the early nineteenth centuries from farming to manufacturing, and from homestead to factory methods, placed a growing proportion of wage-earners in a new environment. They toiled now upon premises controlled not by themselves, but by another—the employer. Instead of working in isolation or in small groups, hundreds were collected under one roof where the error or illness of one might affect all his neighbors. New machinery, new chemical processes, new forces such as electricity and compressed air, have been ceaselessly developed, each involving its own special dangers. Upon all production, speed, the ruling spirit of a machine age, has imposed its exactions. Nor have subjective factors been without their influence. Ignorance, recklessness, and inertia, manifested now by the leaders of technical research, now by the masters of industry, and not infrequently by the workers themselves, have contributed to create a situation in which the statistics of industrial accident and disease are often justly compared with those of the world's great battles.

Conservation of the life, health, and energy of our millions of wage-earners is not an individual question. It is a social question, demanding social action. This does not mean that private or voluntary efforts of the workmen, or of their employers, or of their physicians, should be in any way dis-

couraged. On the contrary, such voluntary efforts should be vastly increased. But the prevention of industrial accidents and diseases is too great an undertaking to be left entirely to individual action.

Though more than half the waking hours of the ordinary wage-earner are spent at his place of employment, it is one of the fundamental disharmonies of present-day industry that he has little or no control over the conditions which there surround him, and which so profoundly affect his well-being and even his life. Individual complaint frequently leads to loss of employment rather than to improvement of conditions. As a member of a labor union the worker's power is potentially increased, but is often, for various reasons, not effectively exerted. Regulation of the physical conditions of employment cannot, on the other hand, be safely entrusted to the individual employer, whose principal business, under competitive conditions, is to secure profits. While many employers are exercising the utmost consideration for their work-people out of motives of humanity, and many more are doing so on grounds of efficiency, such motives cannot be said to have developed into a controlling principle of industrial life. Nor can the industrial accident and disease problem be left to medical treatment alone, for prevention and not after-care is the solution. Not only on account of the magnitude of the problem, but also because of its nature, the protection of the wage-earner from dangerous conditions of employment is a proper function of government.

Frequently it happens that without the aid of uniform legal regulations to force the recalcitrant minority into line, even a vast majority of the manufacturers in an industry are powerless to bring about reforms which they freely admit are desirable. A striking example of this was revealed by the three-year campaign which culminated successfully in the poisonous phosphorus prohibition act. Match manufacturers representing 95 per cent. of the total product testified before Congress that they could not substitute a harmless compound for the slightly cheaper poison without a uniform law compelling all employers in that industry to abandon the poison. All of the other match manufacturers, representing the remaining 5 per cent. of the product, stood out stoutly to the last, even

declaring that they would close their factories before they would submit to this sanitary measure, already in compulsory operation in practically all civilized countries of the world. It required labor legislation to end the use of this unnecessary deadly poison before "phossy jaw," the most loathsome of all industrial diseases, could be abolished.

Legislative activities for the control of industrial accidents and occupational diseases have developed in all important countries along four main lines, namely, (1) reporting, (2) prohibition, (3) regulation, and (4) compensation or insurance. All four lines of activity are closely interrelated, and depend for success largely upon one another. Reporting of accidents and diseases is purposeless unless it leads to prohibition or regulation of the sources of danger, and is likely to be incomplete if not made part of a proper system of compensation administration. Effort for prohibition and regulation gropes in the dark without the light of experience made available through thorough reporting, and is apt to be feeble unless stimulated by the cooperative financial pressure exerted by compensation. Compensation, in turn, is deprived, by lack of careful reports, of the necessary actuarial basis for successful operation, and accomplishes but the minor part of its purpose if the payment of benefits fails to lead to systematic efforts at prohibition or regulation. Upon the combined development of all four devices depends the efficacy of the essentially modern movement for the protection of the industrial worker's life, limb, and health. Leaving the fourth step, compensation, for treatment under "Social Insurance," this chapter will concern itself with the first three methods of attack.

1. Reporting

While in many matters of social interest the gathering of statistics is well developed, in others only the beginnings have been made. In industry, for example, we know much about the value of the raw materials and of the product, but comparatively little about the accidents and diseases which are entailed upon the workers in the creation of that product. Yet there can be no more important link in the whole chain

of social effort for the prevention of industrial death and disability than the securing of accurate data as to the nature of the hazards, their extent, and the particular industries and establishments in which they are most rife. The acquisition of this knowledge is an integral part of the modern movement for the protection of life and health. It reveals the "sore spots" of industry. Not only does it point out conditions introduced by changing methods in manufacture and elsewhere which call for correction, but after corrective legislation has been secured it acts as a valuable guide to and check upon the efficacy of the administrative authorities.

Such information, however, until comparatively recent years, had been intelligently sought, if at all, only incidentally by special commissions which investigated some more pressing phase of industrial abuse, submitted their reports, and disbanded. The idea of a permanent census on the matter is of tardy development.

(1) *Accidents*

It was not until 1886 that any American state placed an accident-reporting law upon its statute books, and again, as in many other matters of labor legislation, it was Massachusetts which took the lead. By the act of June 1, 1886, manufacturing and mercantile corporations were required to report to the chief of the district police, the organization which then had charge of factory inspection, accidents occurring in their establishments and causing death or four or more days' disability. A penalty was provided for failure to comply. Four years later the law was extended to apply to all proprietors of the designated classes of establishments, instead of only to corporations. Similar statutes were enacted in Ohio in 1888, Missouri in 1891, Rhode Island in 1896, and elsewhere during the same decade.

These early laws did not bring satisfactory results. Fees have seldom been offered for accident reports, and employers have appeared reluctant to give their establishments an unenviable reputation for danger. Official enforcement, too, has

been lax. Prosecutions for failure to report have been rare, and the imposition of the stated penalties still rarer. "In none of them," said a federal investigator in 1897, of eight states which then had reporting laws, "is there any pretense that anything like complete returns of accidents are obtained."[1]

Since that time, in spite of its shortcomings and inadequacies, so useful has reporting proven itself as a guide for inspection, safeguarding and advanced legislation, that it has steadily spread not only to new states, but to new branches of industry.[2] The kind of accidents to be reported varies greatly, ranging from all injuries in the more advanced states to only those which result in death or in the incapacity of the injured workman for a stated length of time, as for two days, one week, and in rare cases for two weeks. The time of reporting is variously fixed at "immediately," twenty-four or forty-eight hours, two weeks, once a month, and, in Louisiana, "semi-annually." Accidents occurring to employees under the workmen's compensation acts must usually be reported immediately. Notification by mail on a blank provided by the proper state authority is in most cases sufficient, but in connection with fatal railway and streetcar accidents a telephone or telegraph report, followed by a detailed written statement, is often obligatory. Reports are usually made to the state department of factory inspection, and a wide range of questions must be answered. A standard schedule adopted for use in important industrial states containing about half the manufacturing wage-earners of the country is divided into sections on (1) employer, place, and time, (2) injured person, (3) cause, and (4) nature and extent of injury, and each section asks a number of questions found by long experience and careful study to be most successful in eliciting the desired information.[3]

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[1] United States Bureau of Labor, *Bulletin No. 12*, September, 1897, p. 565.

[2] A standard bill for industrial accident reports, drafted by the American Association for Labor Legislation in 1912, has been passed in several states. See United States Bureau of Labor Statistics, *Bulletin No. 157*, 1915, "Industrial Accident Statistics," Frederick L. Hoffman, p. 151.

[3] This schedule was prepared by the American Association for Labor Legislation, and has been indorsed by the American Statistical Association, the United States Bureau of Labor Statistics, the Workmen's Com-

While much progress has been made since the beginning of the reporting movement in 1886, much remains to be done in the direction of extending and of introducing uniformity into the system. In a few states, and for a limited number of industries, good work is being done,[1] but the failure to cover all dangerous occupations and the wide differences in the meaning of reportable accident still render the data confusing and incomparable as between states. For a comprehensive view of the situation in all industries and throughout the country dependence must for the present be placed on the more or less scholarly estimates which appear from time to time.

What is perhaps the most accurate as well as one of the most recent of these studies is based upon insurance experience with nearly 38,000,000 lives, and places the number of fatal industrial accidents for 1913 at 25,000, and the number of injuries involving disability of more than four weeks at 700,000.[2] The detailed figures are shown in the chart on the following page.

Eight industries, it appears, are more hazardous than service in the United States Army, and of these mining, with metal mining predominating, is the most dangerous. Railroading, electrical work, and quarrying are high on the list, while general manufacturing, including ordinary factory work, is apparently safer than agriculture, in which the introduction of power-driven machinery has of late been adding peculiar new hazards to those previously involved in the handling of live animals. What these thousands of accidents, occurring in every industrial state and country, mean in terms of suffering, interrupted wage-earning, lowering of efficiency and deterioration of standard of living, our compensation laws are at last beginning to reveal with something like scientific accuracy.

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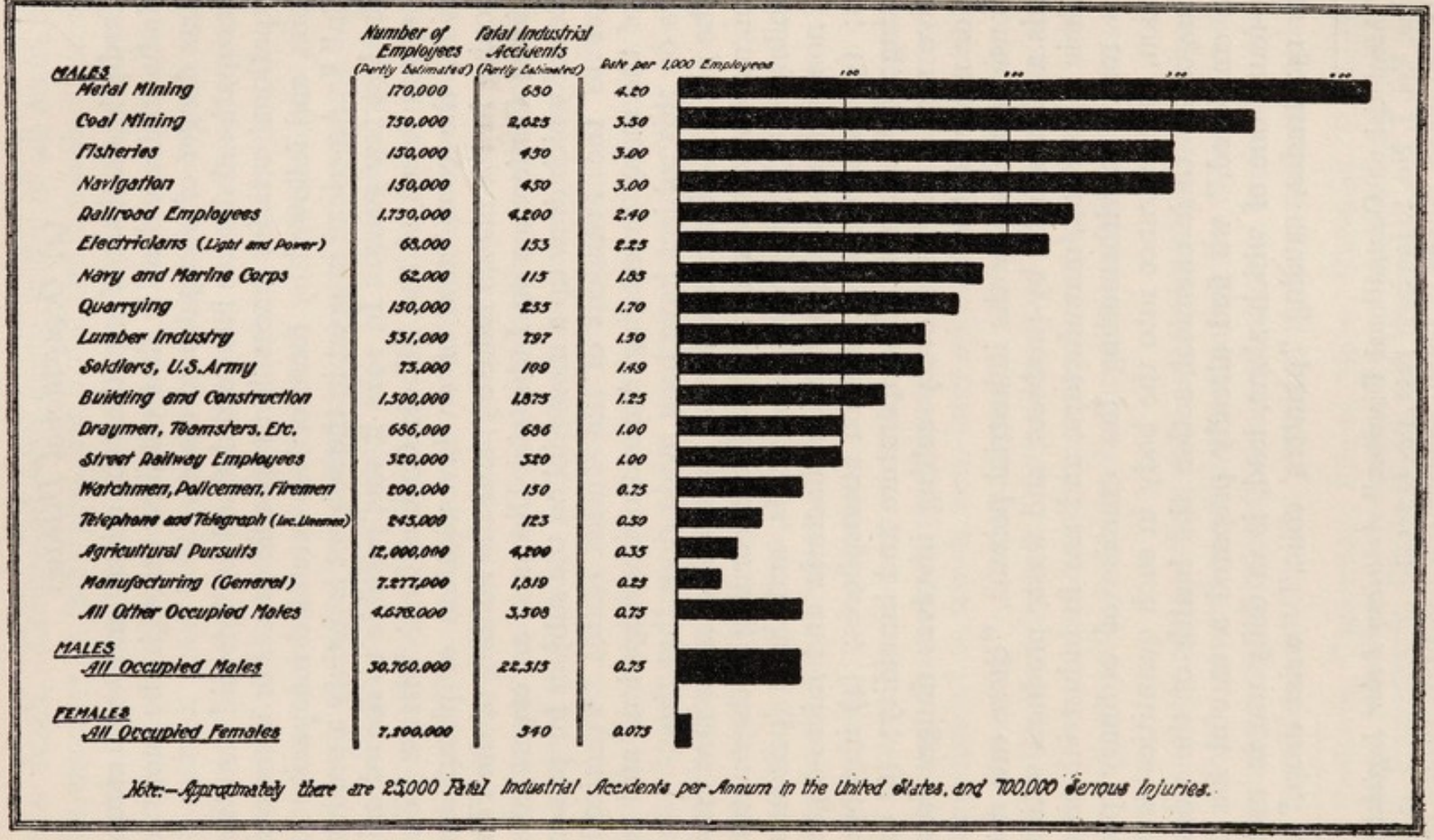
pensation Service Bureau, and the National Council for Industrial Safety. Up to October 1, 1915, it had been adopted by the labor departments of California, Iowa, Massachusetts, Minnesota, Nevada, New Hampshire, New York, Pennsylvania, and Washington.

[1] Especially excellent is the reporting work done by several industrial accident or workmen's compensation boards, notably those of California, Massachusetts, New York, Ohio, and Wisconsin.

[2] United States Bureau of Labor Statistics, *Bulletin No. 157*, p. 6.

Fatal Industrial Accidents

Estimate for the United States for 1913



[Chart exhibited by the Prudential Insurance Company of America at the International Exposition of Safety and Sanitation, 1913]

(2) *Occupational Diseases*

Hardly less serious, if any, than the misery and waste caused by industrial accident is that entailed through the more insidious danger of occupational disease.

Occupational disease has been defined as "morbid results of occupational activity traceable to specific causes or labor conditions, and followed by more or less extended incapacity for work." [1] American interest in the subject is mainly a product of the last few years. In 1910 it was possible to record only the appointment of the Illinois Occupational Disease Commission, the completion of an investigation of phosphorus poisoning in the match industry, and the holding of the First National Conference on Industrial Diseases, an expert committee of which drew up a memorial on the subject for presentation to the President of the United States. Practically all of the many interesting American investigations and reports on this subject have been made since that time.

The principal industrial health risks, as far as we now know them, may be conveniently classified according to their nature as follows: (1) dangerous gases, acids, and dusts (poisonous and non-poisonous); (2) harmful bacteria and micro-organisms; (3) compressed or rarefied atmospheres; (4) improper lighting; (5) extremes of temperature and humidity; (6) excessive strain. Almost every calling involves danger from one or more of these.

Considering merely the industrial poisons, "those raw materials and products, by-products, and waste products which, in their extraction, manufacture, and use in industrial processes may, notwithstanding the exercise of ordinary precaution, find entrance into the body in such quantities as to endanger by their chemical action the health of the workman employed," we find already prepared a careful list of fifty-four,[2] one of which alone, lead, is in daily use in more than 150 trades, causing "painters' colic," "wrist drop," or

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[1] "Memorial on Occupational Diseases," *American Labor Legislation Review*, Vol. I, No. 1, January, 1911, pp. 125–143.

[2] United States Bureau of Labor, *Bulletin No. 100*, May, 1912, "List of Industrial Poisons and Other Substances Injurious to Health Found in Industrial Processes," Th. Sommerfeld and R. Fischer, pp. 733–759.

even death. Connected with dusty trades of all sorts, from silk-weaving to quarrying, are found the non-poisonous dusts which by infiltration and mechanical irritation produce the various occupational lung diseases. Moreover, the bacillus of anthrax may infect tanners and workers on hair goods, while ankylostomiasis, or "miners' hookworm," menaces those who toil in warmth and moisture underground. The tunnel and caisson worker dreads compressed-air illness. Less easy to trace, but perhaps even more widespread, are the obscure ailments which may arise in any industry, from insufficient or excessive lighting, from extremes of heat, cold, and humidity, or from work too heavy, too persistent, and too intense without adequate periods of rest.

Incomplete as is our information on the prevalence and seriousness of industrial accidents, even more incomplete is it with regard to specific trade maladies, some of which are now being recorded in our hospitals and dispensaries. The first American law for the compulsory reporting of these diseases was drafted by the Association for Labor Legislation after investigation of similar legislation in England and was enacted in California in March, 1911. Within five years, as the result of vigorous and sustained effort, sixteen states enacted similar legislation.[1] The earliest of these laws called for reports on all cases of anthrax, compressed-air illness, and poisoning from lead, phosphorus, arsenic, mercury, or their compounds,[2] to which were later added brass and wood alcohol poisoning.[3] The most recent tendency, however, is to make the laws include "any ailment or disease contracted as a result of the nature of the patient's employment," [4] in which form they will probably be productive of more important results.

The duty of reporting falls upon the physician, who may be either a general practitioner treating the case, or, in states requiring a monthly medical examination of workers in specially hazardous trades, the physician making such examination.

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[1] California, Connecticut, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, and Wisconsin.

[2] California, Laws 1911, C. 485.

[3] Connecticut, Laws 1913, C. 14; New York, Laws 1913, C. 145.

[4] Massachusetts, Laws 1913, C. 813, Sec. 6.

A standard certificate has been adopted in a majority of the reporting states,[1] and requires the name and address of both employee and employer, the nature of the business, the diagnosis and symptoms of the disease, and other pertinent information. In most cases reports must be made to the state labor department, but occasionally they go to the board of health, which transmits them to the labor department. In a very few cases[2] a small fee of 50 cents is allowed for sending in notices, but even where this is not done it is not felt that any undue hardship has been caused to the medical profession by placing upon them this added duty.

Reliable statistical data for the country as a whole are, however, still lacking. Again we must fall back on estimates, and careful American authorities declare, on the basis of German experience, that numbering our gainfully occupied population at 33,500,000 no fewer than 284,000,000 days' illness occur annually, causing a social and economic waste of nearly $750,000,000.[3] Of this enormous waste fully one-quarter, it is computed, could be prevented by deliberate effort, largely in the direction of greater care and cleanliness in the nation's workshops. Many unhealthful conditions in industry, also, while they may not lead to actual absence from work, are nevertheless productive of unnecessary physical discomfort which reacts badly on the worker's health and strength. The effects of these daily minor drains upon industrial efficiency are necessarily difficult to trace or to measure, but they must in the aggregate be enormous.

2. Prohibition

The method of prohibition for the safeguarding of industrial workers is usually resorted to only under severe provocation. But at times it appears to be the only effective way of removing an intolerable industrial hazard, and instances of its use are multiplying.

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[1] California, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Ohio, and Wisconsin. Like the standard accident schedule, this certificate was drafted after careful study by the Association for Labor Legislation.

[2] California and Connecticut.

[3] *Memorial on Occupational Diseases.*

There are two ways in which the prohibitive method may be applied. First, it may be used to exclude from employment those most susceptible to danger, whether children, women, or certain classes of men. Second, it may be used to outlaw the substances or instruments which render employment dangerous.

(1) *Exclusion of Persons*

a. Children. Provisions for the exclusion of persons from industrial pursuits have been carried further with regard to children than with regard to any other group of wage-earners, on the general theory that the child is the special ward of the state and most in need of special measures of protection. The dangers thus sought to be guarded against may be to the child's life, limb, health, or morals,[1] and the restrictions which have grown are based on considerations of age, physique, and education.

(*a*) *Age Requirements.* The past century has witnessed an almost complete reversal of public opinion as to the proper age at which children should become breadwinners. Without scruple, and even in the belief that they were acting charitably, the American colonists received from England as bound apprentices large numbers of orphans and children of the poor, ten to sixteen years of age, some even as young as seven years. Laws were passed to keep these boys and girls profitably employed, partly for the benefit of the community and partly to save them from the dangers of idleness. When manufactures arose Alexander Hamilton approved of them as rendering children "more useful and . . . more early useful than they would otherwise be." [2]

These colonial traditions have now gone down before a standard of working age based on the observed harmful effects of premature labor. In 1848 [3] Pennsylvania forbade the employment in textile establishments of children under twelve, a standard which it the following year [4] raised to thirteen.

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[1] See, for instance, Kansas, General Statutes 1909, Sec. 5095.
[2] Alexander Hamilton, *Works*, Vol. III, p. 207.
[3] Pennsylvania, Laws 1848, No. 227. [4] *Ibid.*, Laws 1849, No. 415.

Within the next decade a twelve-year limit was established in Rhode Island,[1] and a ten-year limit in New Jersey [2] and Connecticut; [3] in all three states the law covered manufactures, and in Connecticut it covered mechanical establishments also. In none of these states was any proof of age required, and enforcement was everywhere very lax.

The first state to provide a special officer to see that its age restrictions on the employment of children were obeyed was Massachusetts, in its law of 1867.[4] The previous year, following a report by a commission on hours of labor, a law had been passed forbidding the employment of children under ten years of age in manufacturing establishments. The governor at his discretion might instruct the state constable and his deputies to enforce the law. It seems, however, that the governor did not see fit to give such instructions, and in 1867, when the act was amended to cover mechanical establishments as well as manufacturing, it was made a duty of the state constable to detail a deputy to enforce all laws regulating the employment of children.

About this same period the national labor organizations became active in demanding the legal prohibition of child labor below a minimum age limit. In 1876 laws against the employment of children under fourteen years of age were advocated by the Working Men's Party at a congress in Philadelphia, and about the same time the Knights of Labor took a stand for the prohibition by law of their employment under fifteen years of age in workshops, mines, and factories. The American Federation of Labor, organized later, indorsed the same standard. Since then many influential societies and women's clubs, as well as labor organizations, have supported and worked for the legal prohibition of child labor. In 1904 the National Child Labor Committee was formed to act as a clearing house for information on child labor, to investigate conditions, to educate public opinion, and to promote legislation.

The result of the work of this national committee and the

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[1] Rhode Island, Laws 1853, p. 245.
[2] New Jersey, Laws 1851, p. 321.
[3] Connecticut, Laws 1856, C. 45.
[4] Massachusetts, Laws 1867, C. 285.

various agencies that have cooperated with it is a large body of legislation restricting the employment of children. All states now forbid the employment of children in one or more kinds of work until they have passed a fixed age limit. The fourteen-year minimum age limit is established for general factory work in all except six states.[1] In most states documentary proof of a child's age is demanded, and working permits or employment certificates must be obtained by the children and placed on file in the establishment before they can be employed therein.

The age limit in some of the earliest child labor laws applied only to cotton and woolen factories and to a few other special industries where the evils of child labor were supposed to be most flagrant. In other laws the prohibition was general for all work in "manufacturing or mechanical establishments." It is only in comparatively recent years that the minimum age limit for employment has been applied in the majority of states to mercantile establishments and other places of employment as well as to factories. Several states still have a different age limit for the employment of children in stores and offices from that for employment in factories.[2] In most states children under fourteen years of age are now excluded from employment in a list of establishments including, in addition to factories, mills, workshops, and stores, certain other places—such as hotels, restaurants, laundries, bowling-alleys, and theaters—where conditions appeared to warrant such exclusion.

Nevertheless, most of the state laws are defective in that they fail to cover all the occupations from which children should be excluded. In fact, the rapidly changing industrial conditions render it practically impossible to draw up a list of occupations that will be complete for any length of time, even though it is complete at the time the law is enacted. The tendency of those who are experienced in drafting child labor laws now is to use the general term "in any gainful oc-

[1] Utah has no age limit for general factory work; New Mexico, North Carolina, and South Carolina have a twelve-year limit; in Georgia widows' children and orphans between twelve and fourteen may be employed on special permission of a commission of three public officials; and in Mississippi the age limit is twelve for boys and fourteen for girls.

[2] See, for instance, Alabama, Laws 1915, C. 169.

cupation," instead of a specified list. Agriculture and domestic service are exempted from this general prohibition, except in the Arkansas law enacted by initiative and referendum in 1914.

The fact that so much progress has been made in the last decade in the enactment of child labor legislation, and that the fourteen-year limit has been so generally established, especially for factory work, does not mean that premature employment of children is eradicated. There is serious danger that since the most sensational stages in the fight against child labor have passed, public opinion will become apathetic and not perceive the inadequacies of laws that may have at one time been a great step in advance. Unfortunately most of the laws bear the scars of conflicts with short-sighted legislators as well as with powerful interests who either looked upon the employment of children as necessary to their prosperity or considered prohibitive legislation an encroachment on their business rights. Exemptions—chief of which has been the exemption of the "poor widow's" child and children of "dependent parents," a relic of the days of the Elizabethan poor law—have been the curse of child labor laws.

In addition to the minimum age of fourteen for entrance to general factory work, many states set a limit of sixteen years for certain more dangerous processes, and in some states an additional two years' maturity is required for entrance to a number of extra-hazardous occupations. The first group of occupations may include such employments as the cleaning and oiling of machinery, the adjusting of belts, the operation of machine saws or of stamping, washing, grinding, and mixing machines, and the manufacture of lead products or of compositions containing poisonous acids,[1] while in the second group is work in mines, at blast furnaces, or on railroads, in the outside erection of electric wires, or in the manufacture of explosives.[2] Some states have established minimum limits as high as eighteen or even twenty-one for night messenger service or other morally dangerous work.[3]

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[1] Connecticut, Laws 1911, C. 123.

[2] Arizona, Revised Statutes 1913, Sec. 3127.

[3] New York, for instance, has a twenty-one year minimum for night messenger service (Laws 1910, C. 342), and Michigan a similar minimum for work in theaters or the like where intoxicants are sold (Laws 1915, No. 255).

A growing tendency is manifest to give to state boards of health or state labor departments power to add to the lists of dangerous and extra-hazardous employments.[1] Age restrictions for entrance to dangerous occupations have been repeatedly upheld as a valid exercise of the police power,[2] and in some states illegal employment of a child deprives the employer of the defenses of assumption of risk[3] and contributory negligence.[4] The provision empowering health authorities and others to extend the lists of prohibited occupations for children of certain ages has been held not to be an unwarranted delegation of legislative authority.[5]

All the important countries of Europe possess similar graduated restrictions upon engaging in remunerative employment at too extreme youth, and the principle of adding to the lists of prohibited occupations by administrative authorities is well established. Frequently, also, the authorities are permitted to allow exemptions from the application of the laws.[6]

A serious shortcoming of most of our child labor laws is their failure to deal adequately with child labor on city streets. We have more or less thoroughly prohibited the premature employment of children in factories, stores, and other places, but have inconsistently allowed boys and girls of tender years to be exposed to perhaps a worse moral and physical environment in vending newspapers, gums, and other articles on the streets, without sufficient regulation. At present only one state, Kentucky, has the same age limit, fourteen years, for all street trades as for other employment. Several states have a fourteen-year limit for bootblacking and peddling, and a twelve-year limit for newsboys. So far only about half the states[7] have passed laws regulating the employment of

[1] As in Massachusetts, Laws 1913, C. 831, Secs. 4, 6.
[2] Lenahan *v.* Pittston Coal Mining Co., 218 Pa. 311, 67 Atl. 642 (1907).
[3] Sterling *v.* Union Carbide Co., 142 Mich. 284, 105 N. W. 755 (1905).
[4] Strafford *v.* Republic Iron & Steel Co., 238 Ill. 371, 87 N. E. 358 (1909).
[5] Louisville, Henderson & St. Louis R. Co. *v.* Lyons, 155 Ky. 396, 159 S. W. 971 (1913).
[6] For extended discussions of this matter see *Bulletins No. 80* and *89* of the United States Bureau of Labor, on "Woman and Child Wage-Earners in Great Britain" and "Child Labor Legislation in Europe," respectively.
[7] In 1915 legislation on this subject was found in Alabama, Arizona, Colorado, Delaware, District of Columbia, Florida, Iowa, Kentucky, Maryland, Massachusetts, Missouri, Nevada, New Hampshire, New

children in street trades, and in these the prevailing age limit for newsboys is twelve years. Because of the additional moral danger to girls the age limit for them is usually four or six years higher than for boys.

Suggestions have frequently been made that a uniform age limit for all regular gainful occupations is not scientific, as some children are more mature and fit to work at thirteen years of age than others are at fifteen. No practical method has yet been found, however, of determining the physiological age of children, and the age limit will probably always prove the most satisfactory standard. The purpose of the minimum age is to prevent improper toil before the child has passed the most formative period of adolescence, and also to give the child a chance for a necessary minimum of education. Recent scientific studies of the physical effects of modern industry on children, and recent investigations [1] of the educational needs of children in industry, have seemed to indicate that the fourteen-year limit is not adequate in either of the above respects. There is a strong tendency in the more advanced states to eliminate all children under sixteen from industry. Ohio had for several years a fifteen-year limit for boys and a sixteen-year limit for girls. A new law with a fifteen-year minimum age limit has been passed in Michigan,[2] chiefly through the efforts of the Employers' Association of Detroit. Industries of the best type are finding that children under sixteen do not pay. Organized labor, also, has taken a determined stand for the sixteen-year minimum age during the months in which the public schools are in session, and for a sixteen-year compulsory education limit. Educators are generally accepting this as the standard that must eventually be adopted.

(*b*) *Physical Requirements.* While it may be impracticable to substitute a physiological for the ordinary chronological

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Jersey, New York, Oklahoma, Pennsylvania, Porto Rico, Rhode Island, Utah, Virginia, Wisconsin. In Nevada the law merely makes children in street employment subject to the control of the juvenile courts.

[1] See, for instance, *Child Labor Bulletin*, Vol. I, No. 1, "Child Labor and Education"; United States Bureau of Education, *Bulletin 1913, No. 19*, "German Industrial Education and Its Lesson for the United States," Holmes Beckwith; *Seattle Children in School and in Industry*, published in 1915 by the Seattle, Wash., Board of School Directors.

[2] Michigan, Laws 1915, No. 255.

age test, it is nevertheless true that physical development as well as age should determine the child's eligibility for employment. So far state laws have not designated any standard physical requirements, but have merely contained the rather meaningless provision that children must be physically fit. A physical examination of all applicants for certificates is now required by the laws of ten leading states.[1] In several other states the official granting employment certificates is authorized to ask for the physical examination of the applicant if he considers him of doubtful health and strength.

Because of the lack of definite standards these examinations depend for their value almost entirely on the physician who happens to make them. In New York City, for instance, the physical examination of applicants for certificates is well standardized. Blanks are used in the examination of each child which include not only the height and weight, but a test of the eyesight and hearing, and an examination of the condition of the teeth, the heart, the lungs, throat, and nostrils, and the general physical condition. The same blanks are used throughout the state, but in smaller towns they are usually very poorly filled out.

If the physical examination is to be a real test of the child's fitness, the medical examiner must know the prospective place of employment and have a knowledge of the conditions and processes in the various industries in which children are employed. Under the English law, accordingly, the certifying surgeon must examine the child in the factory where he is entering employment, and if the child changes employment he must be re-examined in the same manner.[2] Wherever medical examination of children in the public schools is extensively developed, the records of the child's physical progress should be kept in such form that they can be compared with the examination at the time the child proposes to leave school. In smaller cities the simplest arrangement is for the school medical examiner to make the examinations of children applying for certificates. In New York state, where certificates are

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[1] Iowa, Kentucky, Maryland, Massachusetts, Minnesota, New Hampshire, New Jersey, New York, Ohio, and Pennsylvania. The Massachusetts act (Laws 1906, C. 502) was the first of this type.

[2] Factory and workshop act, 1901 (1 Edw. 7, C. 22, Sec. 64 (3)).

issued by the boards of health instead of by the public schools, the examinations are, of course, supposed to be made by the health officers, or under their supervision, and there is seldom any cooperation with the school examiners.

A single examination at the time of application for employment certificates will not, however, even when it has been put on a more scientific basis than at present, be sufficient protection for the health of working children. In order that children may not be injured by the work they do, examinations must be repeated periodically. New York has recently recognized this fact by establishing a corps of medical examiners under the department of labor, who have authority to examine children in any industry, and on their recommendation the employment certificate of any child found to be unfit for the work he is doing is canceled. This provision will probably be embodied in the laws of other states as public opinion gradually comes to realize the necessity of safeguarding the child's health after he has entered industry in the same way as is now being done to a large extent up to the time that he leaves school.

(*c*) *Educational Requirements.* Merely to compel the child to go to school until it is fourteen years of age does not guarantee the attainment of any definite minimum of education. Hence a number of states forbid the employment of children who do not come up to certain standards of knowledge. These standards, however, vary considerably. About half the states require only that applicants for employment certificates be able to read and write English. Illinois requires literacy, but not necessarily in English. Several states require the attainment of certain grades in the public schools, or equivalent instruction. The completion of the sixth grade is the generally accepted standard, though five states already require the completion of the eighth grade.[1]

A greater number of states require attendance at school for a minimum period either during the year previous to the birthday at which the child becomes old enough to go to work, or during the year previous to the time the certificate is issued. This required period of attendance may vary from

[1] California, Colorado, Nebraska, New Hampshire, and Vermont, though applicable to children fifteen years of age in California.

the entire school year [1] to twelve weeks or less.[2] Instruction in certain specified subjects, usually reading, writing, spelling, geography, and arithmetic through common fractions, is required in some states.[3]

The provision that children who have been granted "working papers" but are under sixteen years of age shall attend school unless regularly employed is common, but little attention has been paid to its enforcement. Once an employment certificate has been secured the child is usually forgotten by the school authorities, unless the law requires that the certificate be sent direct to the employer and returned by him to the issuing office when the child's employment terminates, the certificate at no time becoming the property of the child. The principal benefit of such a provision is that it tends to check children from leaving school to enter temporary "blind alley" jobs.

Much of the time of the child under sixteen who drifts from one dull, monotonous job to another is wasted, as far as education and training are concerned. Consequently the completion of the eighth grade seems little enough schooling to require of children who go to work under sixteen.

(*d*) *Special Problems in Enforcing Restrictions on Child Labor.* Difficult as it has been, and still is, to place comprehensive child labor laws on the statute books, it is even more difficult to build up their effective administration.

The principal agencies for the enforcement of child labor laws are the departments of labor, the school authorities, and in some states the boards of health. Probation officers and private child welfare agencies may sometimes aid. In some states special child labor inspectors are appointed; in fact, factory inspection has usually begun with the enforcement of the child labor law before other labor legislation was established. In all cases, however, enforcement rests primarily with the factory inspection organizations.

Few, if any, states have an adequate corps of inspectors,[4] and in the southern states, where the child labor problem is

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[1] In Maryland, Massachusetts, Ohio, and Oklahoma.
[2] In Alabama, Florida, Georgia, and South Dakota.
[3] In Florida, Kentucky, Maine, North Dakota, and Oregon.
[4] See Chapter IX, "Administration," p. 418.

most serious, the provision for enforcement is most meager.[1] The experience of state after state has demonstrated that without state inspection child labor laws are dead letters.

The issuance of employment certificates is the first step in the administration of the minimum standards for entrance to industry. In most states where certificates are required they are issued by the local school authorities. In New York they are issued by the boards of health, which has proven very unsatisfactory for the state as a whole, as the health officers are for the most part poorly paid and busy with their other duties, and look upon the issuing of certificates as a tedious task thrust upon them without compensation. In seven states only no employment certificates are required, the affidavit of the parent being accepted as proof of age.[2]

Under the prevailing method of issuance through the school authorities uniformity is secured by the use of standard blanks throughout the state, by regular monthly or more frequent reports either to the commissioner of labor or to the state superintendent of education, and by a certain amount of centralized supervision on the part of these officials. This method is the most practical because the school office is the most convenient place for the children and their parents to go to obtain the certificates; because the local school authority knows the child through his record or through personal contact, and thus there is less likely to be falsification in regard

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[1] In North Carolina the commissioner of labor statistics has no power to inspect if the employer chooses to prevent him. In Alabama the enforcement of the child labor law has been entrusted to the state prison inspector, who must divide his time with the inspection of jails and almshouses. An investigation made in Mississippi by the National Child Labor Committee in 1914 disclosed in nearly every factory in the state wholesale violations of the law passed in 1912, which by way of enforcement merely provided that the county sheriffs were to inspect the factories "at least once each month," and the county health officers to inspect "at least twice each year." Only two of these local officials were found who had ever been inside the places they were supposed to inspect, and not a single one knew the provisions of the law. Those who had paid any attention at all to it had contented themselves with naïvely asking the owner of the mill if he was living up to the law. (See *Child Labor Bulletin*, Vol. II, No. 4, February, 1914, "The Majesty of the Law in Mississippi," Edward N. Clopper.) Following the exposure the Mississippi legislators finally passed a law providing a factory inspector.

[2] Mississippi, New Mexico, North Carolina, South Carolina, Tennessee, Texas, and Wyoming.

to age; and because the local school authority is likely to be much more interested in keeping the child in school and will make more of an effort to point out the inadvisability of allowing it to leave for some temporary and unnecessary employment. The enforcement of the compulsory education law, also, is so closely connected with the enforcement of the child labor law that the two should be coordinated under the school authorities in each community. The same sets of records are necessary for the issuance of certificates and for the enforcement of the compulsory education law. The school census, the record of the child's age on entering school, and its progress in school are equally important to the enforcement of both laws. Applicants who have been refused employment certificates should be reported at once to the school attendance department in order that they may be returned to school, and the names of all children to whom certificates have been granted should be reported to the principals of the schools. In the regulation of children's work in street trades, badges to be worn conspicuously and renewed annually have been found essential to enforcement, and the responsibility for administration rests chiefly with the educational authorities.

Cooperation between the child labor inspectors and the schools is necessary that both may discharge their responsibility to the best advantage of the child. A careful issuance of employment certificates and a thorough enforcement of the compulsory education law make the work of the labor inspector much easier. It is desirable, furthermore, that truant officers have the power to inspect establishments where children are employed, and they should be the local representatives of the state child labor inspectors, reporting to them all violations and aiding them in getting evidence to bring prosecutions. The actual presentation of evidence in the courts should always be done by the state inspector, who is free from local pressure.

The important provisions of what has been called a model law in regard to employment certificates are as follows:[1] No child under sixteen should be employed unless the child

[1] Practically the provisions of the Ohio law (General Code, 1910, Secs. 7765–7771).

presents to the employer an employment certificate, which should be kept on file during the child's employment and returned to the issuing office when the employment terminates. These certificates should be issued only by the local superintendent of schools, or by some one designated by him in writing, and should be given only after the following documents have been received and placed on file:

(1) The pledge of the employer that he expects to employ the child and will return the certificate to the issuing office as soon as the child leaves his employ.

(2) The child's school record, stating the age, ability to read and write, and school grade, signed by the principal of the school that the child last attended.

(3) Evidence of age, in the following order: (*a*) birth certificate; (*b*) baptismal record or passport; (*c*) school record or other documentary evidence; (*d*) in the absence of anything else, affidavit of the parent, with one or two disinterested citizens. The child should personally appear before the issuing officer for examination, and the officer should satisfy himself that the child is at least fourteen years of age, is able to read and write English, and has had a course of instruction equivalent to seven yearly grades in the public schools.

(4) A certificate from the school physician, board of health, or a licensed physician appointed by the board of education, in the order named, showing that the child is physically able to do the work for which it is to be employed.

The certificate should be transmitted by the issuing officer to the employer, and should not at any time come into possession of the child, to be used as a license for idleness. The blanks should be furnished by the state commissioner of labor, to whom should be sent monthly a list of the names of children for whom certificates have been issued, returned, or refused. Such lists should give the names and addresses of the prospective employers and the nature of the occupations in which the children intend to engage. Factory inspectors and truant officers should be empowered to demand that certificates be obtained to prove the age of children apparently under sixteen who claim to be over that age.[1]

[1] The federal Children's Bureau has commenced the publication of thorough investigations of the administration of child labor laws in

Even more for the sake of uniformity in enforcement than for uniformity in restrictions on child labor, federal legislation is needed. The plan of the Palmer-Owen bill pending in the third session of the 63d Congress was to place the enforcement in the hands of the federal department of labor, whose inspectors would be free from local bias or pressure. The work of these inspectors, it is believed by those who promoted the bill, would not obviate the need of state factory inspectors or of interest in the enforcement of the law by local school officials and others, but it would support the local authorities and aid them in resisting any influences which might be brought to bear to prevent their prosecuting for violations. Advocates of the measure believe, also, that the federal courts would be more likely to find against a man who violated a federal law regarding the employment of children than the local courts are to convict for violation of state laws. This would be an important gain, because it is not at all an uncommon thing for the state factory inspector to have a case dismissed by the judge after the most careful evidence has been presented, merely because the judge does not see that any great injustice has been done the individual child.

For the better enforcement of child labor laws cooperation between all the different agencies that are interested is essential. The standards which have been and will be established in regard to the entrance of children into industry will never be thoroughly enforced until the problem of administration is taken up with the same enthusiasm and persistence which have marked the campaigns for legislation.

b. Women. The exclusion of women from various branches of industry is based primarily on their inherently weaker resistance to certain health dangers, and sometimes upon moral grounds or upon their special need for protection at certain periods, as just before and after childbirth. Legislation to this end is much less extensively developed in America than in Europe.

(*a*) *Prohibited Employments.* In America almost all laws forbidding the employment of women in designated occupa-

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various states, pointing out the strength and weakness of the laws. The first of these to appear was "Employment Certificate System in Connecticut," Helen L. Sumner and Ethel E. Hanks, 1915.

tions or under designated conditions relate to work in mines and saloons. Work in mines is forbidden to women in most of the mining states,[1] and work in saloons (except by members of the family) in about fourteen states,[2] but in neither of those occupations has the problem of female labor been as serious as it is in England and in some other European countries where similar prohibitions are in force. In addition, a few scattered provisions of various sorts are found. Two or three states have forbidden the employment of women in cleaning moving machinery.[3] Arizona forbids the work of women "in any capacity" in which they must remain standing constantly,[4] and New York and Ohio forbid women to operate certain kinds of emery and other polishing wheels.[5] New York also forbids the employment of women coremakers in foundries if the cores are baked in the room where they are made.[6]

In Europe the evil effects of certain kinds of work are much better known than in this country, and it is well recognized that even the most careful regulation of working conditions in these occupations would not suffice to prevent injury to the health of women employed therein. Accordingly, European legislation forbids the work of women in a fairly wide list of occupations, most of which involve the presence of dusts, fumes, vapors, gases or substances of a poisonous or clearly harmful character. Among women workers in white lead, for instance, it was discovered that a serious derangement of the reproductive organs frequently occurred, and that the percentage of miscarriages and still-births among married women was exceedingly high. Therefore, in most European countries, and also in Argentina, women are forbidden to work in the dangerous processes in which this poison is used. In France

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[1] Alabama, Arizona, Arkansas, Colorado, Illinois, Indiana, Maryland, Missouri, New York, Oklahoma, Pennsylvania, Utah, Virginia, Washington, West Virginia, Wisconsin, Wyoming.

[2] Connecticut, Idaho, Iowa, Louisiana, Maryland, Michigan, Missouri, Montana, New Hampshire, New Mexico, New York, Texas, Utah, Vermont.

[3] Louisiana, Minnesota, West Virginia.

[4] Arizona, Revised Statutes 1913, Sec. 3115.

[5] New York, Laws 1913, C. 464; Ohio, General Code 1910, Sec. 1027; 15 (as amended by Laws 1911, p. 428).

[6] New York, Laws 1913, C. 464.

females are forbidden even to enter a place in which any one of forty-six especially dangerous processes is carried on, and nearly one hundred additional occupations are forbidden except under special protective conditions. Similar lists are found in the more important European countries and even Spain, long backward in social legislation, has forbidden the employment of women and minor children in a long list of occupations. While it is true that women in foreign countries often engage in work done only by men in this country, yet many women are undoubtedly at work here in industries so dangerous to their health that an extension of prohibitory legislation is urgently needed.

(*b*) *Childbirth Protection.* It was not until 1911 that the prohibition of the industrial employment of women for a stated period before and after childbirth became the subject of legislation in America. Such statutes were passed by Massachusetts in 1911, New York in 1912, and Connecticut and Vermont in 1913. The Massachusetts act is a representative one. It forbids "knowingly" employing any woman in "a manufacturing, mechanical, or mercantile establishment" within two weeks before or four weeks after childbirth.[1]

The desirability of such additional protection for working-women at the time of childbirth has been recognized by most European countries and by several outside of Europe. The prohibited period is generally similar to that found in America, from two to four weeks before and from four to six or eight weeks after confinement. European laws are also rendered more effective than the American by their frequent connection with provisions for maternity insurance.[2] For instance, under the German system of health insurance, a woman worker is paid benefits of half-wages for eight weeks following confinement, or longer if she is unable to return to work at the end of that time. Such insurance is needed partly to make up for the income loss during the enforced period of idleness, and may also be an important aid in the enforcement of the law. The necessity for such law in effective form is, however, undoubtedly less in this country than abroad,

[1] Massachusetts, Laws 1911, C. 229.
[2] See "Maternity Insurance," p. 393.

where the employment of women with young children is much more frequent.

c. Men. Legal regulations for the exclusion of men from dangerous employments are never of universal application, as they are in the case of children and women, but are limited to certain classes or groups of individuals who must be excluded on definite grounds, usually ascertained by examination. The grounds of exclusion may be either physical or technical. Although the distinction does not always hold, physical requirements are in the main intended to protect the worker who is debarred, while in the case of technical qualifications the protection of fellow-workmen or of the general public is an added if not the main consideration. Physical qualifications, also, are usually concerned with health; technical qualifications with safety.

(*a*) *Physical Qualifications.* Physical qualifications established by law are of four kinds: (1) reasonable immunity from the trade malady characteristic of the employment; (2) freedom from a trade malady contracted in the course of employment; (3) freedom from a contagious disease which might be passed on to other workmen or to consumers of the product; and (4) freedom from physical defect of such nature as to interfere with the proper performance of duty. It will be noted that the first two qualifications look toward the health of the workman himself, and that the last two look mainly toward the health and safety of other persons.

The qualification of immunity from a particular occupational disease was found in 1915 in only two American laws, but is more common abroad. The New York [1] and New Jersey [2] statutes regulating work in compressed air require that applicants must be found physically qualified by a physician paid by the employer, and these laws also exclude persons addicted to the excessive use of intoxicants. In Europe examinations for entrance to compressed-air work are required in France and in Holland, the latter country specifying a long list of ailments, such as obesity, heart or lung diseases, and affections of the nose and ears, any one of which debars from the work. Austria bars from work in paper-

[1] New York, Laws 1909, C. 291.
[2] New Jersey, Laws 1914, C. 121.

mills all workers with open wounds, persons with delicate respiratory organs, and consumptives. Still more common is the requirement of a medical certificate of fitness as a condition of entering the more dangerous lead trades, which is found in Austria, France, Germany, Great Britain, and Russia. Germany specifically prohibits the employment in these trades of applicants with lung, kidney, or stomach trouble, a generally weak constitution, or an addiction to alcohol; France, of those who exhibit symptoms of lead poisoning or of any complaint likely to be dangerously aggravated by plumbism. Belgium also forbids the employment of alcoholics in the white lead, lead oxide, or lead paint trades.

It is obvious, however, that merely debarring from entrance to an unhealthy trade those demonstrably susceptible to its dangers is insufficient protection. The worker's real power of resistance to a specific hazard often cannot be determined until he has been exposed to it, and if he begins to show symptoms of succumbing he cannot be too quickly removed. Hence arises the necessity for the second qualification, freedom from a trade malady contracted in the course of employment.

Most common occupational diseases are of such slow inception that a capable physician can detect them in the early stages before their cumulative effects have become serious. To make sure, therefore, that the originally healthy employee is in fact successfully resisting the risk with which he is surrounded, the initial examination, when it is given, must be supplemented by periodical re-examinations at intervals graduated according to the degree of risk. Sometimes periodic examinations are required even when there are no restrictions upon entrance to the trade.

Such is the case with the monthly examinations required under the "lead laws" of the important lead using states. The Ohio [1] and Pennsylvania [2] laws apply to the manufacture of certain of the more poisonous lead salts, such as white lead, red lead, and arsenate of lead (Paris green), while the later New Jersey [3] statute covers also the manufacture of pottery,

[1] Ohio, Laws 1913, p. 819.
[2] Pennsylvania, Laws 1913, No. 851.
[3] New Jersey, Laws 1914, C. 162.

tiles, or porcelain-enameled sanitary ware in so far as lead is used.

In all three of these states the physician who discovers a case of lead poisoning must report it not only to the state departments of labor and of health, but also to the employer, who after five days must not continue the "leaded" employee in a dangerous process nor return him thereto without a physician's written permit.[1]

Provision for regular re-examination is also found in the two American compressed-air laws already mentioned. Under these the examination must be repeated after the first half-day's work, on returning to work after ten days' absence from any cause, and after three months' continuous employment, and workmen who have ceased to be qualified must be excluded.

In the more dangerous lead trades workers are subject to regular examination in nearly all European countries. England and Germany, moreover, require examinations both in alkali chrome works, where corrosions of the mucous membrane are common, and in rubber vulcanizing works, where there is danger from the noxious gas bisulphide of carbon. France requires similar examinations in compressed-air work. The frequency of examination varies from once a week in the British white lead industry, to every six months among German painters, although once a month, as in the American lead trades, is the most usual period. In the Netherlands stone masons are entitled to medical examination at the employer's expense once a year. In order that the advantages of cumulative experience may not be lost, a factory record of the results of medical examinations, especially if they result in findings of disease, is nearly always required, and must usually be kept by the examining physician.[2]

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[1] Similar laws in Illinois (Laws 1911, p. 330), and Missouri (Laws 1913, p. 402) cover wider ranges of related industries, including zinc smelting and work with arsenic, brass, mercury, and phosphorus, but do not require the removal from danger of workmen who show symptoms of the resultant diseases.

[2] In Germany this record is called a "control book," and must contain the name of the person keeping it, first and last name, address and age of each workman, date of his entering and leaving the employment, date and nature of his illness, date of his recovery, name of the factory physician, and dates and results of the medical examinations. The em-

The third physical qualification, absence of contagious disease, is applied occasionally in bakeshops [1] and in other food establishments,[2] while the fourth, freedom from physical defect which might interfere with proper performance of duty, is mentioned in a few states which require an examination of railroad employees for color blindness or other defective sight.[3]

(*b*) *Technical Qualifications.* Far more numerous than the examinations to test an adult workman's fitness for a given occupation upon physical, or health, grounds, are those required in nearly all states for the licensing of men to carry on certain trades after a test of experience, skill, or general education. Laws for the examination and registration of barbers,[4] horseshoers,[5] plumbers,[6] electricians,[7] moving-picture machine operators,[8] chauffeurs,[9] railroad,[10] streetcar,[11] and steamboat [12] employees, elevator operators,[13] and even aeronauts,[14] are designed primarily for the protection of the public, and need only be mentioned. More closely related to the subject are technical examinations for miners and for firemen and engineers in charge of stationary boilers.

Statutes requiring the examination and registration or licensing of certain classes of coal mine employees exist in

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ployer is responsible for the correctness of the record, and must show it to the factory or medical inspector on demand. The Austrian health register goes into even more detail.

[1] See, for instance, Connecticut, General Statutes 1902, Sec. 2570.

[2] Maryland, Laws 1914, C. 678, Sec. 1 (e).

[3] For example, Ohio, General Code 1910, Sec. 12548.

[4] Found in 1915 in fifteen states.

[5] Found in 1915 in four states and in Hawaii. These laws have been declared unconstitutional in Illinois, New York, and Washington, as unduly interfering with a calling not requiring regulation on grounds of public health and comfort.

[6] Found in 1915 in twenty-one states, the District of Columbia, and Porto Rico.

[7] Found in 1915 in Louisiana, Acts 1908, No. 178.

[8] Found in 1915 in three states.

[9] Found in 1915 in twenty-two states and in the Philippine Islands.

[10] Found in 1915 in seventeen states.

[11] Found in 1915 in only three states—Louisiana, New York, and Washington.

[12] Found in 1915 in the United States, eight states, and the Philippine Islands.

[13] Found in 1915 in Minnesota alone.

[14] Found in 1915 in the one state of Connecticut, Laws 1911, C. 86.

practically all of the important mining states.[1] Managers, foremen or bosses, fire bosses, mine-examiners, and hoisting engineers are the employees for whom licenses are usually required, but some of the newer laws cover all miners, each of whom, however, is allowed one unlicensed apprentice.[2] Candidates must present affidavits attesting their good character and sobriety, must have a specified number of years' experience, must be residents of the state, and must pass the examination prescribed by an examining board. The increase of foreign-born workmen among the miners is reflected by the growing number of states which require ability to read and speak English.[3] A fee ranging from $1 to $5 is charged for the examination and license. The examining boards are composed of from three to five men, one of whom is usually a state mine inspector, the others being miners and mine-owners or superintendents in equal number.

Finally, in a number of states[4] and in the District of Columbia no one may serve as fireman or engineer in connection with a stationary boiler who has not been found qualified by a state or local examining board. Moral character and temperate habits, one to three years' experience, and a minimum age limit are specified in a few instances, and the license is generally revokable for negligence, intoxication, or violation of law or regulations.

Because they fear loss of employment if found to be suffering from some disqualifying ailment, workmen have at times protested against medical examinations conducted by the employer. Aside from possible abuse of such information, however, the advantages to be gained by the workman through exclusion or timely removal from a disease-breeding occupation would outweigh the hardship due to temporary loss of wages while awaiting recovery or securing other work. Even the

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[1] Such statutes existed in 1915 in the fifteen states of Alabama, Colorado, Illinois, Indiana, Iowa, Kentucky, Missouri, Montana, Ohio, Oklahoma, Pennsylvania, Tennessee, Utah, Virginia, and Wyoming.

[2] Illinois, Laws 1913, p. 438, Sec. 1.

[3] See, for example, Kentucky, Laws 1914, C. 79, Art. XVI, Sec. 1.

[4] In 1915 licenses for stationary firemen and engineers (exclusive of those in mines) were required in the ten states of Georgia, Maryland, Massachusetts, Minnesota, Missouri, Montana, Nevada, New Jersey, Ohio, and Pennsylvania. Many cities also require licenses under city ordinances.

wage loss, when exclusion is due to illness, can be in large part taken care of by the extension of workmen's compensation to embrace occupational diseases and by the institution of systems of public health insurance.[1] For the physician, also, the practice of examining large bodies of men at the place of employment will lead to added insight into the trade causes of disease, an insight which unfortunately is as yet only rudimentary. In any compulsory system of medical examination the physician should be employed by the state.

(2) *Prohibition of Substances or Instruments*

The most notable example of the application of the method of prohibition to a dangerous substance is the world-wide banishing of poisonous phosphorus from the match industry. Within eleven years after the commercial introduction of the phosphorus match in 1827 the disease known as "phossy jaw" or phosphorus necrosis was attracting the attention of government investigators. Various efforts to eliminate the disease by regulation having signally failed, Finland in 1872 forbade the use of white phosphorus in match factories, and similar action was taken by Denmark in 1874. In France, where match-making is a government monopoly, the profits from the industry were wiped out by sickness and death claims until a harmless substitute was discovered and the dangerous ingredient prohibited in 1897. Other countries followed, and in 1906, on account of the difficulty of eliminating poisonous phosphorus in countries with an important export trade, the International Association for Labor Legislation secured an international conference at Berne which resulted in the unique expedient of an international convention[2] providing for the absolute prohibition of the manufacture, importation, or sale of matches made from white phosphorus. This treaty was signed at once by Denmark, France, Germany, Italy, Luxemburg, the Netherlands, and Switzerland, and a few years later by Great Britain, Spain, and numerous colonies.[3] Canada

[1] See "Health Insurance," p. 385.

[2] For text of this convention see *Bulletin of the International Labor Office*, Vol. I, 1906, pp. 275–276.

[3] For complete list see table, *Bulletin of the International Labor Office*, Vol. VII, 1912, following p. 503.

and Mexico also, without becoming signatories to the treaty, have prohibited the poisonous substance in the match industry.

In the United States the question was first given national prominence in 1910 by the report of a federal investigation.[1] Two years later, in April, 1912, Congress placed a prohibitory tax of 2 cents a hundred on matches containing white phosphorus, and prohibited their import or export.[2] The power of internal revenue taxation which Congress had previously exercised for the benefit of bankers and farmers was thus for the first time used for protecting the health of wage-earners.

Against only one other industrial substance—lead—has the drastic method of prohibition been invoked, and in this case the prohibitory legislation is found only in Europe. Austria was first to act, forbidding in 1908 the use of lead in all paints, colors or cement used for interior work, and the same year the Swiss administrative departments were ordered to forbid the use of white lead in painting carried on in their behalf. The most thoroughgoing action in this regard, however, has been taken by France, which in 1909 declared that after July 20, 1914, the use of "white lead, of linseed oil mixed with lead, and of all specialized products containing white lead, will be forbidden in all painting, no matter of what nature, carried on by working painters either on the outside or on the inside of buildings."[3] Belgium, France, and Germany also forbid the removal of lead paint by any dry rubbing or scraping process.

A few prohibitions apply not to substances, but to instruments of work. One of these is contained in the Massachusetts statute intended to protect textile mill operatives from "the kiss of death." This law, in order to prevent the transfer from worker to worker of tuberculosis and other infections, prohibits the use of any form of shuttle "in the use of which any part of the shuttle or any thread is put in the mouth or touched by the lips of the operator."[4] Contagious diseases among glass-blowers are guarded against in France and Portu-

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[1] United States Bureau of Labor, *Bulletin No. 86*, January, 1910, "Phosphorus Poisoning in the Match Industry," John B. Andrews, pp. 31–146.

[2] United States, Laws 1911–1912, C. 75.

[3] United States Bureau of Labor, *Bulletin No. 95*, July, 1911, p. 180.

[4] Massachusetts, Laws 1911, C. 281.

gal by prohibitions against the use by more than one person of the same blowpipe.

3. Regulation

The method of regulation, in the prevention of occupational accident and disease, as in other social problems, is based on the principle of toleration within limits. The majority of the people may believe that certain dangerous machines or processes are so necessary a part of our industrial life that their prohibition is at present undesirable or at least impracticable. In dealing with industrial accidents and diseases the adoption of this principle leads in the work-*places* to the installation of machine guards, fire-escapes, dust and fume removal systems, separate wash-rooms and eating-rooms; and for the work-*people* to the limitation of working hours. As the latter point has been considered in the chapter on "Hours of Labor" [1] only the regulation of work-places need be treated here.

Furnishing a reasonably safe place in which to work is plainly the duty of the employer, and was so recognized under the common law and by the employers' liability statutes. Not all employers, however, are equally watchful and energetic, even if all were equally alive to their social responsibility in the matter, and hence has arisen the need of standards, drafted and enforced by public authority, which will throw about the work-people the necessary protection. So diversified are the various branches of industry and the accident and disease hazards in each that separate codes have grown up about them. These codes deal in the main with (1) factories and workshops, (2) mines and tunnels, and (3) transportation.

(1) *Factories and Workshops*

Modifying to meet its own conditions a mass of legislation already existing in Great Britain, Massachusetts passed on May 11, 1877, the first American law requiring factory safe-

[1] See p. 200.

guards. This pioneer law touched on nearly all of the points now covered by our most advanced statutes for the prevention of factory accidents. It provided for the guarding of belting, shafting, and gearing, prohibited the cleaning of moving machinery, required elevators and hoistways to be protected, and called for sufficient means of egress in case of fire. Practically every state in the union now has a factory and workshop act prescribing minimum conditions of safety.

a. Machine Guards. The point perhaps most frequently dealt with is safeguarding of machinery. Mechanism for the transmission of power, like belting, shafting, and gearing, as well as active parts of machines, such as saws, planers, mangles, and emery-wheels, must usually be securely guarded, but if this is not considered possible it is sometimes required that notice of the danger be conspicuously posted. Set-screws or other projections must be countersunk beneath the level of the shaft or otherwise guarded, while shafts and belts, and floor openings through which they pass, must be cased or railed off. A statute found only in the great textile state of Massachusetts requires looms to be provided with guards which will prevent injury from flying shuttles.[1] It has often but not uniformly been held by the courts that failure to provide the required safeguards is negligence *per se*,[2] and that the worker does not assume the risk of the employer's negligent disregard of duty, even though he is aware of it.[3] Many safeguards can be applied best and most economically during the original building of the machine, and Minnesota has prohibited the manufacture or sale of mechanism with danger points unguarded.[4] The same idea is found in the laws of some European countries, and a growing number of American dealers are acting upon it without legislative compulsion.[5]

It is not sufficient, however, for a safeguard to be attached to a machine. If it is to do its work it must be actually used.

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[1] Massachusetts, Laws 1909, C. 514, Sec. 101.

[2] Davis *v.* Mercer Lumber Co., 164 Ind. 413, 73 N. E. 899 (1905).

[3] Evansville Hoop & Stave Co. *v.* Bailey, 43 Ind. App. 153, 84 N. E. 549 (1908).

[4] Minnesota, Laws 1913, C. 316, Sec. 5.

[5] John R. Commons, "How the Wisconsin Industrial Commission Works," *American Labor Legislation Review*, February, 1913, p. 13; *Labor and Administration*, 1913, Ch. XXXI.

A number of states have therefore passed provisions forbidding any person to move, displace, or destroy any safety device except under rules established by the employer, and some specify immediate repairs as the only cause for which a machine guard may be removed during the active operation of the machine. A related clause forbids employees to operate or tamper with machines with which they are not familiar or which are not connected with their regular duties.

In case of accident it is important that the operative be able to stop the machine at once. It is commonly required, therefore, that shafting be fitted with tight and loose pulleys, and that belt-shifters or poles be supplied for shifting the belt quickly and safely from one to the other. Some states require friction clutches for stopping machinery, and in addition to all these means of safety Illinois, among other states, requires speaking-tubes, electric bells, electric colored lights or other means of communication between the workroom and the engine-room. Other regulations governing moving machinery forbid cleaning or repairing it while in motion, and overcrowding. Closely related to the foregoing provisions are those dealing with covers or other safeguards on such stationary equipment as vats and pans.

Among other provisions against accident are frequent requirements that stairs must be properly screened at sides and bottom, must have rubber treads if thought necessary by the commissioner of labor, and must be furnished with substantial hand-rails. Stair openings on each floor must be closed, as well as entrances to elevator shafts. Trap-doors, fences, gates, or other safeguards may be required for hoistways, hatchways, and well-holes. It is often required that elevators be provided with automatic catches to prevent falling. In Wisconsin the industrial commission had, in 1915, issued no fewer than fifty-four separate orders all looking to the safe construction and operation of passenger and freight elevators.[1]

Protection against explosions of stationary boilers is best exemplified by the methods of the Massachusetts Board of Boiler Rules. This board, one of the earliest forerunners of

[1] United States Bureau of Labor Statistics, *Bulletin No. 148*, 1914, "Labor Laws of the United States," pp. 2313–2320.

the industrial commission plan of drafting and enforcing safety measures, was established in 1907.[1] It is composed of five members: the chief inspector of the boiler inspection department, who serves as chairman; one representative of the boiler manufacturing interests; one representative of the boiler-using interests; one representative of the boiler-insurance interests; and one operating engineer. The duties of the board include the formulation of rules for the construction, installation, operation, and inspection of steam-boilers. For this purpose public hearings and private conferences are held, and the rules as formulated are submitted to the governor for approval. When approved they are published and have the full force of law. The success of this system in reducing the number of boiler explosions has led to its adoption in many states and cities, even as far away as Manila.

b. Protection against Fire. Though the prevention of fire is of far more importance than providing means of escape, legal provisions covering this point are of comparatively late development. It was not until 1911, for instance, that New Jersey ordered cans to be provided for combustible waste, and it was not until 1912 that New York required gas-jets to be inclosed in globes, wire cages, or other protection, and forbade smoking in factories. Meanwhile, disastrous factory fires in both states, due in part to lack of these safeguards, had attracted the attention of the country, and resulted in much legislation. In some states floors must now be swept daily and the sweepings removed, and the quantity of explosives that may be kept in a building is carefully regulated. Sometimes factories must be equipped with an automatic gas-cock or appliance by which in case of fire the supply of gas may be shut off without entering the building.

Required means of extinguishing fires include pails of water or sand, a standpipe and hose of specified dimensions, fire extinguishers or automatic sprinkler systems. The major part of fire laws, however, is devoted to provisions for prompt escape. In the early days of this legislation, since no one had taken the time to study out what would constitute effective egress, lawmakers contented themselves in most cases with

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[1] Massachusetts, Laws 1907, C. 465, Secs. 24–28.

ordering "suitable and sufficient" exits and escapes. Now the most elaborate details as to material and construction are found. Balcony escapes, fire towers, or chutes or toboggans may be used in different states. Doors must be constructed to open out or slide, and must not be fastened in any way during working hours. Sometimes the number of employees to the floor is regulated, periodical fire drills are called for, and gongs, and red lights or other "Exit" signs, must be installed. A growing number of states require plans for fire egress in new buildings to be passed upon by labor or building department officials.

c. Lighting, Heating, and Ventilation. Although proper lighting affects both the health and comfort of the workman and his liability to accident, less attention has been paid to this phase of industrial safety and hygiene than to almost any other point of similar importance. Comparatively few states have enacted any legislation on the subject, and most of those limit themselves to meaningless and unenforceable provisions such as that factories must be "well and sufficiently lighted." [1]

Artificial lighting in factories is notoriously bad because of poor quality, insufficient quantity, haphazard distribution resulting in spots of excessive intensity separated by dangerous shadows, and glare caused by lack of shades or diffusing mediums. Many eye specialists assert that from 80 to 90 per cent. of headaches are due to eye strain, and in the production of eye strain improper lighting is an important factor. The effects of poor illumination are particularly severe upon women workers, because of their more delicate nervous organization. Yet at the present stage of the art all harmful light conditions in factories could be done away with easily and cheaply. "It can easily be shown," declares one expert, "that a workman earning only $2 per day of ten hours would have to lose but three minutes of his time to make a

[1] Connecticut (General Statutes 1902, Sec. 4518) adds that painted, stained or corrugated glass in factory windows must be removed, " where the same is injurious to the eyes . . . upon the order of the factory inspector." In other words, Connecticut permits any factory-owner to block out light by any one of the three methods named until ordered to desist by the inspector, who must, however, first prove that the darkness is injurious.

loss to the manufacturer equal to the cost of all the artificial light he could possibly require during the entire day." [1]

Indications of what a really scientific law on factory lighting might be are found in the Holland statute. There women and children are forbidden to work in establishments where artificial illumination is ordinarily required between 9 A.M. and 3 P.M. For processes exceptionally trying to the eyes, such as embroidering, typesetting, and instrument-making, a minimum light of one and one-half foot-candles is specified, while for less exacting occupations the minimum is one foot-candle.

A few states authorize the inspector to require changes in heating apparatus found dangerous to health, but no standards of proper or permissible temperature are set up. Massachusetts has established for certain textile processes a graduated standard of humidity permissible at certain temperatures,[2] but only there and in Illinois is the subject of humidity mentioned. Yet apart from the presence of dusts and fumes, the only atmospheric condition which has been thoroughly proven harmful is the combination of excessive heat with excessive humidity.

Recognition of the importance of ventilation is more widespread. Industrial dust and fume, whether metallic, chemical, vegetable, or animal in origin, and whether poisonous or not, are among the most insidious and serious of modern health hazards, and the illness and death of wage-earners vary almost in direct proportion to the contamination of the air supply. Hence about half the states have enacted provisions that factories shall be ventilated. The wording, however, is in most cases so vague that it means but little. Among the first laws which attempted to establish even an elementary standard of ventilation was the Illinois statute of 1909. Under this act the amount of fresh air to be supplied depends upon the kind of illumination used, the cubic air space furnished for each employee, and the window area of workrooms.[3] Provisions for from 250 to 600 cubic feet of air space for every

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[1] F. Leavenworth Elliott, "Factory Lighting," *American Labor Legislation Review*, June, 1911, p. 116.

[2] Massachusetts, Laws 1910, C. 543.

[3] Illinois, Laws 1909, p. 202.

employee are now found in a few state laws, but more important are the newer regulations providing for the retention and removal of dangerous dust and fume at the point of production by specially constructed hoods, hoppers, exhausts, and fans. Regulations of this type have been established either as statute laws or by administrative order principally in the large lead-using states, such as Illinois, Missouri, New Jersey, New York, Ohio, and Pennsylvania.[1] As additional precautions, most of these laws require wet-cleaning methods, the use of respirators, and separate lunch-rooms, and forbid bringing any food or drink into the workrooms. Similar provisions in the laws of other countries have helped reduce the risk of lead poisoning far beneath previous American expectations. For instance, in an American white and red-lead factory, employing eighty-five men under unregulated conditions, the doctors' records for six months showed thirty-five men "leaded," while an English plant of the same nature, with ninety employees, but under strict supervision, reported no cases for five years.[2]

In at least two cases ventilation statutes have been declared unconstitutional by state courts, but both times upon issues not related to the purpose or benefits of the laws, and in both cases they were soon replaced by amended acts. In 1901 the California law of 1889 was challenged on the ground that it made the commissioner of labor the judge not only of the need for means of dust removal, but also of the character of the appliance to be installed. The supreme court upheld the objection,[3] but the invalid statute was immediately replaced by a new law, giving the commissioner power to order only proper appliances instead of some particular contrivance. In Illinois a 1911 statute forbade the use of emery or similar wheels "in any basement so called, or in any room lying wholly or partly beneath the surface of the ground." This provision the Supreme Court of Illinois held to be an "unwarranted discrimination," since it condemned all rooms of the class named without reference to their adequate ventila-

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[1] For a comprehensive act of this type see New Jersey, Laws 1914, C. 162.

[2] *American Labor Legislation Review*, December, 1914, p. 539.

[3] Schaezlein *v.* Cabaniss, 135 Cal. 466, 67 Pac. 755 (1901).

tion or lighting.[1] The legislature of 1915, however, reenacted substantially the same provision, with a change of wording designed to overcome the objection.

d. Seats, Toilets, and Dressing-Rooms. In safety and health legislation, as well as in legislation on hours and wages, a distinct tendency is noticeable to single out women for special protection, on the grounds of their greater physical weakness and their comparative helplessness as wage bargainers. The possibilities of injury from unsafe or insanitary conditions are more apparent and it is easier to make a conclusive case in their behalf. Not infrequently health and safety laws applied only to women when first passed, but were later extended to protect all workers. For instance, in Colorado a law which originally required hand-rails on stairways only in buildings where women were employed was extended in 1911 to cover all work-places.[2] Or in some cases a law affording some protection to all workers may be of wider scope in its application to women. Thus in Missouri mechanical means for dust removal must be installed in all factories carrying on dusty processes where five or more "persons" are employed, and also in dusty workshops if the five or more employees are "children, young persons, or women."[3]

Particularly striking is the special protection of women manifested in the laws on seats, toilets, and dressing-rooms. In fact, legislation with regard to seats exists only for women. As far back as the end of the 'seventies the dangers of constant standing for salesgirls were recognized, and it was urged that they be furnished seats and allowed to use them. A law containing such provisions was passed by New York as early as 1881. Almost every state now requires suitable seats for females in at least mercantile establishments.[4] The majority of laws extend this requirement to manufacturing or to manufacturing and mechanical establishments, and several states cover practically all employments.[5] The proportion of seats

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[1] People *v.* Schenck, 257 Ill. 384, 100 N. E. 994 (1913).
[2] Colorado, Laws 1911, C. 132.
[3] Missouri, Revised Statutes 1909, Secs. 7858–7859.
[4] By the end of 1915 only Idaho, Mississippi, Nevada, and New Mexico were without such legislation.
[5] Arizona, Arkansas, California, Kentucky, Louisiana, Missouri, Montana, Ohio, Pennsylvania, Texas, Washington, West Virginia.

to workers is sometimes fixed and in many cases the law specifies that employers must permit the use of the seats when work will not thereby be interfered with.[1] These laws are of little real importance in protecting health, however, since it is practically impossible to see that employers and foremen allow the seats to be used even when provided.[2]

Nearly all the states likewise require sanitary and separate toilets for women workers in addition to those for men, and about a third make provision for women's dressing-rooms. These provisions form a very important factor in maintaining the health and morals of women workers in any establishment; the character of the employment frequently makes necessary a change from street clothes to work clothes, and it is also highly desirable that a suitable place be provided where women and girls may eat lunch, secure a little rest at the noon period, and retire in case of illness.

For the lead industries, especially, careful wash-room standards have been worked out, specifying hot and cold water, a definite ratio of basins or of trough length to the number of employees, soap, nail-brushes, and towels. In the best lead laws, also, such as those of New Jersey, Ohio, and Pennsylvania, hot and cold shower-baths are required, to be used at least twice a week on the employer's time, and to insure the use of the baths a bath register must be kept. A few states require a sufficient supply of pure drinking-water to be kept in a readily accessible place. Sometimes, especially in connection with foundries and casting-rooms, the lead trades and compressed-air work, the dressing-rooms must be properly heated and ventilated, and often supplied with lockers and with facilities for drying clothes.

e. Protection from Infectious Disease. Modern industrial processes subject large numbers of employees not only to dangerous dusts and vapors, but also to a variety of disease-breeding organisms, carried either by fellow-workmen or by the materials worked upon. As a protection against such infection a number of legal regulations have been adopted.

[1] See Kentucky, Laws 1912, C. 77, Sec. 3, for both such provisions.

[2] A law of this class which plainly defeats its own intent is the Delaware statute of 1913 (C. 176) which provides that no girl under eighteen may work in any employment which "compels her to remain standing constantly, unless seats are provided."

Several states, for example, forbid sleeping in workrooms, some require cuspidors to be furnished and to be cleaned and disinfected daily. Massachusetts in 1913 required that cloths or other material provided for cleaning printing-presses must be sanitary,[1] and a California law of the same year laid down the rule that all wiping-rags must be sterilized.[2] In every industrial state hundreds of cases of infection or "blood-poisoning" occur yearly, and about six out of every seven of these are the result of small scratches. The requirement now found in some states for a first-aid kit in factories, workshops, and mercantile establishments should assist in reducing this needless danger.

Prominent among the infectious diseases of industry is anthrax, which arises in the handling of infected hides or hair. Austria, Belgium, France, Germany, Great Britain, and Italy have all turned their attention to eradicating this malignant malady, but the United States remains inactive. The commonest legal safeguards are provisions for thorough washing, for overalls, neck-coverings, and gloves, and for treating instantly scratches and slight wounds which offer an entrance to the bacillus. Disinfection of bristles and bales of hair from suspected localities before any work is done on them is insisted on in some countries.

f. Tenement House Manufacture. Difficult as are the problems connected with the regulation of labor conditions in factories, they are not more troublesome than those encountered in the regulation of tenement workshops, where the work is done by the family group in its customary living-quarters.

Tenement house manufacture is often looked upon as a pleasant and easy method whereby the mothers of the poor may add to the family income in their leisure moments. The fact is that such work has usually proven a menace to health, to wage standards, and to the existing labor laws. Congestion, insanitary quarters, lack of restriction on child labor, absolutely unregulated hours, and miserable pay combine to create a condition which endangers the lives not only of the workers, but of the purchasers of their product. Often tene-

[1] Massachusetts, Laws 1913, C. 472.
[2] California, Laws 1913, C. 81.

ment dwellers have been found at work on garments and articles of food while suffering from contagious diseases.[1]

As early as 1885 New York sought to end the "sweating" or tenement workshop system by prohibiting the manufacture of cigars and other tobacco products in tenement houses in cities of the first class. The law was declared unconstitutional, the court holding it an abuse of the police power and an infringement of the cigar-maker's liberties in that it sought to force him "from his home and its hallowed associations and beneficent influences, to ply his trade elsewhere." [2] Had this pioneer statute been sustained, the entire problem of tenement house labor might have been disposed of almost at its beginning.

The setback in the Jacobs case radically changed the method of attack on the sweating system. Prohibition having been declared invalid, for three decades nearly all effort was directed toward regulation and the imposing of minor restrictions through a licensing system. In 1891 Massachusetts passed "An act to prevent the manufacture and sale of clothing made in unhealthy places," and the following year New York inserted in its newly codified labor law a provision for the licensing and regulation of tenement workshops. Similar provisions now exist in about a dozen states.[3]

These statutes ordinarily require that home work on garments, foodstuffs, and tobacco must be done only in rooms licensed by the factory inspection department. Only members of the immediate family, which is carefully defined, may be employed, and licenses may be issued only if fire-escape, toilet, and all other health and safety laws have been complied with. In case of disease, work must cease until the board of health has declared the illness at an end and has fumigated the apartment. A register must be kept of names and addresses of persons taking out work, and goods given

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[1] See *Second Report of the New York State Factory Investigating Commission*, "Manufacturing in Tenements," Vol. I, pp. 90–123; *Report on Condition of Woman and Child Wage-Earners in the United States*, Vol. II, "Men's Ready-Made Clothing."

[2] *In re* Jacobs, 98 N. Y. 98 (1885).

[3] In 1915: Connecticut, Illinois, Indiana, Maryland, Massachusetts, Michigan, Missouri, New Jersey, New York, Ohio, Pennsylvania, and Wisconsin.

out must be labeled with the name and address of the manufacturer. Licenses are revokable for failure to comply with the law, or, in some of the newer acts, "if the health of the community or of the persons employed thereunder requires it."[1]

The results of attempted regulation under even the best of these laws have, however, never been satisfactory. On February 1, 1915, for instance, there were almost 13,000 licensed tenements in New York City alone, and over 500 in the rest of the state. As the working day of a factory inspector is eight hours long, it would require three inspectors to each tenement, or an army of over 40,000 in all, to set a continuous day and night watch upon these dwellings to see that no violations of the law were going on; and this estimate takes no account of the fact that home work is covertly carried on in unlicensed as well as in licensed houses. "After twenty-one years," declare those who have long been sympathetic observers of this legislation, "the difficulties of inspection have been proved insuperable."[2]

In 1913, therefore, after the able investigations of the state factory investigating commission, New York once more returned to the prohibitory method in dealing with this question, and forbade work in tenement homes on food products, dolls or dolls' clothing, and children's or infants' wearing-apparel.[3] The prohibition covered both work done directly for a factory and indirectly through a contractor, and was applied to these articles first because of their close relation to public health, especially the health of children. There is little doubt that in the present state of public knowledge these restrictions will be followed by others.

(2) *Mines and Tunnels*

Underground work of any sort obviously subjects the workman to greater dangers, both as to health and to safety, than

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[1] See, for instance, Maryland, Laws 1914, C. 779, Sec. 248.

[2] *Constitutional Amendments Relating to Labor Legislation and Brief in Their Defense*, submitted to the Constitutional Convention of New York State, June 9, 1915, by a committee organized by the American Association for Labor Legislation, p. 51.

[3] New York, Laws 1913, C. 260.

do most of the manufacturing industries. Distance beneath the surface, artificial light, poisonous gases, explosive dusts, dampness, intestinal parasites, extreme heat, and in some kinds of work abnormal air pressure amounting often to several atmospheres, all contribute to render underground occupations extraordinarily hazardous. It is for this reason that the validity of hour legislation for adult men has become thoroughly established in the mining industry, although in many other lines of work such restrictions are still subject to attack on the score of unconstitutionality.

a. Mining. Under these circumstances it is not surprising that mining furnishes a higher fatal accident rate than any of the other main groups of industry. Metal-mining has a higher death-rate than coal-mining, and employment in anthracite coal mines is more dangerous than in bituminous mines, since the former are deeper and more subject to accumulations of noxious and explosive gases.

Coal-mining appears to be more dangerous in America than in any other country. Standing second with regard to numbers employed, the United States leads all other important coal-producing countries both in total number and in rate of fatal accidents. During the ten years ending with 1910 the average fatal accident-rate per 1,000 employed in coal-mining was 3.74 for the United States, 2.92 for Japan, 2.11 for Germany, 1.69 for France, 1.36 for Great Britain, 1.04 for Austria, and 1.02 for Belgium.[1]

Health dangers and occupational diseases among miners have been given much less legislative attention than has the subject of accidents. Accidents are usually more spectacular, their causes are more certain and more easily located, and, moreover, an employer may be held in damages for accidental injuries to mine workmen, while only two American states have provided compensation for occupational diseases.[2] Among the more important legal provisions for safeguarding the life and health of miners are the requirements for detailed

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[1] United States Bureau of Mines, *Bulletin No. 69*, "Coal-Mine Accidents in the United States and Foreign Countries," Frederick W. Horton, p. 87.

[2] For a further discussion of this subject see Chapter VIII, "Social Insurance."

maps of mines showing all workings and open at all times to mine inspectors, for a sufficient number of escapement shafts, for proper ventilation and a supply of pure air, and frequently for a special employee to inspect the mine daily for explosive or poisonous dusts or gases. Precautions against falling rock or coal must also be taken by carefully timbering dangerous places as far as known. Rules are laid down in regard to proper methods of drilling and blasting, and hoisting-gears and cages for carrying men in and out of the mine must conform to specific requirements. Safety-lamps, shelter-holes, fencing of machinery, telephone connections, restrictions upon the storing of explosives and upon the quality of illuminating oils—these and many more safeguards are frequently required and carefully defined by law. In the newer laws provision is usually made for a rather limited first-aid equipment.

The enforcement of these provisions in the various states is usually entrusted to a special body of mine inspectors, who either form a separate bureau of mine inspection or are attached to the state department of industrial inspection. Mine inspection protects the property of the employer as well as the lives of the employees, and many states require of inspectors a certain number of years' experience and also civil-service examinations conducted by an examining board frequently composed of representatives of employers and employees. The authority of the inspectors is sometimes far reaching, extending even to the power of stopping work if the mine regulations have not been obeyed. The best results in the enforcement of mine safety and health legislation have been achieved in states where, as in Illinois, joint conferences of miners and mine-owners have been brought together for the administration as well as the drafting of the laws.

A significant step, which may in time lead to national regulation of mining conditions, was the establishment by Congress in 1910 of the federal Bureau of Mines with the function, among others, of conducting "scientific and technologic investigations concerning mining," with a view to improving health conditions and increasing safety and efficiency. The bureau has no authority to do anything except conduct investigations, publish reports, and furnish advice, all enforce-

ment of mine laws being left in the control of the states, but within its limited field it has already performed valuable services. Series of bulletins and technical papers distributed free to miners present the results of the latest scientific inquiries into the causes and prevention of mine explosions and other accidents, and some half-dozen mine rescue stations have been established, one in each of the more important coal fields of the country. Connected with each station is a fully equipped mine rescue car, in charge of a mining engineer and two especially trained miners, which tours the district, giving practical instruction in safety work, and is dispatched at once to the scene of any disaster. Previous to creating this bureau, Congress had enacted a code for the regulation of mining conditions in the federal territories, which is still in force in Alaska and in the insular possessions.[1]

b. Work in Compressed Air. An industrial hazard brought into prominence by the increasing construction of tunnels, subways, bridges, and skyscrapers is compressed-air illness, or the "bends." An investigator for the Illinois Commission on Occupational Diseases secured interviews with 161 men who had sustained attacks of the malady, and the medical director at the construction of the Pennsylvania-East River tunnels in New York in 1909 reported 3,692 cases, of which twenty were fatal.

Thus far only two states, New York and New Jersey, have attempted to control the disease by legislation, although in other states similar steps have been taken through the method of administrative orders.[2] The customary provisions include physical examinations of all applicants for work and of all employees at stated intervals, a sliding scale of working hours, decreasing as the pressure increases,[3] and a period of gradual "decompression," ranging from one minute for emergence from a pressure of ten pounds above normal to twenty-five minutes for emergence from a pressure of fifty pounds above normal. Work under more than fifty pounds' pressure is forbidden. The employer must maintain dressing-rooms with lockers, hot and cold shower-baths, and provision for drying

[1] United States, Laws 1890–1891, C. 564.
[2] See p. 351.
[3] See "Hours of Labor, Men," p. 236.

clothes. Medical attendants are also required, as well as a hospital lock for the recompression and treatment of sufferers from the disease.

(3) *Transportation*

Protective legislation regulating working conditions in transportation relates mainly to safety. The development of aerial transportation had in 1915 led to no labor laws except the Connecticut provision that aeronauts be licensed [1] and a Pennsylvania clause that they be over eighteen years of age,[2] but in carriage by land and water a large body of statutes has gradually grown up. These measures may either be designed for the protection of employees, as in the case of automatic couplers on railroads, and the provision for emergency exits for seamen, or they may be intended primarily for the protection of the traveling public, as in the case of boiler inspection in both kinds of transportation. A few measures such as the full-crew laws on railroads and in navigation have been urged as a direct protection for both laborers and travelers.

The majority of transportation employees are engaged in traffic which is interstate or international in character. The more important legislation affecting this class of workmen has therefore been federal rather than state. Railway employees have been more often brought under state laws than have seamen, but when any question has arisen over the respective jurisdiction of state or federal authority the latter has practically always been given precedence by the courts.

a. Navigation. While slavery and serfdom have been abolished for the majority of workmen in most civilized countries, until 1915 the seaman in America was kept in a position of semi-slavery through employment under a contract enforceable by imprisonment. This position of involuntary servitude gave him but little effective voice in regulating the conditions under which he worked. In the early days of sea travel a ship-owner's interest impelled him to secure an intelligent and competent crew which could protect his cargo. But with the substitution of steam for sails, the spread of lighthouses and channel markings, and the growth of

[1] See "Technical Qualifications," p. 323.

[2] In the child labor code, Pennsylvania, Laws 1915, No. 177, Sec. 5.

marine insurance and limited liability legislation, the quality of seamanship has greatly declined. In the majority of serious sea disasters in recent years the lack of both skill and numbers in the working force has been officially reported. There has apparently been a steady increase in the size of the load carried without a corresponding increase in the number and skill of those employed to handle it. The "seaman" has been displaced by the "deck-hand," the American by the northern European, and the latter by the immigrant of the southern races.

In a few states legislation looking toward general marine safety has been enacted, such as provisions for boiler inspection and signal lights, but most of the legislation affecting seaman has been federal. As early as 1798 Congress recognized the need of special protection for this class of workmen, many of whom are single and homeless. In that year the federal government established a marine-hospital fund to maintain hospitals for the care of disabled seamen of ships belonging to the United States. During the latter half of the nineteenth century Congress continued its protective policy toward seamen by legislation, regulating, among other matters, the conditions of living and working on shipboard, the size and experience of crews, and the construction and inspection of vessels. But despite these regulations the position of seamen was held to be most unsatisfactory, and it was not until the passage of the federal seamen's act of 1915 that the grosser injustices were removed.[1]

While the outstanding features of this act related rather to the personal freedom of seamen,[2] additional provisions were made for the health and comfort of employees through the requirement of proper washing-places and sleeping-rooms, hospital space, fumigation, heating, lighting, ventilation, and drainage.

It has been repeatedly pointed out that in case of accidents at sea, such as fires or boiler explosions, a ship cannot summon assistance as a manufacturing establishment, for instance, is able to do on land, but must rely upon its own crew and the chance aid of near-by vessels. For this reason the

[1] United States, Laws 1914–1915, C. 153.
[2] See "Contract Labor," pp. 44, 45.

only way really to safeguard human life at sea is to provide an equipment and crew adequate to meet any reasonable emergency. The seamen's act of 1915, therefore, provided for a substantial increase in the size of the crews employed, for a certain percentage of able seamen, for "certified life-boat men," and for properly constructed life-boats, the number to be fixed according to the size and character of the ship and its cargo.

b. Railroads and Streetcars. In the early days of railroading, reports of deaths and mutilations, particularly in connection with the coupling of cars, were repeatedly made public, and the need of protective legislation became apparent, especially as the length and complexity of lines developed and as speed increased. At the middle of the nineteenth century only about 9,000 miles of railroad existed. In 1869 a through route to California was opened, and by 1880 the total mileage had increased to 86,000. Between 1880 and 1890 more miles of new road were built than during the entire period previous to 1875, and in the early 'eighties a few states enacted protective legislation. It soon became apparent, however, that state legislation alone would result in long delays and in a great lack of uniformity. As the occurrence of serious accidents continued and as interstate commerce developed, the need of federal regulation became more apparent.

Many experiments were carried on in search of proper safety devices, and as early as 1868 a successful application of air-brakes was made. But the most serious danger to employees resulted from their being required to go between cars in order to couple or uncouple them. It was not until 1887 that a satisfactory automatic coupler was devised for general use. In order to compel the general adoption of the standard coupler the necessity of federal legislation was recognized.

Although the Interstate Commerce Commission, created by the federal act of February 4, 1887, had power to investigate and to regulate rates, the act made no mention of safety appliances or the protection of employees. The absence of authority over these matters was remedied by the federal act of March 2, 1893, and several subsequent acts[1] made

[1] United States, Laws 1892–1893, C. 196; Laws 1902–1903, C. 976; Laws 1906–1907, C. 225.

it obligatory upon all roads engaged in interstate traffic to equip all cars and locomotives with approved automatic couplers, and to provide other safeguards such as power-brakes and grab-irons.[1] In this particular, American labor legislation was far in advance of European. The results of the coupler legislation are particularly striking. In 1890, when only about 10 per cent. of railway cars were equipped with automatic couplers, accidents in the coupling of cars amounted to nearly half of all casualties to trainmen. By 1912, when over 99 per cent. of all cars were so equipped, the proportion of accidents from this cause was reduced to about 8 per cent. The majority of early regulations imposed by the federal government, however, left open to the various roads the determination of the kind and character of devices to be installed. The absence of a central standardizing authority resulted in lack of uniformity, and at times in the adoption of inadequate or ineffective devices. In 1910, therefore, an act of Congress, in addition to making new safety provisions, gave to the Interstate Commerce Commission power, after proper hearings, to "designate the number, dimensions, location, and manner of application of the appliances," and thereafter such determinations were to remain as "the standards of equipment," and any failure to comply with any requirement of the commission was subject to a "like penalty as failure to comply with any requirement of this act."[2] At the same session of Congress the commission was given authority to investigate all collisions, derailments, or other accidents, to subpœna witnesses, administer oaths, take testimony, and to require the production of all papers, books, and other evidence. It might also make a public report "together with such recommendations as it deems proper." One year later $25,000 was appropriated for the use of the commission in making tests and establishing standards[3] and a maximum

[1] For the further protection of employees and as a stimulus to the roads to use every possible safety precaution Congress also provided that no employee injured on a train not equipped according to law could be held to have assumed the risk of his employment even though he knew of the violations. This provision has been upheld in the North Carolina case of Greenlee *v.* Southern R. Co., 122 N. C. 977, 30 S. E. 115 (1898).

[2] United States, Laws 1909–1910, C. 160.

[3] United States, Laws 1910–1911, C. 285.

of $300,000 a year was appropriated to provide for proper boiler inspection by a staff of fifty-three inspectors working in close cooperation with the commission.[1]

Beginning with the great increase in railroad mileage in the early 'eighties, state legislation grew in volume and developed along two lines, one mainly for the protection of employees, and the other mainly for the protection of the traveling public. Measures for the protection of travelers are of two kinds. The first relates to mechanical devices for the prevention of accidents, such as automatic bell-ringers, brakes, headlights, and signal lights, while the second relates to the qualifications and training of employees.

Among the measures which have been passed primarily for the protection of employees are found such requirements as those for the installation of grab-irons, ladders, running-boards, storm windows in engines, the maintenance of a proper temperature in mail or baggage cars, the regulation of the height of bridges or other overhead structures, the maintenance of a proper clearance around tracks, particularly in railroad yards, the blocking of frogs and switches, and, for employees engaged in repairing tracks, the erection of sheds to protect them from inclement weather. For the safety and convenience of employees who are frequently required to travel long distances on freight or stock trains caboose-cars must be provided, which must be constructed according to certain rules of size, strength, safety, and comfort.

Employees on street or interurban railways are also frequently protected through state legislation or municipal ordinance. Such measures relate usually to inclosed vestibules during the winter months, seats for motormen, and proper automatic brakes, and occasionally to equipment for the sanding of rails, to the examination of employees, and to minimum age limits.

During the past few years the sharpest debate in matters of protective railway legislation has centered about the full-crew laws, which are held to protect both the public and the employee. More than twenty states have enacted such legislation. These acts usually apply to both passenger and

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[1] United States, Laws 1910–1911, C. 103.

freight service on roads of given lengths, and fix the number of employees—principally of brakemen—in proportion to the number and kind of cars in the train. Full-crew laws have been initiated by the railway men's organizations and have been vigorously opposed by the railroad owners, who have contended that as a rule larger crews are unnecessary because of the reduction in the amount of work required of employees since the introduction of safety devices, the formation of special switching crews, and the generally improved methods of handling trains. They point also to the increase in operating cost, resulting in reduced dividends and in curtailment of improvements.[1]

On the other hand, the trainmen point to the large number of both fatal and non-fatal accidents, and to the increasing strain upon railway employees due to the increase in the weight of trains, in the number of tons per train, and in the number of cars per man. They hold that by these increases the railroads have made their greatest economies. The trainmen maintain, therefore, that full-crew legislation serves practically the same purpose as legislation restricting hours of labor, in that both reduce the physical strain and thereby the frequency of accidents.

This is the view which was adopted by the Supreme Court of Pennsylvania when in 1913[2] it upheld the full-crew law of that state, enacted in 1911,[3] as having a real and substantial relation to the safety of passengers and employees on railroad trains. The company presented evidence as to the cost of the legislation, but the court held that "Uncompensated obedience to a regulation enacted for the public welfare or safety under the police power of the state is not taking property without due compensation, and any injury sustained in obeying such a regulation is but *damnum absque injuria*."[4]

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[1] For a full discussion of this subject see bulletin Consecutive No. 73 of the Bureau of Railway Economics, Washington, D. C., "Arguments for and against Train-Crew Legislation," 1915.

[2] Pennsylvania R. Co. *v.* Ewing *et al.*, 241 Pa. 581, 88 Atl. 775 (1913). A similar decision was rendered in Chicago, Rock Island and Pacific R. Co. *v.* Arkansas, 219 U. S. 453, 31 Sup. Ct. 275 (1911), upholding the 1907 law in that state.

[3] Pennsylvania, Laws 1911, No. 811.

[4] In 1914 the railroad companies succeeded in repealing by a referendum vote the Missouri full-crew law of 1913; and in Pennsylvania they in-

During the year 1915 bills were introduced in a number of states fixing the maximum length of trains. This legislation is also strongly opposed by the railroads, on the ground that they have expended large sums of money for improved roadbeds, yard and switching facilities, and for increased tractive power of locomotives, which will be rendered useless if they are not allowed to increase the length and weight of their trains.

State provisions for railroad safety have frequently been contested on the ground that regulations which apply to interstate commerce are a subject for federal legislation. But the courts have uniformly held that where Congress has not legislated upon these questions the states were entirely within their rights. An interstate road, therefore, might either make such changes as were necessary, as it passed from one commonwealth to another, to meet the minimum requirements of each commonwealth, or it might comply everywhere with the maximum provision found in any of the states through which it passed.

Although much of the protective railroad legislation is mainly for the benefit of employees, it is recognized that the safety of the public depends in large part upon the safety of those who are entrusted with the care and management of trains. It is this aspect of the matter which has largely influenced the courts in rendering favorable decisions on safety and health laws for railway employees.

The enforcement of protective regulations in relation to railway labor has in the majority of states been entrusted to railway or public utility commissions created primarily to supervise or regulate rates. In this class of legislation, as in the regulation of conditions in factories, workshops, and mines, it has been found impracticable to embody in the statute law specifications which will be effective under diverse and constantly changing conditions. For this reason many legislatures have delegated to the railroad commissions power to work out details of provisions and to prescribe safety rules and regulations. This method of protection has repeatedly been sustained by the courts. In 1913 the law creating the

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duced the 1915 legislature to pass a repealing act, which, however, was vetoed by the governor.

Railroad Commission of Indiana, and an early ruling of the commission fixing a 1,500 candle-power standard for locomotive headlights, were both attacked as unconstitutional. The case was carried to the supreme court of the state, which upheld the delegation of legislative powers, declaring that "The decisions of this court and the courts of other states in this regard are clearly against the appellant's contention." [1]

4. Development of Standards

A careful study of the early laws to preserve industrial safety and health, as passed by Congress and by the legislatures of the fifty American states and territories, discloses at once four fundamental defects.

(1) *Defects of Early Legislation*

First among these defects is *the incompleteness of these laws.* It was long the custom of legislatures to specify in the law the industries and danger-points which were to be safeguarded, and to confine the inspectors' authority to the places and conditions mentioned. Under this method many industrial danger-points were overlooked. Perhaps "buzz-saw" or "dangerous dusts" or "foundry" was omitted from the law, inadvertently or otherwise. Although often fraught with harm to the worker, these unmentioned points were outside the authority of the inspection officials, and the workers received no protection until the law could be changed. Frequently, too, a qualifying phrase greatly limited the operation of a good law. For example, the law in one state required poisonous fumes generated "in the course of the manufacturing process" to be removed. While varnishing the interior of

[1] Vandalia R. Co. *v.* Railroad Commission of Indiana, 182 Ind. 382, 101 N. E. 85 (1913). This case was, however, appealed to the United States Supreme Court where, in November, 1915, it was still pending. For a clear opinion on the delegation of legislative authority see Minneapolis, St. Paul and Sault Ste. Marie R. Co. *v.* Railroad Commission of Wisconsin, 136 Wis. 146, 116 N. W. 905 (1908).

vats in a brewery two men died and one was totally blinded for life, due to inhaling the poisonous fumes of wood alcohol used in the varnish. But because varnishing vats is in the nature of repair-work and does not come "in the course of the manufacturing process," the inspectors could not legally remedy the dangerous situation. It was necessary to wait an entire year (in most states it would have been two years) before the legislature convened and the law could be amended. These illustrations indicate a common weakness of early safety and health laws in many states.

The second fundamental defect is *the absence of direct responsibility*. Many laws placed no obligation whatever upon an employer to safeguard danger-points nor upon the employee to aid in maintaining safety except "in the discretion of the commissioner of labor," or unless "the commissioner so directs," or "if in the opinion of the commissioner of labor it is necessary." This type of legislation placed no duty upon the employer to provide nor upon the employee to maintain proper protection until required to do so by the inspector. No protective devices had to be provided until the inspector called and ordered them installed. Scarcely a state but has had laws of this character.

The third fundamental defect is *the absence of well-defined standards*. The old theory of factory inspection legislation assumed that the legislatures, often made up largely of lawyers and farmers, would define in the law the exact nature of protection to be provided in factory, workshop, or mine. But because of inadequate information, and possibly also because of fear of adverse court decisions, our lawmakers vaguely required merely that dangerous machinery be "sufficiently guarded," usually "where practicable," and left it to the poorly trained and poorly paid inspector to enforce these indefinite laws, usually "in his discretion." This discretionary power, when placed in the hands of uninformed officials, brought this method of lawmaking into disrepute among employers, employees, and the public.

The fourth fundamental defect is *the lack of responsiveness to changing industrial conditions*. When it had become apparent that many of the early laws were failing of their purpose because of the foregoing blemishes, there followed a

comparatively brief period during which efforts were made to frame comprehensive, scientific provisions, free from "jokers" and loopholes, and to secure their passage by the legislatures. Perhaps the most noteworthy example of such legislation was the standard law enacted in several states providing for the protection of workers in the lead trades. In this instance, after careful investigation by the federal government supplemented by private studies and many conferences, a very specific bill was drafted to apply to the various processes in the manufacture of lead salts, and the resulting legislation served a very useful educational purpose. In a few states also the laws undoubtedly hastened the efforts of employers to make their work-places sanitary. But it was found that some specific safeguards minutely prescribed in the statutes were very quickly out of date. In order that they might be superseded by improved devices or methods there was once more required the slow and expensive action of legislatures, which in most states might not be in session again for more than an entire year. The impracticability of embodying in statute law specific danger-points and specific remedies became clear.

(2) *The Method of Administrative Orders*

Legislators themselves began to recognize the futility of attempting to formulate in the short and busy sessions, convening in most states only once in two years, proper protective measures. They saw that the proper persons to accomplish this work efficiently were those who had an opportunity to familiarize themselves with changing industrial conditions. Therefore, in several states, legislators decided that they would no longer attempt to enact laws specifying in detail what shall be done, but instead would ask that work-places be made safe. To carry out the will of the legislature they provided a commission to work out with employers and employees the best possible methods of protection. After public hearings, the methods agreed upon were issued by the commission in the form of administrative orders or regulations to apply state wide and to have the force of law. Here we find the

very foundation of effective safety inspection work. The key-note is *cooperation*. The experience of the worker, the knowledge of the employer, and the critical constructive ability of the expert are all needed in the formation of effective standards of health and safety and in the enforcement of these standards.

This new method of regulating industrial conditions through administrative orders cooperatively formulated and issued by a permanent commission, has resulted in several states in a progressive and accurate adjustment of factory inspection to the changing methods and new risks that accompany modern industry. Concerning this method a former chief factory inspector has said: "As a state inspector, my experience has demonstrated that the arbitrary imposition of rules of law will not, in itself, produce satisfactory standards for the safety and health of employees in factories, mills, and workshops. . . . The observations which I have made emphasize the importance of cooperation and of education of both parties to the labor contract as to what are ideal factory conditions. This cooperation must be brought about if substantial results with reference to safety standards are to be obtained through state inspection." Fortunately scientific accident prevention has recently been brought into the foreground by the adoption of workmen's compensation acts, and it has quickened the movement for reorganization of administrative boards in many states.

No longer is it necessary in states like Ohio and Wisconsin, for example, to wait two long years for a session of the legislature in order to submit proposals for the proper protection of the workers. No longer need specific rigid provisions be drafted into bills and thrust upon the bewildered attention of the legislators while temporarily in session at the state capitol. The legislature has laid down the law in a broad way; the industrial commission, as rapidly as circumstances permit, may fill in the administrative detail. Under this new system the industry itself makes the laws for its own shop government. Employers and employees, with the aid of impartial experts, are learning through self-expression the importance and the practicability of the now popular motto, "Safety first." The prevention of industrial accidents and diseases, particularly

when accompanied by social insurance, is becoming a matter of enlightened selfishness; the general and the specific statutory requirements of former years are being supplanted by scientific standards developed through administrative orders based on continuing investigations.[1]

[1] See Chapter IX, "Administration."

CHAPTER VIII

SOCIAL INSURANCE

For most of the economic hazards of life there has been developed an appropriate method for the distribution of losses and the subsequent elimination of risks. Marine insurance, for the financial protection of those who send their goods down to the sea in ships, was the first to be developed on an extensive basis. Insurance against loss by fire is now a regularly accepted precaution in every community. By this common method of insuring against loss, each individual in the organized group is assured that in case of the destruction or damage of his property he will be reimbursed from a fund contributed little by little by the whole group. Insurance, accordingly, has been defined as an arrangement for distribution among many of the losses sustained by a few.

By this thin-spreading of individual losses over a large group, the man receiving an income from property destroyed by shipwreck or by fire is in a position to reinvest. Even more necessary than for the property-owner is insurance for the workingman, whose ability to labor is his only asset and who is peculiarly liable to be deprived of his income. When the laborer, no matter how efficient he may be, has as a result of either individual or collective bargaining secured a job for himself even if at a wage and under hour limitations which are temporarily acceptable, his economic position is still precarious. He and his family are still face to face with exceptional economic risks including the suffering and want following accident, illness, invalidity or premature old age, normal old age, premature death, and unemployment.

Peculiarly necessary, therefore, is this common arrangement for group or social action known as insurance, when those who suffer the losses are workingmen solely dependent for support

upon their ability to labor. When provision for such insurance is made through legislation, it marks the development of a settled policy on the part of society to provide protection for one group in the community which either is in greatest need of the protection or which on account of insufficient income or forethought fails to buy such protection through private commercial channels. It is therefore natural to term this insurance *social insurance.*

The most substantial reason why wage-earners do not voluntarily insure themselves against the risks of accident and illness, invalidity and old age, early death and unemployment, is insufficient income. Reliable information from conservative private and public reports amply confirms the statement that the average wage-earner with a family is not receiving pay for his labor sufficient "to secure the elements of a normal standard of living."[1]

A further reason for the failure of the underpaid masses to insure themselves is indifference or lack of foresight concerning the problems of the future. Although thrift in the presence of subnormal living occasioned by low wages may at times become a positive social vice, provision for the future is on the whole necessary and beneficial. Furthermore, it is recognized that for millions of laborers saving will take place only under a distinct incentive. This "enforced saving" against the inevitable rainy day in the life of the workingman is most effectively brought about through the periodical collection of dues or premiums for the support of the various forms of social insurance. Moreover, it has been discovered that community of interest in directly bearing the financial cost of insurance furnishes a kind of cooperative pressure on employers[2] which can be utilized effectively in the elimination of risks in so far as they are preventable. The rapid development of the "Safety first" movement which followed so closely the enactment of workmen's compensation laws is sufficient evidence of the preventive power of social insurance.

Thus, although beginning in each case with some form of private organization, there has been developed, to meet the peculiar risks which modern industrial workers must endure,

[1] See Chapter IV, "The Minimum Wage."
[2] See Chapter IX, "Administration."

a special kind of insurance, depending for its inclusiveness, its financial security, its economical administration, and its effectiveness in reducing the cause of each particular evil, upon an element of social compulsion.

Various countries have social insurance against accident and occupational disease, against sickness, against old age and invalidity, against death and the consequent dependency of widows and orphans, and finally against unemployment. In all of this social action an important element of self-defense is not lacking. It is clearly recognized that insurance is the most effective device for protecting society itself against the pressure of incapacitated individuals who otherwise would be thrown upon the community for maintenance. And while attempting to avoid the demoralizing round of charity, by means of an insurance program which aims at nothing less than eventual abolition of poverty, there is consciously promoted a system of individual care aimed at the scientific promotion of the worker's efficiency.

These advantages to society in protecting workmen against the suffering and loss resulting from their being incapacitated in any way for manual labor, Emperor William I of Germany had principally in mind when on November 17, 1881, he sent to the imperial legislature the historic message outlining a complete system of social insurance. This document has been so important in its influence in Germany and throughout the world that it has been called by some enthusiasts "the monument of the new social order." It marked the beginning of a great new movement in labor legislation.

1. Industrial Accident Insurance

The first kind of social insurance to be developed extensively through legislation in the United States, probably because of the comparative ease of recognizing both the industrial cause and the far-reaching extent of the evil, is insurance against occupational accidents and diseases, or as it is more popularly termed in this country, workmen's compensation.

Compensation to the injured workman is based upon the

theory that the consumer of economic goods should bear all the expenses incurred in the production of such goods. Among those expenses must be included the pecuniary losses from deaths and injuries occurring in the regular course of production. Wages lost, medical attendance, and burial expenses, in case of accidental injury or death are all losses which should be considered as a part of the expense of production. If these losses are to be borne by the workman, he indirectly carries part of the expense of production. In order to avoid this, the expense of work accidents, it is now generally agreed, should be treated like all other expenses of production; it should be borne by the employer in the first instance, and be shifted by him, in the form of increased prices, upon the consumer of those goods in the production of which the injuries were sustained.

Our present compensation laws have passed through a long period of development, and have many precedents. As mining and navigation developed in Europe, the workmen of these two industries formed, in the eighteenth century and sometimes even earlier, mutual accident insurance associations for their own protection. The above industries were the pioneers in forming such mutual associations largely because each man was greatly dependent for his safety upon the care of his fellow workmen.[1]

In the handicraft production of the middle ages, not only were the workmen very closely related, but there was also a close connection between the master and his servants. Manufacturing in the gilds was conducted on a small scale, and each master had but few helpers. Accidents were not numerous because machinery was not developed, and production was carried on at low speed. When injuries did occur, the master, at least theoretically, took care of the disabled.

This personal relation of employer and employee to a great extent disappears with the development of large scale industry. As the number of employees to each establishment increased, the owner could no longer give them his personal attention and care. The workman gained more personal freedom, but

[1] United States Commissioner of Labor, *Twenty-fourth Annual Report*, 1909, "Workmen's Insurance and Compensation Systems in Europe," Vol. I, p. 977.

lost the aid of his employer in case of sickness and accident. To recover damages he now had to seek relief by legal proceedings, either under the common law or under statutes establishing employers' liability; he had to bring suit against his master.

(1) *Rules of Employers' Liability*

The conditions under which the injured could recover in court were based upon a series of rules which included (a) the duties of the employer; (b) the burden of occupational risks; (c) the fellow servant rule; (d) contributory negligence; and (e) assumption of risks.[1]

a. Duties of the Employer. It was considered the duty of the employer to use reasonable care in protecting his employees against injury while engaged in his service.[2] Numerous court decisions defined this obligation of the employer in considerable detail. He was required to provide a safe place to work, to furnish safe tools and appliances, to conduct his business in a safe manner, and to select competent fellow servants. But reasonable care required the guarding of only those dangerous conditions of which the employer had knowledge or of which by the exercise of reasonable care he should have had knowledge.[3] It is held by many experts that no matter how great caution is taken against accidents, many mishaps will occur which result in death or injury to the workman. Establishments in which every machine is guarded and where safety work is carried on ably and conscientiously, will nevertheless, it is declared, have numerous accidents. These injuries are said to be due to the inherent hazards of the industry; nothing will prevent them.

b. Burden of Occupational Risks. It is to these accidents that the principle of the burden of occupational risks applies. The employee assumes the ordinary risks of the employment in which he engages. In an early American case the court stated that "The general rule, resulting from considerations

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[1] See E. H. Downey, *History of Work Accident Indemnity*, 1912, p. 17.
[2] Priestly *v.* Fowler, 3 Meeson and Welsby, 1, 6 (England, 1837).
[3] Magee *v.* Chicago & Northwestern R. R. Co., 82 Iowa 249, 48 N. W. 92 (1891).

as well of justice as of policy, is, that he who engages in the employment of another for the performance of specified duties and services, for compensation, takes upon himself the natural and ordinary risks and perils incident to the performance of such services, and in legal presumption the compensation is adjusted accordingly."[1] Freeing the employer from liability thus left a vast number of injuries and deaths as a direct burden upon the workmen and their dependents, with no chance of obtaining damages.

c. Fellow Servant Rule. The rules holding the employer responsible for exercising reasonable care in protecting his employees, and exempting him from liability for inherent occupational hazards, were recognized uniformly by the courts. The third, or fellow servant rule, involved more serious difficulty. The usual rule of law is that a master is responsible for the negligence or carelessness of his servants in the course of their duties. Since very many accidents to workmen can be traced to the carelessness or negligence of a co-employee, the application of the rule as between fellow servants was felt to be harsh.[2] Exception to the general rule was first taken by the English Exchequer Court in 1837 in the case of Priestly *v.* Fowler.[3] A butcher driver's helper was injured by the breaking down of the wagon. He brought suit against the butcher for damages on the grounds that the wagon was insufficient for its purpose, and that it had been overloaded. Damages were denied on the ground that if they were allowed the master's liability would extend very far. He might be held liable to the footman who was injured by a defective wagon due to the negligence of the coachmaker, or to the servant for the negligence of the cook in not properly cleaning copper vessels in the kitchen. Besides, the opinion states, the driver's helper "must have known as well as his master and probably better" that the wagon was insufficient, or overloaded, and might have refused to use it.

A similar decision was rendered four years later in America,

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[1] Farwell *v.* Boston & Worcester R. R., 4 Metcalf (Mass.) 49, 57 (1842).

[2] Consequently the courts, declare Shearman and Redfield in *The Law of Negligence*, "boldly invented an exception to the general rule of masters' liability, by which servants were deprived of its protection." (p. *vi.*)

[3] Priestly *v.* Fowler, 3 Meeson and Welsby 1, 5 (England, 1837).

without mentioning the Priestly case. In this case[1] damages were denied a locomotive fireman who had been injured owing to the negligence of the engineer under whom he worked. It was held that the railroad company was not a guarantor to one employee against the negligence of other employees; that the fireman should have been aware of the perils of his employment, and that the plaintiff was paid for his labor and for the danger to which he was exposed.

In 1842 Chief Justice Shaw of Massachusetts gave the fellow servant rule a definite formulation and a wide application in deciding the case of Farwell *v.* Boston and Worcester Railroad Corporation[2] in favor of the defendant. An engineer brought action for damages because he had lost a leg due to the switchman's neglecting to change a switch. Justice Shaw argued that any servant might reasonably anticipate that his associates will at times be careless and negligent; that this is one of the risks of employment, to which, in legal presumption, the compensation is adjusted. Want of care can be anticipated as much as a coupling out of repair. The brakeman can guard against one as much as against the other—being powerless against both.

This chain of reasoning was accepted as sound and conclusive, and numerous later decisions were based on it. It relieved the master from all liability for an injury sustained on account of the negligence or carelessness of a fellow servant provided the master had exercised reasonable care in his selection.[3]

d. Contributory Negligence. According to the doctrine of contributory negligence a plantiff for damages for an injury occasioned by the fault of the employer must, in order to win his case, establish his own freedom from negligence. Any negligence on the part of the injured, no matter how slight in comparison with that of the employer, will cause him to lose the suit, if without that negligence the accident would not have occurred. Such negligence exists if the employee continues to work under conditions which are apparently danger-

[1] Murray *v.* South Carolina Ry. Co., 1 McMullan 385 (1841).

[2] Farwell *v.* Boston and Worcester R. R. Corporation, 4 Metcalf (Mass.) 49 (1842).

[3] Seymour D. Thompson, *Commentaries on the Law of Negligence*, 1901–1905, Vol. IV, p. 270, § 4048.

ous and which a reasonably prudent man would avoid, or if his own want of due care contributed as a proximate cause to the accident.[1]

e. Assumption of Risk. As a last resort to free himself from liability the employer could set up the defense that the injured workman had "assumed" the risk. The risk referred to in this connection is not the ordinary inherent hazard of the occupation, but an abnormal danger of which the employee was fully aware, but in spite of which he continued to work. The principle of assumption of risk has, however, been modified in several states by statutes in favor of the workman. This is particularly true in case of children and of railroad workers.

It can easily be seen that with these last four rules all aiming to relieve the employer of liability it is extremely difficult for the injured workman to win a suit for damages. In order to gain a favorable verdict he must be able to show that the injury was the immediate result of the employer's failure to exercise ordinary care, and that it was not contributed to in any degree by his own want of ordinary care. Moreover, he cannot recover if the accident was due to an ordinary hazard of the employment, or to the negligence of a fellow workman, or to a defect due to the negligence of the employer that was known to the injured and that created a condition under which a prudent man would not have continued to work.

Satisfactory statistics are not available to show definitely the proportion of injured men who received indemnity under these liability doctrines. From the meager investigations which have been made, however, it may be concluded that but few recovered damages, and that the amounts were in many cases shamefully small. Under the liability system insurance companies have engaged in carrying the employer's risk. They have expert legal advice, and are able to contest wage-earners' claims even more effectively than the average employer. It is true that numerous laws have been enacted in most countries attempting to place more liability upon the employer; Germany passed a law, wide in scope,

[1] Butterfield *v.* Forester, 11 East 60 (England, 1809); Haley *v.* Chicago & Northwestern Ry. Co., 21 Iowa 15 (1866).

to that effect in 1871, and Great Britain followed in 1880. Notwithstanding all attempted legal regulation, the position of the injured workman was not much improved. To recover he had to go to the courts and had to meet the strong legal opposition of insurance companies or of his employer.

Not only are the injured man's chances to win his case very small and the machinery too slow to bring relief when it is most needed, but the system is extremely wasteful. The following figures taken from the records of ten insurance companies for a three-year period will substantiate this statement:[1]

Collected from employers	$23,523,585
Absorbed by companies in profits and expenses	14,963,790
Received by plaintiffs' attorneys (approximately)	1,900,000
Received by injured workmen or their dependents (approximately)	6,660,000

Of every $100 paid by the employer in premiums, but $28 reached the workman, and that amount only after a long legal action.

An investigation of 327 firms in New York in 1907 showed that these companies paid out on account of accidents $255,153, of which 56 per cent. reached the workmen,[2] the other 44 per cent. being consumed by court costs, insurance company's profits, legal fees, and other charges.

Without question but a small proportion of cases are taken to court, because the injured knows an attempted recovery is but a gamble with all odds against him. As a rule the insurance companies act as if their duty under employers' liability is not to compensate the injured, but to defeat their claims.

(2) *Beginnings of Industrial Accident Insurance*

Germany was the first country to realize that in order to give certain and adequate relief to the injured workman it was necessary to provide insurance for all laborers, and for all accidents. The first bill to this effect was introduced in

[1] New York Commission on Employers' Liability and Other Matters, *First Report*, 1910, pp. 29–31.

[2] E. H. Downey, *History of Work Accident Indemnity*, pp. 82, 83.

the Reichstag in 1881, but failed to be adopted. The following year a second bill was introduced providing for sickness and accident insurance. The sickness clauses, including provisions for accident compensation during the first thirteen weeks of disability, were passed in 1883, but the accident insurance was again defeated. Finally in 1884 a bill providing compulsory insurance against accidents was passed which became effective in October, 1885.

a. German System. The German law has been frequently amended and extended in scope, and to-day practically every industry of that country is included. The federal council may exempt non-hazardous establishments upon application, but as late as 1909 no such exemptions had been made.[1]

An accident is held to exist "if because of a sudden event, taking place at a definite time, the physical or mental condition of a workman is injured through an external wound or an organic disablement." All accidents occurring in the course of employment and causing a disability of three days or more are covered. It is not necessary that the injured was actually working when the accident occurred. For example a man may be exposed to certain accidents during the noon hour, such as a boiler explosion, in which case he is entitled to compensation. An injury due to some external force such as lightning is considered a compensable accident if the injured is exposed to such risk to a higher degree because of the nature of his employment. Accidents by fault of a third party are included if the origin or degree is materially influenced by the characteristics of the establishment. This clause is broadly interpreted, and covers all accidents due to negligence or lack of care of a fellow servant.

Under the German system the compensation of the injured workman for the first thirteen weeks of disability comes from the sick funds. During the first four weeks he receives 50 per cent., and from the fifth to the thirteenth week inclusive 66⅔ per cent. of his wages, and the latter proportion is continued from the accident funds until temporary disability ceases. The sick funds are maintained by contributions two-thirds of which are paid by the workmen and

[1] United States Commissioner of Labor, *Twenty-fourth Annual Report*, Vol. I, p. 993.

one-third by the employers. From the fifth to the thirteenth week the additional 16⅔ per cent. of wages is paid by the employer in whose establishment the accident occurred.

Thus accident compensation comes from three sources:

(1) From the first to the fourth week of disability, inclusive, from the sick funds;

(2) From the fifth to the thirteenth week, inclusive, from the sick fund and the additional 16⅔ per cent. from the employer;

(3) After the thirteenth week from the accident insurance associations composed of employers.

During the decade 1886 to 1895 accidents causing a disability of less than thirteen weeks formed 84 per cent. of the total, and the cost of these injuries, paid from the sick funds, is, according to Dr. Bödeker's estimate, 16⅔ per cent. of the total cost of accident insurance. Since the insured workmen pay two-thirds of the expense of the sick funds, they therefore provide about 11 per cent. of the cost of accident insurance and the employers 89 per cent.[1]

In addition to the monetary benefit, free medical attendance, medicines, and appliances are provided. During the first thirteen weeks these costs are paid by the sick fund, and after that by the insurance associations. To bring about a speedy recovery, and to avoid large pensions which would result if the injured were permanently disabled, the insurance associations have established numerous hospitals, convalescent homes, and similar institutions.

In case of permanent total disability the injured workman receives 66⅔ per cent. of wages for life. For permanent partial disablement he receives a pension in proportion to the degree of disablement. In computing the amount, the nature of his occupation and training are taken into consideration; for example, the loss of a finger would affect a linotype operator much more seriously than a foundry laborer, and accordingly he would receive a larger pension.

Benefits are based on wages in the last employment. If wages exceed $428.40 a year, only one-third of the excess may be calculated.

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[1] United States Commissioner of Labor, *Twenty-fourth Annual Report*, Vol. I, p. 999.

If the accident results in death a funeral benefit is paid in all cases, whether the deceased has left dependents entitled to survivors' benefits or not. The amount paid is one fifteenth of the annual earnings, but not less than $11.90. This benefit must be paid within one week after occurrence of death, even if burial is impossible, as in case of drowning or burning. A liberal pension is provided for surviving dependents. The widow receives 20 per cent. of the average annual earnings of her husband, for life. If she remarries she is given three times the annual amount, or 60 per cent., in a lump sum, but then her benefits cease. If a woman supporting a dependent husband is killed, he receives 20 per cent. of her wages as long as he is unable to support himself. Each child receives 20 per cent. of the wages of the killed parent until the age of fifteen, but the total benefits may not exceed 60 per cent. of the average annual earnings. If there are more than two dependent children in addition to the widow, the benefits are divided equally so as to total 60 per cent.

The cost of insurance is defrayed by assessments on employers based on the amount of wages paid to employees and the nature of the risk. The board of directors of the insurance association classifies the risks, and adopts a schedule of charges which must be approved by the imperial insurance office. Premiums collected are based upon the cost of the previous year. It is evident that under such a system the cost will increase every year until a maximum is reached. Each year more widows are added to those already drawing pensions, and each year more are added to the list of permanently disabled. Until approximately as many widows and disabled die as are added each year, the cost of insurance will increase. The argument is often made that under such a system the new concerns do not receive justice. They are assessed the same amounts as the older ones, and consequently are obliged to pay for losses of the past, and for accidents to which they did not contribute. The fallacy of this argument is easily seen when we look at the underlying theory. The burden of insurance must be borne by the industry, and not by its individual members. When a new company becomes a member of a trade association, that industry has already caused a certain number of accidents and must bear the

losses. The individual employer finds remuneration in advanced prices, by which the cost of insurance has been shifted upon the consumer. The premium should be regarded more in the nature of a tax upon industry. A new company knows in advance what that tax is, and is able to make provision for it when it is organized.

The most important branch of the administrative machinery of the German compulsory insurance law is the mutual trade associations. Employers in related trades organize their own associations, fix their own rates, and enforce their own safety requirements, and to the special facilities which this method affords is mainly due the conspicuous success of the German system in promoting accident prevention. Each *Berufsgenossenschaft* or trade association has its own constitution, but is closely regulated by the state and the imperial insurance office. The last named authority, whose expenses the government assists in defraying, is supreme over the whole field of industrial insurance, and has its office at Berlin. It is composed of a president, and permanent and temporary members. The president and permanent members are appointed for life by the emperor upon nomination by the federal council. Of the thirty-two temporary members, eight are chosen by the federal council, at least six of whom are from its own membership, twelve are selected by employers, and twelve by the insured. Subordinate to the imperial insurance office is a system of local and superior insurance offices, each composed of public officials with associates elected by and from employers and employees respectively. Judicial and administrative matters passed upon by the local office may, subject to certain restrictions, be appealed to the superior office, and from that to the imperial office, whose decision is usually final.

According to the report of the imperial statistical bureau issued in 1914, over 28,000,000 workmen were insured against accidents in 1912, and $42,500,000 was paid in indemnity. The system is cheaply administered and cases are settled quickly, giving relief when it is most needed.

b. Methods in Other Countries. The German insurance system has been described in detail because it was the first to be introduced, is one of the most efficient, and was the

experiment upon which, in various degrees, other countries based their acts.

Great Britain passed a compensation law in 1897 which was frequently amended and amplified in scope until the present law was enacted in 1906.[1] All employments, and all injuries arising out of and in the course of employment, are covered. In case of death three years' wages are paid in a lump sum to the dependents. Disability benefits are limited to 50 per cent. of wages, but continue for life if the disability is permanent. The employer bears the entire cost of compensation, and may either carry his own risk under proper safeguards or insure in a private or mutual company.

The principle of industrial accident insurance, or workmen's compensation as it is usually called, is now so generally accepted that over forty foreign countries, including practically all of any industrial importance, have laws of this character, covering together some 50,000,000 wage-earners.[2] Benefits range from 50 per cent. to 80[3] per cent. of wages, and in most of the important countries medical and surgical aid is rendered. To secure the payment of benefits, employers are usually required to insure their risk, often in institutions prescribed and controlled by the state.

c. Inclusion of Occupational Diseases. Though workmen's compensation laws originally concerned themselves only with mechanical injuries, such as cuts, broken bones, or loss of members, it soon became obvious that elementary justice required the extension of similar relief to the victims of specific industrial diseases contracted in the course of employment. The first country to take this forward step was Great Britain,

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[1] For complete summary of this and other European laws see United States Bureau of Labor Statistics, *Bulletin No. 126*, 1914, pp. 131–179.

[2] Among the more important foreign countries with workmen's compensation systems are: Austria, Belgium, Denmark, France, Germany, Great Britain, Hungary, Italy, Japan, Netherlands, New Zealand, Norway, Portugal, Queensland, Russia, South Australia, Spain, Sweden, Switzerland, and Western Australia.

[3] This latter percentage occurs only in the Swiss law of 1911, Sec. 74, and is payable only during the period of illness immediately following an accident, after which the compensation for permanent total disability is reduced to 70 per cent. of wages. Under both the Swiss and the German laws, however, indemnity may be increased to 100 per cent. of wages in exceptional cases requiring special care.

which in the act of 1906 included for compensation a schedule of six of the commonest occupational maladies. While South Australia[1] and Ontario[2] have followed this example, the mother-country has three times expanded its original schedule until in 1915 no fewer than twenty-five diseases were there compensable. These include poisoning by lead, mercury, phosphorus, or arsenic, compressed-air illness, anthrax, a number of miners' ailments, glass workers' cataract, and telegraphers' and writers' cramp. In other countries, also, the beginnings of similar consideration for victims of occupational maladies are to be noted. Because of the peculiarly infectious nature of the disease and its close connection with the occupations in which it occurs, both France and Germany now class anthrax, for compensation purposes, as an accident. In France, also, by the financial law of 1911, employers of miners suffering from ankylostomiasis, or "miners' hookworm," are required to bear the expense of treatment and to pay compensation. Foundations for a broad system of occupational disease indemnity have, moreover, been laid in Germany[3] and Switzerland.[4] In the former country the federal council has been given permission, and in the latter it has been ordered, to draw up a list of trade diseases which shall be compensated for at the same rate as trade accidents. Up to the beginning of 1916, however, neither country had drawn up its list.

(3) *Compensation Legislation in the United States*

As in other forms of social insurance, to be considered later, the United States is far behind European countries in providing for the injured workman. The first legislation providing for stated benefits without suit or proof of negligence was enacted in Maryland in 1902, in the form of a cooperative insurance law.[5] The law was narrow in scope, covering only a small specific list of industries, and was declared unconstitu-

[1] 1911. [2] 1914.
[3] German workmen's insurance code, 1911, Article 547.
[4] Swiss federal law relating to sickness and accident insurance, 1911, Article 68.
[5] United States Bureau of Labor Statistics, *Bulletin No. 126*, p. 30.

tional in 1904.[1] In 1908 Congress enacted a law granting to certain employees of the United States the right to compensation for injuries sustained in the course of employment. In 1910 an act was passed in Montana providing for the maintenance of a state cooperative insurance fund for miners and laborers in and about mines. This also was declared unconstitutional.[2]

The first law of general application was passed by New York in 1910. It was made elective for most occupations, but compulsory for an enumerated list of hazardous employments. This statute was declared unconstitutional in 1911 in the case of Ives *v.* South Buffalo Railway Company,[3] but an amendment to the constitution made possible the enactment of a compulsory law in 1914. Other states followed New York's lead, and during the five years 1911–1915 compensation laws were enacted in thirty-one states and two territories of the union.[4] Moreover, the 1908 law covering federal employees was extended to several additional classes of workmen, including those on the Alaskan railways, and in 1907 the United States Philippine Commission established limited compensation for public employees in those islands.

One of the main obstacles to the enactment of effective compensation laws has been the question of constitutionality. It is maintained that to require a person to pay damages for an accident for which he was not to blame is taking property without due process of law, that both employer and employee are deprived of the right of trial by jury, and that the employer is charged with liability without fault.

Before the end of the year 1915 the constitutionality of compensation laws had been tested by the highest courts of

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[1] Franklin *v.* United Railways and Electric Co. of Baltimore (1904). Summarized in United States Bureau of Labor, *Bulletin No. 57*, 1905, pp. 689, 690.

[2] Cunningham *v.* Northwestern Improvement Co., 44 Mont. 180, 119 Pac. 554 (1911).

[3] Ives *v.* South Buffalo R. Co., 201 N. Y. 271, 94 N. E. 431 (1911).

[4] Alaska, Arizona, California, Colorado, Connecticut, Hawaii, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Texas, Vermont, Washington, West Virginia, Wisconsin, and Wyoming.

no fewer than twelve states. Four state courts declared such laws unconstitutional,[1] upon the above grounds, while all the others upheld them.[2] Moreover, of the four states which suffered an adverse decision, three—Maryland, New York, and Montana—subsequently enacted laws which remained in force, and the New York law was upheld by the same court which in 1911, before the constitution was amended, ruled out the earlier act. The only point in a compensation law which had been passed upon by the United States Supreme Court was the Ohio provision excluding from the obligation of the act shops employing fewer than five persons, which was upheld as not an arbitrary or unreasonable classification.[3]

Among recent decisions, none is more indicative of a progressive attitude on the part of the bench than that in the Jensen case, upholding the present New York law. The decision, rendered in July, 1915, establishes no new doctrine. On the question of conflict of laws in interstate commerce it reiterates the principle that regulations affecting such commerce are within the jurisdiction of the state until Congress by entering the field excludes state action, and it emphasizes the well-established doctrine that no one has a vested right, under the constitution, in the maintenance of the common law.

On the question of the violation of the fourteenth amendment of the federal constitution, the Oklahoma case of Noble State Bank *v.* Haskell is considered to be decisively controlling. Although it may be admitted that there is a taking of property under the compulsory compensation law, it is less direct and

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[1] The unfavorable decisions in Maryland, New York, and Montana have already been cited; the fourth was in Kentucky: Kentucky State Journal *v.* Workmen's Compensation Board, 161 Ky. 562, 170 S. W. 1166 (1914).

[2] The most important favorable state decisions are: *In re* Opinions of Justices, 209 Mass. 607, 96 N. E. 308 (1911); State *ex rel.* Davis-Smith Co. *v.* Clausen, 65 Wash. 156, 117 Pac. 1101 (1911); Borgnis *v.* Falk Co., 147 Wis. 327, 133 N. W. 209 (1911); State *ex rel.* Yaple *v.* Creamer, 85 O. 349, 97 N. E. 602 (1912); Sexton *v.* Newark District Telegraph Co., 84 N. J. 85, 86 Atl. 451 (1913); Mackin *v.* Detroit-Timkin Axle Co., Michigan, 153 N. W. 49 (1915); Jensen *v.* Southern Pacific Co., 215 N. Y. 514, 109 N. E. 600 (1915); Western Indemnity Co. *v.* Pillsbury, California, 151 Pac. 398 (1915); Hunter *v.* Colfax Consolidated Coal Co., Iowa (1915).

[3] Jeffrey Mfg. Co. *v.* Blagg, 235 U. S. 571 (1915).

at least as much in the public interest as the taking which occurred in the Oklahoma case. "The theoretical taking," says the court, "no doubt disappears in practical experience . . . a compulsory scheme of insurance to secure injured workmen and their dependents from becoming objects of charity certainly promotes the public welfare as directly as does an insurance of bank depositors from loss."

It is the frequent recognition of the changed conditions and their effect upon legal doctrine that constitutes the distinctive quality of the New York decision. "In the way modern undertakings are conducted it is rarely possible to trace the personal fault to the employer, but he has been held liable for wrongs of others under the doctrine of *respondeat superior*," says the judge. And again: "This subject should be viewed in the light of modern conditions, not those under which the common law doctrines were developed. With the change in industrial conditions an opinion has gradually developed which almost universally favors a more just and economical system of providing compensation for accidental injuries to employees as a substitute for wasteful and protracted damage suits, usually unjust in their results either to the employer or the employee, and sometimes to both. Surely it is competent for the state in the promotion of the general welfare to require both employer and employee to yield something toward the establishment of a principle and a plan of compensation for their mutual protection and advantage."

The opinion ends with a reassuring note on the probable attitude of the United States Supreme Court: "Fortunately the courts have not attempted to define the limits of the police power. Its elasticity makes progress possible under a written constitution guaranteeing individual rights. The question is often one of degree. The act now before us seems to be fundamentally fair to both employer and employee. . . . It is plainly justified by the amendment to our own state constitution, and the decisions of the United States Supreme Court, notably in the Noble State Bank case, make it reasonably certain that it will be found by that court not to be violative of the constitution of the United States."

Owing, however, to the adverse decision on the early New York compulsory law in the Ives case, most American com-

pensation acts have been made elective. That is, the employer is given his choice of accepting the act or of operating under the liability law; but as an encouragement to the employer to elect compensation, the old liability defenses of fellow servant's fault, contributory negligence, and assumption of risk, discussed earlier in this chapter, are abrogated or greatly modified. This is frequently called by its opponents "club" legislation, but the courts have sustained it as a valid exercise of legislative power for a public end.

The relief which a compensation act gives to the injured workman depends upon (*a*) the scale of compensation, (*b*) the scope of the law, (*c*) the method of administration, and (*d*) the security for payment of awards. A liberal law, that is, one which provides a high rate of indemnity, will be of little service unless it applies to many cases of accidents, and conversely a law covering many or all cases will not accomplish what is intended unless the benefits provided are reasonably high. Again, the practical results obtained, no matter how liberal the law, will be seriously impaired unless means are provided for effective administration and for securing the actual payment to the injured worker or to his dependents of the amount awarded.

a. Scale of Compensation. The object of indemnity is twofold—first and more important, to restore the workman's earning power as completely and quickly as possible, so that society will not be burdened with disabled human beings, and second, to provide for the support of the family while the surgical and medical treatment is being given. To effect the former it is imperative that he receive efficient medical and surgical care.

(*a*) *Medical Attendance.* The importance of medical attendance is often underestimated. Proper, immediate care tends not only to reduce the period of disability, but also to diminish the number of serious, perhaps permanent complications. Lifelong impairment of earning capacity frequently results from improper care of fractures; infections or "blood-poisoning" could be almost eliminated by efficient immediate attention. Of 721 infections reported to the Wisconsin Industrial Commission during a two-year period ending September 1, 1913, about 600 were the result of small scratches

and breaks of the skin.[1] These cases represented a total of 12,500 working days lost, and, under the Wisconsin law, a compensation of about $40,000. Had proper care been provided this large loss of time and money could have been avoided.

Full medical aid at the employer's cost is of benefit to the workman in that it relieves his suffering, reduces the period of disability, and permits his return to full earning capacity in shorter time; at the same time, in virtue of this fact, it is beneficial to the employer inasmuch as the amount of compensation is reduced. If the wage-earner is required to provide medical treatment himself, he will not receive as good care. The average laborer has little means to pay for good service, even when earning full wages. When disabled and receiving only a part of his wages, he is even less able to provide himself with proper care.

The amount of medical aid, in proportion to the total indemnity, is large. During 1914 a total indemnity of $1,254,000 was paid to injured workmen in Wisconsin. Of this amount $420,000, or 33.3 per cent., was for medical aid.[2] Other states and insurance companies report the amount of medical aid at from 29 per cent. to 43.8 per cent. of the total cost of compensation.[3] Thus it is evident that medical care is a very important factor in a compensation law and should not be underestimated. It is of such importance to the welfare of the injured and their dependents that the law should require the giving of full free medical attendance, medicines and appliances, and should impose a limit neither in time nor in amount. Such is the requirement under the German law, and besides vastly benefiting the injured it has achieved marvelous results in preventing permanent impairment.

The laws of our states are not so liberal in this respect. While most states provide for medical care, they also impose either a time limit, an amount limit, or both. The time limits range from one week to ninety days, while the amount varies from $25 to $250. In several states the administrative boards have control over the amounts, and may extend the maximums at their discretion.

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[1] Industrial Commission of Wisconsin, *Shop Bulletin No. 5.*
[2] Figures obtained from Wisconsin Industrial Commission.
[3] *Workmen's Compensation,* Senate Document 419, pp. 32, 33.

It is evident that with such low limits a large part of the medical care must be borne by the injured. The amounts may be sufficient to take care of the less serious injuries, but in case of accidents resulting in fractures, dislocations, and serious sprains a large part of the burden falls on the workman himself.

(*b*) *Waiting Period.* It is customary, in compensation laws, to provide no monetary benefits for the first few days of disability. The intervening time is known as the "waiting period" and its object is to prevent malingering; that is, to prevent a slightly injured man from pretending inability to work, with the expectation of drawing part of his wages. On the other hand, if the period is too long it will prove a hardship to the injured. The proper length of the period is hard to determine and varies with individual cases, but it seems that three days is sufficient.[1] This view is upheld by actual accident experience. Studies of accidents made by Dr. I. M. Rubinow and by the Wisconsin Industrial Commission show that about three-quarters of all accidents requiring medical attendance terminate within two weeks, and that two-thirds terminate within one week. Of these two-thirds, one-half cause no disability other than on the day when the accident occurs, and one-quarter cause disability lasting from one to three days, while only one-quarter result in disability extending over more than three days. For example, a total of 36,000 accidents requiring medical attendance would be distributed about as follows:

Length of Disability	*Number of Accidents*	*Per Cent.*
Two weeks and more	9,000	25
More than one but less than two weeks	3,000	8–1/3
More than three days but less than one week	6,000	16–2/3
More than one but less than three days	6,000	16–2/3
One day (day of accident)	12,000	33–1/3
Total	36,000	100

Hence, if the waiting period is two weeks only about a quarter, and if it is seven days, only one-third, of the injured receive

[1] The American Association for Labor Legislation recommends a waiting period of not less than three nor more than seven days. See "Standards for Workmen's Compensation Laws," *American Labor Legislation Review*, December, 1914, p. 587.

compensation. By reducing the period to three days, one-half of those injured would be entitled to benefits.

In a small number of states there is no waiting period and compensation begins on the day of accident. A few states set a seven-day period, and most of the others provide for two weeks. In some, however, compensation is paid from the day of injury in case disability continues for more than a specified period, as two, four, or eight weeks. Since the large majority of accidents cause disability which terminates in a short time, it is important that the period during which no compensation is paid be made short. A short waiting period is also an inducement for the employer or insurance company to render the best treatment to the injured. The sooner the man is able to return to work the less the compensation will be, hence small accidents will be taken care of in a much better way.

(*c*) *Compensation for Total Disability.* Injuries for which compensation is paid may be divided on the basis of their severity into three large groups, namely (1) death; (2) partial disability or impairment of earning capacity such as the amputation or loss of function of a member; and (3) total disability of either a permanent or a temporary nature. The vast majority of accidents result in disability of the last-named sort.

The best American laws, such as are found in New York and Ohio, award to the disabled workman 66⅔ per cent. of wages (within certain limits) during the entire period of disability. In permanent cases, of course, this means a pension for life. The limits referred to are in New York a maximum payment of $20 a week and a minimum of $5 a week, except that if full wages be less than $5 full wages are paid.

Most of the laws, however, contain provisions far less liberal. In some states the percentage of wages paid is 65, 60, or 55 per cent., and in the majority of American commonwealths which have compensation laws it is still as low as 50 per cent. The rate in the law of 1908 covering federal employees was 100 per cent (for one year only), but the executive order of March 20, 1914, applying to employees in the Panama Canal Zone, where nearly half of the accidents to government employees occurred, changed it to 50 per cent. in that district.

The weekly maximum, also, is often lower than in New York, being sometimes $15 or $10, and in the Colorado act passed as late as 1915 the weekly maximum was as shamefully low as $8. Besides granting a low percentage of wages, frequently held down by a weekly maximum limit, most states still further restrict the total amount to be recovered, either directly or—what amounts to the same thing—by stating a maximum period beyond which compensation is no longer payable. Time limitations vary from 260 weeks to eight years, and money limitations from $3,000 to $6,000.

The reason for these unprogressive restrictions is not hard to find. It is that our compensation laws are based upon the idea of merely keeping the injured and his family from starvation, rather than upon the principle of replacing wage loss. The common 50 per cent. scale is obviously insufficient to keep a family from hardship. Most workmen hardly receive when employed enough to pay their current living expenses, and when their income is cut in two these expenses cannot be met. The low weekly maximums fixed in many states intensify the deprivation. A family whose head receives ordinarily $25 or $30 a week has a fairly high standard of living, and if in case of accident the maximum recoverable is limited to $10 or $12 weekly, that standard cannot be maintained. This is especially true if disability is of long continuance, yet some states which fix a $10 maximum for the first 300 or 400 weeks of disability reduce that sum thereafter to $8 or even as low as $5 a week.

These excessive limitations upon the amount of compensation work considerable hardship to the cases which they affect, and should not be included in the law. If the accident results in permanent total disability, the injured should receive two-thirds of his wages for life, as is the case in Germany. Nothing short of this will bring the proper relief. With a two-thirds normal income the family will be deprived of some things, but still the amount is sufficient to maintain about the same standard of living, and even in the lower paid classes to keep the family from dependence on charity. Under our system of laws children are required to go to school until a certain age, which means considerable expense. If in case of accident causing a total loss of earning capacity no proper

compensation is provided, or if the compensation period is limited, it frequently means disintegration of the family.

(*d*) *Compensation for Partial Disability.* Compensation for permanent partial disability is based in most states upon a fixed schedule of a certain number of weeks' benefit for each specific dismemberment, such as fifteen weeks for the loss of a little finger, 125 weeks for an eye, or 215 weeks for a leg. While this system of a fixed charge for each dismemberment, regardless of its effect upon earning power, is easily administered, it is open to serious criticism on the grounds of arbitrariness and injustice. A system like the German, in which partial disability is defined as a proportion of the loss of earning power, is more difficult to administer but results in more equitable settlements. In response to the criticism that the number of weeks' benefit allowed by the fixed injury schedule is too small there has been a tendency to increase the specific periods, but the best thought is now against this method and in favor of indemnifying on the basis of the loss of earning power. California for this purpose has worked out a schedule estimating the percentage of impairment in earning capacity caused by each specific injury to workers of various age groups in each industry in the state. If the injured suffering a permanent impairment of earning capacity is a minor, his compensation should be increased until he reaches the age of twenty-one, as his wages would probably have increased had he not been injured. Several of our states already take cognizance of this fact, and the number is growing.

(*e*) *Compensation for Death.* If the injury results in death a funeral benefit should be paid in all cases, whether or not the deceased had dependents entitled to compensation. About $100 is sufficient to cover all essential funeral charges. Some states have laws providing funeral benefits only if there are no dependents entitled to compensation, but most grant funeral benefits in all cases.

Our states have thus far not been very liberal in prescribing the amount of compensation to be paid to dependents. Very few of them grant pensions to widows for life or until remarriage. New York, the most liberal state in 1915, prescribed 30 per cent. of wages for the widow until death or remarriage and 10 per cent. additional for each child, the total not to

exceed 66⅔ per cent. A few states limit the death benefit to a specified monthly amount, such as $35 or $50, while others set a maximum for the total, varying from $2,000 to $6,000.

A life benefit to the widow and additional amounts for each child up to the age of eighteen is the only rational system to adopt. Statistics show that the average age of injured workmen is about thirty-two years. A young family which loses its supporter at such an age cannot exist very long on $3,000 or less. So small an amount will mean that the family must lower its standard of living, and that the children will not receive the proper care and education. Here again compensation is regarded more in the light of a means of preventing starvation than as a reimbursement for the loss of earning power. The rates adopted by New York, mentioned above, are the most liberal in America, conforming closely to those of the German law. It may be expected that in the future other states will follow New York's example and grant to the widow a pension for life or during the period of widowhood. If there are no dependents, the death benefit should be paid to the state insurance fund if there is one, or to the administration fund or to some other proper body. This last provision is found in one or two laws, but if there are no dependents all other states provide for funeral benefit only. Full death benefits in all cases would tend to wipe out the desirability to employers of engaging single men with no dependents, or foreigners if the law excludes non-resident alien dependents. To what extent this discrimination is practised is difficult to discover.

The question as to whether alien non-resident dependents should be entitled to death benefit has been considerably discussed, and a few states still expressly exclude them. In a number of other states they are expressly included, and elsewhere, as no mention is made of them, they are apparently included by implication. There seems to be little justification for excluding non-resident dependents; if our industry has been responsible for the loss of a family supporter, due remuneration should be made regardless of nationality or residence.

b. Scope of Laws. A compensation system should apply to all employments, and cover all injuries. In the early days

of the movement, however, partly because of administrative difficulties and partly because of the incompleteness of public education on the subject, the exclusion of certain classes of workers, and of certain sorts of injuries, was found temporarily advisable.

(*a*) *Employments Included.* The four large groups of workers commonly excluded from the protection of early American compensation laws were farm laborers, domestic servants, casual employees, and workers in employments not carried on for the profit of the employer. In fixing the employments to be covered, three different methods have been followed. One is to enumerate the employments to which the act applies, another is specifically to exclude certain employments, and the third is to exclude establishments with less than a certain number of employees. Often two of these methods are found in the same law. Of the three the first, the "enumerated industries" plan, is the most objectionable. It is difficult to draw the line between hazardous and non-hazardous industries. A laborer may be killed no matter how non-hazardous the occupation seems. As has often been stated, it is that industry in which a person is injured which is hazardous. The enumeration system is not, therefore, in harmony with the theory on which compensation is based. Of the other two methods, the "minimum number of employees" plan is perhaps the better. By specifically enumerating the excluded industries frequently a large employer, as for example a large farm operator, is left out. If the law applied to all employing four or more persons, such an operator would be included.

In interpreting the exclusion of casual laborers the term casual is often misconstrued. It should apply only to the employment and not to the laborer. Freight handlers at a dock, who work only when a boat is to be loaded or unloaded, are for compensation purposes by no means casual laborers. The irregularity of their employment is inherent in and a necessary part of shipping by sea, and should in no way operate to bar them from accident indemnity.

(*b*) *Injuries Included.* All injuries sustained in the course of employment should be compensated, except those occasioned by the wilful intention of the employee to bring about the injury

or death of himself or his fellow workmen. These are clearly not a hazard of the industry, and should not be compensated. Some states also exclude accidents caused in part by the intoxication of the injured employee. Such exclusion is likely, however, to cause litigation over the question of whether or not the employee was "intoxicated"; and since compensation legislation aims at preventing litigation and securing prompt aid, limitations of this sort are to be deprecated. Moreover, the safety of fellow workmen requires that the employer be discouraged from hiring men who are prone to intoxication, and an excellent method of accomplishing this result is to make subject to compensation all accidents occurring to such employees.

In order to induce the workman to make use of the safety appliances supplied by his employer, the compensation may be reduced if he wilfully fails to use such guards and appliances. On the other hand, the compensation should be increased in the same proportion if the employer fails to provide the proper devices, and the laws of some states include penalties of this nature. In Wisconsin, for example, the injured receives an increase of 15 per cent. in compensation if the employer did not provide guards as required by law, but, on the other hand, his compensation is reduced 15 per cent. if he fails to use the guards when they are provided.

(*c*) *Occupational Diseases.* The inclusion of occupational diseases in compensation laws has been much discussed in America. It is recognized that numerous diseases are contributed to by the work which a man is doing. Working at a dusty occupation causes tuberculosis. Employments requiring sudden changes in temperature are instrumental in bringing about pneumonia and other organic ailments. To cover all these diseases would, however, make a compensation law very complex and difficult to administer, and such disabilities are probably better taken care of under health insurance.[1] Nevertheless there are some diseases which are so plainly and directly caused by the nature of the employment that they should unquestionably be included. Among these are lead, mercury, and phosphorus poisoning, compressed-air

[1] See "Health Insurance," p. 385.

illness, anthrax, and a number of fatigue diseases such as miners' nystagmus and telegraphers' cramp. Massachusetts has been paying compensation for such injuries regularly under its act, and in 1915 the California law was amended to permit similar payments. In 1915, also, Pennsylvania amended its constitution to allow the passage of laws establishing compensation for occupational disease, and a clause to the same effect was embodied in the proposed new constitution for the state of New York which failed of adoption.

c. Method of Administration. There are two general ways of administering compensation laws. One is to appoint a central board with general powers of enforcing the law, and the other is to create no machinery for the administration of the act, but to provide that all questions arising shall be settled by the courts. Of the states now having laws, less than a third, most of which are of little industrial importance, have no central administrative body and leave the administration to the courts. All other states have adopted the central administrative plan.

Recent investigations made by the National Civic Federation and the American Federation of Labor,[1] and by the American Association for Labor Legislation,[2] indicate that the administrative board plan is much superior to the court procedure scheme. The two studies agreed in estimating that in New Jersey not over 60 per cent. of the amounts payable under the statute were being paid, and the report of the Association for Labor Legislation made it clear that the court procedure plan was mainly at fault for this defeat of the legislative intent. The chief flaws in the court system were pointed out to be (1) the delay of court procedure, (2) the cost of court procedure, and (3) the unfitness of the courts for the settlement of compensation claims.

Prompt, honest, and full compensation, and medical aid as required, are the vital factors in bringing relief as desired by the law, and to achieve these purposes a central board with broad powers is essential. States with central boards having

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[1] *Report upon Operation of State Laws*, Senate Document No. 419, 63d Congress, 2d session.

[2] "Three Years under the New Jersey Workmen's Compensation Law," *American Labor Legislation Review*, March, 1915, pp. 31–102.

full power to make rules and regulations require receipts to be filed showing actual payment of compensation, and since they provide for arbitration hearings in cases of dispute there is little danger of fraud and deception of workmen, and payments are promptly made. The board should consist of three or five members appointed by the governor and should have power to employ necessary assistants. To insure their adequate attention to the responsible duties of their position, its members should be required to devote their entire time to its work.

d. Security of Payment. In order to protect the employer, as well as the workmen, liability under the compensation laws is commonly carried by an insurance company. Should several of his men meet with a serious accident at one time, the small shopowner or contractor would not be financially able to pay the compensation. For this reason most states compel employers to insure their risk unless they can give satisfactory evidence that they are able to bear losses due to accident even if very serious. This, of course, means that practically all small employers will carry insurance, while many large companies will carry their risk themselves.

The carrying by a concern of its own risk is sometimes called "self-insurance," and in addition thereto three other methods have been developed: (1) insurance in a state fund; (2) insurance in a stock company; and (3) insurance in a mutual or interinsurance company.

State insurance funds have been established in a number of the more advanced states, including California, New York, Ohio, Oregon, and Washington. Sometimes, as in Washington and Oregon, insurance in this fund is compulsory, while other states permit insurance in authorized private companies. Short as their experience has been, the success of the efficiently managed state fund is undoubted. One of the latest of these to be started, that in New York, found its expenses in its first six months' experience to be only 17 per cent. of premiums, and even this low proportion was shortly afterward cut to 12 per cent. Notwithstanding its rates were 20 per cent. lower than those of the casualty companies, the fund declared dividends averaging 20 per cent. on its first six months' business, and estimated that New York employers had saved

half a million dollars by selecting state insurance. At the end of the first year two of the largest corporations in the state transferred their insurance to the state fund, and others were contemplating similar action.

Stock companies carry on business for the profit of their stockholders. As a consequence of their large business soliciting organization, comprising thousands of agents, their managing expenses are excessively high. In Wisconsin in 1914 the operating expenses of these companies were 38 per cent. of earned premiums, or 79 per cent. of compensation benefits.

Mutual insurance companies seek the protection of their own members, who are the policyholders. They do not need the large, expensive organization which a stock company must have, and therefore their managing expenses are lower. Mutual insurance is insurance at actual cost, any excess of premium remaining the property of the policyholder and being refunded in the form of dividends. In the state last cited the operating expenses of these companies were only 18 per cent. of earned premiums. As a result of these low operating expenses mutuals can sell insurance at about 25 per cent. lower rates than stock companies. A strong feature of the mutual insurance method, provided it be made general and brought under close supervision as in Germany, is the added inducement to employers to do their own factory inspection. Such voluntary inspection, if stimulated by the financial inducement of reduced insurance rates for safer conditions, has generally been found even more effective than state inspection.

Interinsurance companies, commonly called "exchanges," are, like the mutuals, operated purely for the protection of their members, but are more expensive. They provide insurance to a stated amount, and members become liable to limited assessment, commonly to twice the amount of premiums. The business is transacted through a manager, called the attorney-in-fact, who receives a fixed percentage of premiums, commonly 30 per cent., for his services. Besides this 30 per cent., the subscribers must pay for the expense of claim adjusting, amounting in the state of Wisconsin to 7 per cent. during 1914. Thus, the total cost of operating expenses was 37 per cent., or over twice that of mutuals, and yet the

members received no greater protection than the mutuals provide.

Insurance rates are quoted on the basis of $100 wages paid by the employer. A rate of $4.50 means that for every $100 which the workmen receive in wages, the employer must pay the insurance carrier $4.50. Rates obviously depend greatly upon the benefits provided by the compensation act, and thus we have different rates in the various states. Another factor which largely determines the insurance rate is the hazard of the industry. Thus we have one rate for logging, one for machine shops, one for breweries, and so on. But even in establishments of the same industrial group widely different hazards will be found. One company may perhaps take great interest in safety work, while another does not. The former would be a better risk than the latter and is entitled to a lower rate. This allowance is accomplished under a merit rating system. Instead of one flat rate for an entire industry, this system seeks to adjust the rate of each employer to the hazard of his particular establishment. A schedule of credits and charges is provided, so that the employer receives credit for conditions tending to reduce or prevent accidents, and, conversely, he is charged for conditions conducive to accidents. American experience in accident insurance is so limited that rates have heretofore been little more than estimates. Gradually experience is growing, however, and with it rates are constantly being reduced.

The feature of accident prevention just alluded to is too often underestimated when discussing compensation laws. After all, to prevent the injury is of greater significance than to provide compensation for it; accident prevention is the greatest feature of a comprehensive accident indemnity plan.

The accident prevention or safety movement has spread rapidly in the last few years, and the chief factor in this development is the growing correlation between accident prevention and compensation. State agencies are usually effective in accident prevention work to the degree that they secure the cooperation of employers and of workmen. Their main function consists in educating these two in methods of safety. State agencies can order the application of mechanical safeguards. Their rules afford standards. But their

inspectors can do but little in comparison with what the employer and employee can do, under the stimulus of an adequate compensation system.

Insurance companies have no power to compel the safeguarding of machinery, but they can frequently attain the same end by increasing or reducing the insurance rates under the merit rating system previously discussed. Many companies now have a force of inspectors who investigate the risk before the final rate is computed. During 1914 the amount expended on factory inspection and accident prevention by insurance companies in Wisconsin equaled 2.6 per cent. of the total earned premium. What has been accomplished through the cooperation of these agencies cannot be determined because accident statistics in this country have never been adequately compiled in a comparable manner until recent years. The indications, however, are that the number of fatalities and serious injuries is gradually being reduced.

In order to secure more satisfactory industrial accident and occupational disease statistics for purposes of prevention as well as for rate making, a number of government bureaus and interested organizations are now jointly engaged in working out uniform industry classifications and uniform methods of reporting.[1] If the classifications agreed upon are finally adopted in all states, the occupational accident and disease statistics will be comparable, and a vast amount of valuable information will then be available.

2. Health Insurance

The development of machinery, the expansion of industry, and the growth of the wage-earning class have not only brought into existence the problem of industrial accident, but have also added importance to the question of the wage-earner's ill health. Since a large amount of the worker's time and energy are expended in the workshop, it is natural that industry and the conditions connected with it are among the important factors seriously affecting his health. Foresight,

[1] See "Reporting," pp. 297–304.

consequently, has led to the introduction of health insurance, which is gradually being extended to cover all occupations, even those in which the risk to health is less obvious.

(1) *Early Steps in Health Insurance*

The importance of adequate provision in case of illness or invalidity was recognized by the workers long before the era of social insurance. As early as the middle ages the insufficiency of individual action was realized, and a more satisfactory arrangement, that of insurance, was initiated by the mediæval gilds. Under these early plans insurance was purely voluntary and the workers had to bear the full cost. This optional unassisted form of health insurance still exists in many civilized countries. In this country it is provided to a limited extent by trade unions, fraternal societies, establishment funds,[1] and insurance companies. It is the only form of health insurance so far in practice here. But under optional insurance most workers are either unwilling or unable to make regular outlays for the premium, and thus are left without the much-needed insurance protection. Other weaknesses frequently charged against the system are inefficiency of management, inadequacy, lack of state supervision, financial instability, and, in the case of profit-making insurance companies, excessive cost.

A remedy for these defects was offered in the device of government subsidies and control. This measure marked the beginning of the second stage in the history of health insurance and directly prepared the way for the compulsory principle. The aim of government subsidies is to relieve the worker from a part of the burden and thus to stimulate insurance; the aim of control is to secure efficient management. Subsidies are usually given to the so-called recognized societies, that is, health insurance organizations which answer certain requirements and submit to government regulations.

The system of subsidized insurance was first introduced in

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[1] Funds organized among the workers in one plant or establishment, usually under the control of the employer.

Sweden in 1891, and existed in 1915 in six countries: Sweden, Denmark, Belgium, France, Iceland, and Switzerland. The financial assistance granted in these countries and the government supervision, potent though they are, cannot be expected to be a very vigorous stimulus to insurance among the classes most in need of it. Obviously compulsory insurance, transferring a considerable part of the burden to industry and including in the system those workers who most require this protection, is a more effective way of meeting the need.

(2) *Compulsory Health Insurance*

Although Germany was the first country to introduce compulsory health insurance, the principles of this reform had been previously worked out elsewhere. Long before 1883, the first date in the official history of social insurance, there existed in several states of Europe insurance associations in which the elements of compulsory state supervised insurance were found. It was left, however, for Germany to gather these dispersed components into one coordinated unit and thus to become the fatherland of social insurance. Among the illustrious thinkers connected with this forward step Bismarck occupies a conspicuous place. The "Iron Chancellor" keenly realized the need of adequate protection of the working people and recommended to statesmen and legislators that they accustom themselves to think continually of the workman and to make his welfare a direct object of national policy. There was another motive which stimulated Bismarck's interest in the problem. This was his desire to deter the working class from Socialism, "to bribe the working classes, or, if you like, to win them over to regard the state as a social institution existing for their sake and interested in their welfare."[1]

On November 17, 1881, Emperor William I in his celebrated message to the Reichstag announced his intention of introducing, among other reforms, a bill for health insurance. The bill became law in 1883. Besides Germany, compulsory health insurance existed in 1915 in Austria, Hungary, Lux-

[1] W. H. Dawson, *Social Insurance in Germany*, 1912, p. 11.

emburg, Norway, Servia, Great Britain, Russia, Roumania, and Holland. In several other countries, including our own, the principle of health insurance is under consideration and its adoption in the near future is predicted by close students of the subject.

The German system was more or less closely followed in the laws of the other countries. In all of them the existing mutual sick benefit funds of various kinds, such as fraternal societies, trade unions, and establishment funds, were allowed to continue business, provided they complied with the regulations imposed upon them by the new law. In a few countries, Germany among them, the law also brought into existence new insurance associations, the local sick funds, for the insurance of persons not claiming membership in any other society.

The scope of the law varies slightly in the different countries. In Germany the law of 1883 was very limited, but subsequent additions, the latest of which, the insurance consolidation act, was passed in 1911, have considerably extended its application. At present it embraces practically all industries, including, (1) workmen, helpers, journeymen, apprentices, and servants; (2) establishment officials, foremen and other officials; (3) clerks and apprentices in commercial establishments and pharmacies; (4) actors and musicians; (5) teachers and tutors; (6) homeworkers; (7) crews of German vessels. In groups two to five, inclusive, the law is compulsory only for those whose annual incomes are less than $595. By this comprehensive trade grouping just over 14,000,000 workers, or 22 per cent. of the total population, were insured in 1912.[1] Approximately the same classification is made in Austria; in Norway all wage-earners are included whose annual earnings are less than $321 in rural districts, and less than $375 in urban areas; in Russia the act applies to employees in factories, mines, iron and railway works, inland navigation undertakings, and tramways.

The noteworthy act of Great Britain, passed in 1911, includes within its scope all manual laborers between sixteen and seventy. Persons not employed at manual labor, such

[1] "Social Insurance in Germany in 1912," *Board of Trade Labour Gazette*, July, 1914.

as clerks and agents, are compelled to insure if their earnings are less than $800 a year. Credit should be given to the legislators and administrators who found it possible to include from the outset both casual workers and homeworkers, even though this necessitated special arrangements for collecting contributions. Within the insured groups, persons may be exempted if they can prove that they have a regular income from other sources equal to $130 a year, or that they are not dependent for a livelihood upon the earnings of their insured occupation. In addition, certain classes of occupations are excluded, such as employment under the crown, because the terms of employment already offer provision in case of illness. The exceptions have proven numerically unimportant, so that during the first year of operation 13,742,000 individuals were insured, or nearly 30 per cent. of the total population.[1]

The cost of insurance is usually distributed between the worker and the employer, and in some countries the government also contributes a share. By this device the employer is compelled to bear some portion of the cost of sickness among his employees, and the worker receives larger benefits than he could purchase unaided. In Germany the worker pays two-thirds of the premium and the employer the remaining third. The same proportion has been adopted in Austria and in Russia, with the exception that here the employer also pays the cost of medical attendance. In Norway the worker contributes six-tenths, the employer one-tenth, the commune one-tenth, and the state the remaining two-tenths. In Germany, Austria, Hungary, and Norway the premium is calculated as a percentage of wages. The employees are divided into wage groups, and the premiums and benefits vary with an increase in the worker's income. Great Britain, however, has not followed the continental practice, but has adopted a uniform rate of contributions, regardless of wage differences. The insured male worker pays weekly 8 cents, the female worker 6 cents; in either case the employer adds 6 cents and the state 4 cents. To mitigate the hardship of the low paid

[1] For an excellent study of the actual operation of the British act and of its administrative problems, see *The New Statesman*, "Special Supplement on the Working of the Insurance Act," March 14, 1914.

worker, special rates are provided for those earning less than 62½ cents a day, whereby the worker's contribution is diminished, and that of the employer and state increased.

In return for their contributions, workers usually receive both a money benefit and medical care. The cash benefits paid in time of sickness are not equal to the full wage, but are 50 per cent. in Germany, and 60 per cent. in Norway. England has been consistent with her flat rate contributions and has adopted a system of uniform benefits of $2.50 a week for men, and $1.87 a week for women. In general, benefit is not allowed for the first three days of illness, and is paid for only a limited number of weeks in a year—in Germany and England twenty-six. Benefit is usually made conditional upon a doctor's certificate stating that the applicant is incapable of work. When the attending physician certifies that the patient has recovered, sick benefit ceases.

The German and British acts differ in the character of the disabilities which they include. Germany, in common with Sweden and the proposed Norwegian scheme, has included "invalidity"—chronic illness or impairment of earning capacity—in the old age insurance act, so that only temporary illnesses are covered by the health insurance act. Great Britain, on the other hand, has included "invalidity" in the provision for health insurance. The invalidity contemplated by the British legislators, however, is limited to incapacity for work because of disease or disablement, as distinguished from reduction in earning power. The British grouping of invalidity with sickness benefit is probably due to the existence of a state system of old age pensions. As the recipients do not contribute to the pension, it was desirable to make provision for invalidity in the health insurance system, which is contributory. The British invalidity benefit consists of a weekly payment of $1.25 as long as incapacity for work continues, though it ceases when the beneficiary reaches the age of seventy and becomes entitled to an old age pension.

Medical attendance is furnished by many insurance systems, including those of Germany, Great Britain, and Norway. If an insurance system is to accomplish its ultimate object of improving the health of the workers, it is of great importance that they receive treatment whereby they may be restored to

health. Furthermore, it is financially important to the insurance funds that sick members shall recover as quickly as possible and so reduce the amounts expended upon sick benefit.

In Germany each society makes its own arrangements for medical attendance, usually by means of a contract open to all qualified physicians, with payment by some form of capitation fee.[1] Members are then free to select, with some restrictions, any one of the contract or panel doctors. The provision is generally liberal, the funds arranging for the services of specialists and hospital care when necessary. In Great Britain, where the medical service is less efficient, arrangements with the doctors are made not by the "approved societies," but by local insurance committees. This method secures fairly uniform conditions of service and rates of pay throughout the kingdom. Insured persons have unrestricted choice of panel doctors practising in their neighborhoods. The system of capitation payments as adopted in England had led to the charge of hasty and inadequate diagnosis, especially when there is an inefficient system of "control" of doctors, which is not comparable to the control exercised in Germany by the funds employing a doctor. A wholly satisfactory solution of the relation of the medical profession to insurance has not yet been found, for in Norway, where the doctors are paid by the visit, a new problem arises. Here the alleged tendency is for doctors to make unnecessary visits, thereby increasing their own incomes at the expense of the provision for medical care.

Drugs and appliances, such as spectacles, trusses, and crutches, are usually provided as a part of medical benefit. The provision in Germany is particularly generous.

In the organization of the carriers of insurance each country has adapted itself to existing conditions. Germany found already in existence mutual aid funds and an effective system of compulsory insurance among miners. The former it allowed to serve as a substitute for compulsory insurance, providing that employers might be exempted from contributing for workers so insured; it also permitted establish-

[1] I. G. Gibbon, *Medical Benefit in Germany and Denmark*, 1912, p. 54.

ment funds, under certain conditions, to carry the insurance. The system was, however, based in the main on self-governing local mutuals, organized by the law, which it has been the policy to encourage, so that they are now overwhelmingly predominant.

Great Britain built its insurance system around the voluntary friendly societies, utilizing their organization and permitting them to establish separate sections for national insurance. Accordingly many societies have both a "private" and a "state" section. In contrast to the German method, the insured are not grouped according to trade or locality, but are given unrestricted choice of society. As a result of this freedom, the members of some of the large societies are distributed throughout the kingdom, and through various industries. Segregation by locality, and in some large cities by trade, as carried on in Germany has many practical and technical advantages, such as more precise distribution of the risk and greater ease of administration.

The methods of establishing security of payments in the two countries are quite different. In Germany the dues are calculated so as to cover the current expenditure on benefits and to accumulate a small reserve fund. It is, however, a recognized fact that sickness increases with age and that any voluntary fund organized on this basis would be compelled to increase its dues as the members advanced in years in order to cover the increasing costs—unless the fund is able to attract a sufficient number of young lives. These younger members, paying the same dues as the older members, do not claim the same amount of sick benefit, hence from their contributions a surplus would accrue which could be devoted to making up the deficit caused by the older members. This system is practicable in Germany, since each local or trade society is practically assured of a due proportion of young lives which will pay for the older members.

In Great Britain the contributions are calculated so that the surplus accumulated during the early life of each worker may be applied for his own benefit in later years. That is, contributions are not calculated on the simple basis of covering expenditures, but upon the basis of covering the estimated liability for the average person throughout life. This involves

the accumulation of an "actuarial reserve" for each insured person. This method, resulting in complex financial problems, is not considered as satisfactory as the German method.

(3) *Maternity Insurance*

An important part of health insurance laws is the payment of maternity benefits to insured women, usually irrespective of marital condition, and in some countries, such as Great Britain, Russia, and Roumania, also to uninsured wives of insured men. In Germany a maternity benefit equivalent in amount to sick benefit is paid for eight weeks, six of which must be after delivery. With the consent of the woman the fund may in place of maternity benefit provide medical treatment and maintenance in a hospital; or treatment at home may be given, for which the fund may deduct not more than half of the maternity benefit. The funds are also allowed to provide for a pregnancy and a nursing benefit. In Norway, Hungary, and Russia the regular sick benefit is paid for six weeks, in Austria for four weeks. Usually the benefits received by uninsured wives of insured men are smaller than those payable to women who are themselves members of the funds.

In some cases the benefit is paid in a lump sum instead of in weekly instalments. Great Britain, for instance, allows the sum of $7.20 to all insured women, and $7.20 to wives of insured men, making a total of $14.40 for the insured wife of an insured man. An interesting exception to the general plan of including maternity benefit in the health insurance system occurs in Italy. There the problem was considered so urgent that even in the absence of a general compulsory health insurance measure a compulsory scheme of maternity insurance was introduced in 1910. All wage-earning women between fifteen and fifty years of age are included, and annual premiums of 19.3 cents for women between fifteen and twenty and 38.6 cents for women of all other ages are divided equally between the employer and the worker. The benefit is a lump sum of $7.72, of which the state contributes one-quarter.

Although in this country four states, beginning with Massa-

chusetts in 1912, prohibit the industrial employment of women for a period of several weeks immediately before and after childbirth,[1] no American state has yet recognized the justice and necessity of furnishing maternity benefits during such periods of enforced idleness. If insurance is to accomplish its object of conserving the health and life of a nation, it is desirable that maternity benefits be extended as widely as possible.

(4) *Need in the United States*

It is sometimes urged that in this country, with its expanding industries and higher level of wages, such measures as compulsory health insurance are unnecessary. But those who know the facts recognize that illness is a cause of destitution here as it is in England and in Germany. The reports of the New York State Board of Charities show that in 1910 nearly one-third of the 300,000 applicants were driven by sickness to ask for relief.[2] The records of the Charity Organization Society in New York City show that ill health is directly or indirectly responsible for three-quarters of the applications for aid which come to it.[3]

These figures are sufficient to suggest that sickness in a wage-earner's family means privation. Unfortunately, there are no statistics showing the amount of sickness among the American working class; such figures are available only for European countries which have had compulsory insurance in operation. On the basis of European figures it is estimated that about 40 per cent. of the workers of this country suffer from illness every year, and that the total time lost through this cause, distributed over the entire industrial population, averages about nine days per person. Upon this basis, the loss in wages, the medical cost, and the loss to the employer total nearly $750,000,000 annually, most of which falls upon the employees.[4] A just compulsory insurance measure would enable

[1] See "Childbirth Protection," p. 319.
[2] Rubinow, *Social Insurance*, p. 205.
[3] Edward T. Devine, *Misery and Its Causes*, 1909, pp. 225–230.
[4] "Memorial on Occupational Diseases," prepared by a committee of the American Association for Labor Legislation, *American Labor Legislation Review*, January, 1911, p. 127.

the workers to bear the loss of wages more easily, and would distribute more equitably the cost of sickness among the workers, the employers, and the state.

After many conferences, at which all sides of the problem were thoroughly discussed, the American Association for Labor Legislation formulated in the summer of 1914 the following tentative standards which it later followed in the drafting of a health insurance bill for introduction in the state legislatures:[1]

1. To be effective health insurance should be compulsory, on the basis of joint contributions of employer, employee, and the state.

2. The compulsory insurance should include all wage workers earning less than a given annual sum, where employed with sufficient regularity to make it practicable to compute and collect assessments. Casual and home workers should, as far as practicable, be included within the plan and scope of a compulsory system.

3. There should be a voluntary supplementary system for groups of persons (wage workers or others) who for practical reasons are kept out of the compulsory system.

4. Health insurance should provide for a specified period only, provisionally set at twenty-six weeks (one-half a year), but a system of invalidity insurance should be combined with health insurance so that all disability due to disease will be taken care of in one law, although the funds should be separate.

5. Health insurance on the compulsory plan should be carried by mutual local funds jointly managed by employers and employees under public supervision. In large cities such locals may be organized by trades with a federated bureau for the medical relief. Establishment funds and existing mutual sick funds may be permitted to carry the insurance where their existence does not injure the local funds, but they must be under strict government supervision.

6. Invalidity insurance should be carried by funds covering a larger geographical area comprising the districts of a number of local health insurance funds. The administration of the invalidity fund should be intimately associated with that of the local health funds and on a representative basis.

7. Both health and invalidity insurance should include medical service, supplies, necessary nursing, and hospital care. Such provision should be thoroughly adequate, but its organization may be left to the local societies under strict governmental control.

8. Cash benefits should be provided by both invalidity and health insurance for the insured or his dependents during such disability.

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[1] American Association for Labor Legislation, *Health Insurance; Standards and Tentative Draft of an Act*, 1915, pp. 5, 6.

9. It is highly desirable that prevention may be emphasized so that the introduction of a compulsory health and invalidity insurance system shall lead to a campaign of health conservation similar to the safety movement resulting from workmen's compensation.

In addition to the relief value of such a measure, it contains, as indicated in the closing paragraph of the standards, important possibilities for the prevention of illness. After a century of rapid industrial growth and increasing urban population we are just beginning to value as a social factor the sanitation which drains cities, provides pure water and pure milk, and quarantines infectious diseases. We have too long failed to realize that the ill health of the individual, even though he may not be suffering from a contagious disease, is a matter of public concern. Medical care of adults is no less important for a state which values the lives of its citizens than is the medical examination of school children which we have already adopted in the larger cities.

More general medical consultation will reveal unsuspected tendencies which, if allowed to develop, will have as pernicious effects as the adenoids we are so careful to remove from school children. Here, as in England, there are many wage-earners who are unable to afford a doctor's fee. Nor is the dispensary service given in the large cities sufficient to meet the need. A socialized medical service, whereby all who require the services of a physician may have access to the necessary treatment, has been found very effective in some countries. Great Britain's health insurance act has revealed a mass of human suffering, especially among women, which hitherto had received no medical attention. Because of the increased use of doctors, a far larger number of persons have been discovered who need operations and hospital care—persons whose ills previously would have gone without treatment until the suffering had become acute and the chances of recovery had been diminished. Socialized medical service, especially in Germany, has resulted in prophylactic treatment for the individual and in the conservation of national vitality.

Great Britain's health insurance act has been an incentive for undertaking a national campaign against tuberculosis. By means of a sanatorium benefit for every insured worker suffering from this disease, more adequate treatment is being

provided. In Germany, particularly, the health insurance law has been an important factor in the anti-tuberculosis campaign. German authorities even attribute "the progress which has been made in the crusade against tuberculosis more to the industrial insurance laws than to any other cause, owing to the fact that those laws have placed within the reach of the working classes resources of healing which were never dreamt of before."[1]

Furthermore, the necessity of spending money on preventable disease is in itself a stimulus to prevention. Various English bodies have been aroused by this factor to a keen interest in the relation between tuberculosis and housing. The financial pressure on "approved societies" is a direct inducement to demand thorough inspection of dwellings and workplaces, especially since the delinquent authority can be made to pay the cost of the sickness produced by the poor sanitary conditions which it has allowed to exist.

It is also possible, as is done in Germany, to levy a higher premium upon the industry or particular establishment in which the sickness rate is higher than normal. This is a means tending to persuade the employer of the economy of factory sanitation which will improve the health of the worker and thereby reduce his insurance premium. It is the same inducement of low insurance premiums for workmen's compensation which is partially responsible for the "Safety first" movement and the installation of safety appliances. Without a compulsory health insurance system, the economy of health preservation cannot be made an effective lever for reform.

3. Old Age and Invalidity Insurance

The rapid development of industry has, among its other results, placed emphasis on the individual's physical vigor and wage-earning capacity. It has deprived old age of the esteem bestowed upon it under more primitive patriarchal conditions, and after a life of productive toil it relegates to the background the aged or incapacitated man as a useless, uneconomic

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[1] Dawson, *Social Insurance in Germany*, p. 202.

factor. Failing health, inability to find employment, lack of means, often absence of friends willing or able to help him —such is the prospect which confronts, in the great majority of cases, the aged worker.

(1) *Unassisted Old Age Insurance*

In response to the gravity of this situation three main measures of relief have been developed: charity, saving, and insurance. Charity has been known since ancient times, and no doubt has relieved a deal of destitution. But the modern opinion is that charity, both private and public, is insufficient in amount and unsatisfactory in quality; that it exercises a degrading effect upon the recipient and is repugnant to the self-respecting person. The serious difficulties in the way of saving are also well known. The low standard of wages seldom, if ever, allows any surplus; most often the immediate demands outweigh the arguments in favor of saving. Besides, the very remoteness of old age and the uncertainty of attaining it discourage many people from making preparation for the future at the expense of the present. In this problem, as in that of provision for illness, the collective process of insurance is considered much more satisfactory than the individualistic method of savings. Professor Seager has said that "for every wage-earner to attempt to save enough to provide for his old age is needlessly costly. The intelligent course for him is to combine with other wage-earners to accumulate a common fund out of which old age annuities may be paid to those who live long enough to need them."[1]

The development of old age and invalidity insurance is similar to that of health insurance. The first stage in the movement was marked by optional unassisted insurance, which is still furnished by some fraternal societies, trade unions, establishment funds, and insurance companies. However, the number of fraternal societies and trade unions, either here or abroad, which undertake the complicated business of old age and invalidity insurance is small. In many

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[1] Henry R. Seager, *Social Insurance*, 1910, pp. 118, 119.

states of this country fraternal societies are prohibited from dealing in it. Only forty-two out of 182 general or national fraternal benefit societies in the United States promise old age benefits, and these usually do not begin until the age of seventy has been reached.[1] As to American trade unions, out of the approximately 110 national organizations four are known to pay a superannuation benefit. These are the International Typographical Union, the Granite Cutters' International Association, the Amalgamated Society of Carpenters and Joiners, and the Amalgamated Society of Engineers, the last two being branches of English unions. In a few other unions the introduction of this form of insurance is being considered, and in some old age benefits are paid by individual locals. Nineteen unions,[2] the majority of which consist of transportation workers, pay a permanent disability benefit. Business concerns furnishing old age insurance for their employees are also rare, especially in this country, as are those granting straight old age pensions. Insurance companies do a considerable old age annuity business in Europe, chiefly among the middle class; in the United States, on the contrary, commercial insurance for old age is little known.

(2) *Assisted State Plans*

Obviously, voluntary unassisted old age insurance reaches only a small part of the wage-earners. As a consequence, as in the other branches of social insurance, it came to be considered the duty of the state to assist its aged citizens, and the principle of state insurance, sometimes aided by subventions, was devised.

This form of voluntary old age insurance is known in France, Belgium, England, Italy, and Spain, and in America in the states of Massachusetts and Wisconsin, and in Canada. France, Belgium, Italy, and Spain grant subventions in the form of a substantial rate of interest, and to certain classes

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[1] Lee W. Squier, *Old Age Dependency in the United States*, 1912, p. 67.

[2] United States Commissioner of Labor, *Twenty-third Annual Report*, "Workmen's Insurance and Benefit Funds in the United States," 1908, p. 31.

of insured direct subsidies are given. The state also furnishes the administrative machinery and running expenses. The Massachusetts plan is a system of voluntary old age insurance through the savings banks under state supervision, while the Wisconsin system provides for the issuance of annuities by the state life fund under the supervision of the insurance commissioner.

But even state assistance and supervision failed to secure for old age and invalidity insurance any large measure of popular acceptance. Experts commonly agree that even generous subsidies do not seem to attract more than a small part of the wage-earners; that in a large number of cases the payments are either made irregularly or are after a while suspended, and that the benefits paid are very small.

In view of the insufficiency of state control and subsidy, two other very significant elements of social insurance were added, namely, compulsion and the requirement of the employer's contribution.

(3) *Compulsory Systems*

Compulsory old age and invalidity insurance have not yet found so wide an application as has compulsory health insurance, being established at present in only the six countries of Germany, Luxemburg, France, Roumania, Sweden, and Holland. Here again, as in the two previously discussed branches of social insurance, Germany took the lead, enacting its first law in 1889. All wage-earners in the designated occupational groups, regardless of size of income, are compelled to insure between the ages of eighteen and seventy, after which exemption from insurance may be granted on application. The groups covered are the same as those under health insurance,[1] except that of the homeworkers only tobacco and textile operatives are as yet included. Salaried workers receiving more than $476 a year are not required to insure, but may, in common with other classes, take out voluntary insurance. Contributions are of five grades, ranging from 4

[1] See "Health Insurance," p. 388.

cents to 11½ cents a week according to the worker's income, and are paid in equal parts by employer and employee. The pensions also are divided into five groups, corresponding to the five grades of contributions. The state's contribution is made in a novel way, consisting in the payment of $11.90 annually to each person in receipt of a pension. Thus the total benefits range from $26.18 to $54.74 a year—an allowance which obviously cannot go very far even with a low standard of living. A necessary condition for receiving a pension is the payment of contributions for not less than 1,200 weeks. To meet the need of persons who were already of advanced age, transitory provisions were introduced, reducing the required 1,200 weeks' payments by forty for each year of age over forty when the law went into effect.

In the German law provisions for old age are subsidiary to those for invalidity insurance. An insured person of any age, who on account of diminished strength is unable to earn one-third of the wages usually paid to normal workers in his occupation, is entitled to an invalidity pension. The benefits are larger than the old age benefits, and this, together with the fact that they are paid irrespective of age, tempers the hardship which would otherwise result from the high age of seventy necessary for eligibility to a pension for superannuation. In fact, in 1908, 894,000 persons were in receipt of invalidity pensions as against 102,000 who were drawing old age pensions, or nearly nine times as many.[1] The government has always met requests for a reduction of the seventy-year limit with refusal because the law regards the old age feature as a minor matter, and has stated that any additional expenditures should be devoted to enlarging the invalidity benefits.

For the purposes of this insurance the empire is divided into large districts for each of which is created an insurance institute, under the direct supervision of the imperial insurance office. Each institute is managed by a board of directors, in part appointed by a public authority, in part chosen equally from employers and employees by the committee, itself an elective body composed of equal numbers of employers and employees, with supervisory duties. While far

[1] Rubinow, *Social Insurance*, p. 359.

more bureaucratic than the sickness funds, the administration of the institutes is still largely supervised by the persons affected as contributors and beneficiaries.

Two unique points in the German old age invalidity insurance system are sickness pensions and sanatorium treatment. Sickness benefits, equivalent in amount to invalidity benefits, are paid to persons, not permanently incapacitated, who have exhausted their claims to sick pay and are still unable to work. However, it is entirely apart from cash payments, and in the realm of prevention, that the most significant feature of the whole German social insurance plan is to be found. Under the local pension boards is maintained a country-wide network of sanatoria, rest homes, and health resorts. Persons who have drawn all their sick benefits but who are still unable to work are entitled to maintenance in these institutions, and the timely and efficient care there furnished to the patients has proven a powerful factor in the prevention of invalidity.

Other compulsory old age insurance laws do not, on the whole, differ much from the German plan. The conditions for the receipt of invalidity pensions, however, are much stricter in the other countries than they are in Germany; only persons completely unable to earn a living are entitled to benefits. Another point of difference is the rather unusual application of the Swedish law, which is extended to "every Swedish man or woman." It is also worthy of remark that in none of these countries has even an attempt been made to emulate the admirable German methods of invalidity prevention.

(4) *Straight Pensions*

Another much discussed method of meeting the problem of old age poverty is that of "straight," or non-contributory, pensions. Such pensions, their opponents charge, tend to keep wages at a low level, destroy the habit of thrift, and have an injurious effect on family solidarity. As for the last argument, it is difficult to see how the parents' dependence can add to the filial affection of the struggling wage-earner. The habit of thrift, also, can hardly be destroyed

by the remote and uncertain possibility of attaining old age with a pension which is hardly sufficient to keep body and soul together. With regard to the possible effect on wages, the persons in receipt of old age pensions are a very unimportant factor in the labor market, and as to the workingmen who have not yet reached pensionable years it is doubtful whether the prospect of a very meager assistance in their old age would alone be sufficient to make them accept lower wages. Some champions of social insurance also object to straight pensions on the apparently more valid ground that the straight grant resembles charity and is, therefore, less desirable than a system by which the worker is asked to contribute.

Straight old age pensions are granted sometimes to all persons meeting certain personal requirements, and sometimes for the performance of a definite period of service. Six countries—Denmark, New Zealand, Belgium (temporarily), France, Australia, and Great Britain—and Alaska and Arizona[1] in the United States, had by 1915 enacted legislation providing such aid to all persons possessing certain moral, economic, or civil qualifications. Under most of these laws a definite period both of residence and of citizenship is a prerequisite. New Zealand demands twenty-five years', Australia twenty, Great Britain twelve, Alaska ten, and Arizona five years' residence, while in Belgium one year is sufficient. In Australia the applicant must have been a citizen three years, in Arizona five years, and in Great Britain twenty years. All but the French and the two American acts embody a number of moral qualifications. Family desertion, neglect of children under fourteen years, drunkenness, and a prison sentence are some of the grounds which disqualify an applicant either permanently or temporarily from receiving an old age pension. The requirements as to the economic status of the pensioner also vary widely. In Australia an income of $300 a year debars one from receiving an old age pension; much less liberal are the provisions in the other countries. In France an income of $92.64 is the highest allowed, while in Denmark it is but $26.80. Similar regulations exist with regard to the amount of property owned. The grants are

[1] In November, 1915, this act had been held unconstitutional by the superior court, and was on appeal before the supreme court of the state.

far from generous. In Great Britain the pension ranges from 24 cents to $1.22 a week, varying inversely with the amount of income received from other sources, and in Alaska the maximum is set at $12.50 a month. In other countries no definite level of pensions is established by law, and the local authorities are permitted to exercise their judgment in the individual cases.

Pensions for service are granted both by governments and by private employers. In this country pensions are provided by the federal, state, and municipal governments for several classes of employees, especially policemen, firemen, and teachers. The necessity of pensions for all civilian employees is now frequently urged not only as a matter of justice to the employee, but also as a means of retiring the older workers and thus increasing the efficiency of the force. The federal government has also established pensions in the army and navy, with particular generosity toward civil war veterans. In several European countries, furthermore, workers in the government owned industries are granted pensions, as for example, in the tobacco works of Italy and France and in the Russian liquor monopoly. Finally pensions are granted to their employees by some private concerns. Establishment pension funds exist practically in every country of industrial prominence, but in the United States their number is relatively small. The transportation industry can boast of the largest number, there being at least eighteen steam railroads with such pension systems, as well as several electric street railways and a few steamship lines. The number of manufacturing establishments granting pensions is much smaller. The social value of these provisions is almost negligible, first, because of their small number, and second, because of their defects, some of which are arbitrariness on the part of the employer, lack of certainty as to the receipt of the pension, and their injurious effect on the independence and mobility of labor.

(5) *The Problem in the United States*

Clearly the total results accomplished by all these organizations are of little or no consequence. "Strange as it may

seem," declares a leading American authority, "the United States is the only great industrial nation in the civilized world that has not already attempted a practical and permanent solution of this problem of old age and dependency."[1] This neglect of the problem of old age poverty cannot, however, be explained by the absence of conditions calling for attention. On the basis of an investigation of old age poverty made in Massachusetts by a special commission on old age pensions of that state, it is estimated that "approximately 1,250,000 of the people of the United States above sixty-five years of age are dependent upon public and private charity, to the amount of about $250,000,000 annually. Thus far one person in eighteen of our wage-earners reaches the age of sixty-five in penury; and the indications are that the proportion of indigent old is increasing."[2]

But this admittedly conservative estimate can hardly give a correct conception of the extent of old age poverty. The age of sixty-five is somewhat high, as the exhausting effect of industry on the worker and the well-known prejudice against the employment of older men throws out of industry a large number of people before that age. If we include also the number of invalids of all ages, the quoted figures will be far too low. Existing arrangements for the care of old age do not affect more than one-third of the wage-earners; of the remaining two-thirds, those who grow old without having saved enough to support them must resort to charity, either of their children and families or of some organized agency. The dependence of large numbers of people on such an uncertain, insufficient, and morally degrading method of relief as charity is a grave injustice to the toiling wage-earner and a serious menace to the community.

This failure of the United States to provide an organized policy for the protection of its citizens at the close of their life of productive work appears the more striking when we see that eleven European countries, together with Canada, Australia, and New Zealand, have enacted national measures, either in the form of insurance or straight pensions, for the solution of this problem.

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[1] Squier, *Old Age Dependency in the United States*, p. 325.
[2] *Ibid.*, p. 324.

4. Widows' and Orphans' Insurance

Insurance for the protection of widows and orphans, or, as it is ordinarily called, life insurance, is furnished by practically all fraternal societies, many trade unions, some establishment funds, and by private life insurance companies. In some countries, such as Great Britain, France, Italy, Russia, and Canada, the government has undertaken the business of life insurance; in the United States we have state life insurance in Wisconsin, and in Massachusetts there is a system of life insurance administered by savings banks under state supervision.

(1) *Voluntary Life Insurance*

Life insurance, sometimes for enormous amounts and paid for by annual or quarterly contributions or premiums, is now a well-established method of providing for the future among the moderately well to do and the wealthy. But in order to bring the poorly paid wage-earner under the system, a special form of life insurance had to be devised, known as "industrial" or "prudential" insurance as opposed to the "ordinary" type. Under industrial insurance the policy amounts are much smaller, usually providing only for the burial of the insured, and to facilitate payment premiums are collected weekly, by a vast army of agents.[1] This method of collection, however, results in the increase of administrative expenses and, consequently, in higher rates. Another cause of higher rates in industrial insurance is the assumption of a higher death rate among wage-earners. Thus even in purchasing decent burial the wage-earner is obliged to pay a higher rate of insurance than does his more prosperous neighbor.

State insurance, as well as insurance furnished by fraternal societies, trade unions, establishment funds, and mutual assessment societies, is less expensive but still outside of the reach of many working people. Moreover, because the in-

[1] The 1910 Census gives the total number of insurance agents in the country as 88,463. Not all of these, of course, deal in industrial insurance.

surance is voluntary, the very families most in need of protection are often left without it. These defects, as in the other branches of social insurance, have led to the introduction of the compulsory principle.

(2) *Compulsory Insurance*

Compulsory widows' and orphans' insurance, the newest branch of social insurance, is so far practically in operation in only two countries, France and Germany.

In France the compulsory old age insurance law of 1910 provides for benefits to widows and orphans of the insured. The total benefits vary from $29 to $58 according to the number of dependents, and are paid in monthly instalments of $9.65 until the entire amount has been paid.

In the following year, 1911, the German law was passed. As in France, benefits are furnished to certain survivors of those carrying old age and invalidity insurance. The amount of the pension depends on the amount of invalidity pension to which the insured was entitled. The widow, but only if she is herself an invalid, receives 30 per cent. of the invalidity pension to which her husband was entitled. Only children under fifteen are eligible for pensions, the amount being 15 per cent. for the first child and 2½ per cent. for each of the others. In addition, the state annually pays the widow $11.90 for herself and $5.95 for each child. The cost is met by an increase of the premiums for old age and invalidity insurance. This increase varies for the five different wage-groups established for that type of insurance, and runs from ½ cent to nearly 3 cents a week, equal shares of this amount being contributed by the employer and the employee. It has been estimated that the average annual pension of a widow with three children is $37,[1] a sum which cannot be considered as substantial. An increase in the amount of benefits paid in this and in other branches of social insurance is urged as the next step in the development of the system.

In a third country, Holland, the old age and invalidity in-

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[1] Rubinow, *Social Insurance*, p. 434.

surance law of 1913 allows benefits to the orphans of men or women who carried old age and invalidity insurance. These benefits depend on the amount of the parent's pension; they are paid to the orphans until of the age of thirteen and only when the father was already receiving a disability pension or if forty weekly contributions were credited to him. The same limitations hold true in the case of death of an insured widow.

In Austria the compulsory old age and invalidity law of 1906 provides for pensions to the widows and orphans of the insured. But this law applies only to salaried employees, and is, therefore, of relatively small importance.

(3) *Mothers' Pensions*

A more popular method of dealing with the problem of widowhood and orphanhood is by means of mothers' or widows' pensions, paid to certain classes of mothers with dependent children. These pensions, however, are straight grants by the state. Such systems exist in several European countries, in New Zealand, and in a number of American states.

The movement in this country is particularly interesting. Here the pressing problem of widows' and orphans' poverty and helplessness has, instead of giving rise to social insurance measures, resulted in a sudden wave of legislation providing straight pensions, usually upon condition that the mother is found capable of providing a proper home for her child. Indeed, a leading argument in behalf of this legislation is that it is better to pay the mother for taking care of her child than to expend the same amount in financing institutions, in even the best of which the death rate is abnormally high. In the five years 1911–1915 nearly thirty American states enacted such laws. The surprising rapidity with which this provision has gained recognition in American legislatures is a significant indication both of the great need of public action and of the growing conception of the state as having a duty toward its citizens, two of the underlying ideas of social insurance.

5. Unemployment Insurance

Finally, the destitution due to unemployment, until recently considered a matter of purely individual concern, or at best as an occasion for charitable activity, is now beginning to be recognized as an evil which must be met by the coordinated forethought of society as a whole. The demoralization of individuals and communities by prolonged and widespread deprivation of income due to involuntary idleness, it is now rather generally agreed, should no longer be allowed to continue unchecked.

(1) *Voluntary Out-of-Work Benefits*

In warding off the financial hardships of unemployment, individual action and charity have been found just as inadequate as they were in protecting against the financial hardships due to accident, ill health, or old age. Here again the collective method of insurance has demonstrated its superiority. Unemployment insurance originated among labor organizations, and at first the cost of this insurance was borne by the workers themselves without any outside assistance. This form of unemployment insurance has achieved a considerable success in the important European countries. In the United States, on the contrary, only a few unions are known to pay out-of-work benefits. Of the 110 national organizations affiliated with the American Federation of Labor the Cigar Makers' Union alone is known to have a national system of unemployment insurance. Two other important unions which pay out-of-work benefits, the Amalgamated Society of Carpenters and the Amalgamated Society of Engineers, are both branches of British organizations. In a number of national unions only certain locals are paying such benefits; several unions pay a traveling benefit; others limit themselves to excusing their unemployed members from the payment of dues.

In addition to trade unions, fraternal societies in some countries pay a regular out-of-work benefit. One country, Germany, furnishes an interesting example of a different way

of meeting a part of the unemployment insurance problem, namely, through funds established by some employers for their own employees.

(2) *The Ghent System*

Unassisted trade union unemployment insurance, however, with the cost borne by the workers alone, is a heavy burden on them and only a comparatively small part of the workers are able or willing to insure. In order to encourage insurance, a plan was devised by which government, most often municipal, subsidies are granted to trade unions furnishing unemployment insurance. This is the principle of the famous Ghent system, which was first introduced in the city of Ghent in Belgium in 1901. The Ghent idea was rapidly adopted, with some modifications, not only in a number of cities in Belgium, but also in Great Britain, Germany, France, Switzerland, Italy, Holland, Denmark, and Norway. The subsidies vary in the different countries from 33⅓ per cent. to 100 per cent. of the benefits paid by the unions. In Great Britain the trade unions which are outside of the compulsory unemployment insurance law receive a state subsidy of not over one-sixth of the total amount of the out-of-work benefits paid.

The system of government subsidized unemployment insurance has undoubtedly stimulated provision against unemployment.[1] On the other hand, it is generally recognized that the advantages of optional subsidized insurance are not far-reaching enough to offset its limitations, the most important of which is its failure to attract a sufficiently large number of workers. The lesson taught by the other branches of social insurance points to compulsory insurance as the solution of the problem.

(3) *Compulsory Unemployment Insurance*

Compulsory unemployment insurance was first introduced in the city of St. Gall, Switzerland, in 1894. After a two years'

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[1] See I. G. Gibbon, *Unemployment Insurance*, pp. 104, 105.

trial the system, owing to defective administration, was adjudged a failure and was discontinued. The only country where compulsory unemployment insurance is now in force is Great Britain, under the national insurance act of 1911, which went into operation on July 15, 1912.

The unemployment insurance part of this act applies to seven groups of trades, but the administrative authorities are permitted to extend the range of the system. The selected trades are (1) building, (2) construction of works, (3) ship building, (4) mechanical engineering, (5) iron-founding, (6) construction of vehicles, and (7) saw-milling, and they were chosen because in them the extent of unemployment was greatest and most accurately known. About 2,500,000 workmen are included, out of 15,000,000 in the country, or 16⅔ per cent. The employer and employee contribute equal amounts of 5 cents each week; to this the government adds 3⅓ cents, which is one-third of the combined contribution of employer and employee. This premium entitles the worker in case of unemployment to the sum of $1.75 a week for not more than fifteen weeks in any one year. No benefit is paid for the first week of unemployment, and the worker must be insured five weeks for every week of benefit he claims. The limitation to fifteen weeks a year has not in practice worked any serious hardship. In a study of 130,000 cases of unemployment it was found that only .5 per cent. of the recorded unemployment among union men and only 1.2 per cent. among non-union men was left without benefit because of this restriction.[1]

To safeguard the workers' interests an unemployed man is not compelled to take work in a place where a trade dispute is on, or at wages below those he usually received or less than those current in the community. Another clause with a similar purpose provides that any insured workman over sixty years of age, who has been insured for ten years and who has paid 500 contributions, is entitled to a refund of his total payments, less his total benefits, with compound interest at 2½ per cent.

As a protection to the employer, a worker is refused benefit

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[1] *First Annual Report*, p. 13.

if he strikes, quits work without due cause, or is discharged for bad conduct or inability to do the work. Furthermore, an incentive to regularize work, to avoid large turn-overs of labor, and thus to prevent unemployment, is held out to the employer in the clause entitling him to a refund of one-third of his own contributions for each worker retained in his employ not less than forty-five weeks in a year. This amounts at present to not less than 75 cents a year for each employee so retained, and the principle is, of course, capable of extension.

The administrative machinery of the act is simple. The employee must secure an unemployment insurance book, which on taking employment is deposited with the employer. The latter must paste in the book on pay day the stamps representing his own and the employee's contribution, deducting the worker's portion from his wages. The weekly payments are transmitted through the post office, which sells the stamps, to the unemployment insurance fund, which, in spite of the smallness of the individual contributions, totals about $12,500,000 a year for the 2,500,000 insured workers. If the insured worker loses his place, he receives from his employer his insurance book, which he must then deposit in the nearest labor exchange or insurance office, one of which is within five miles of every considerable group of workers in the kingdom. He is thus automatically registered as looking for work, and so an abuse of the system by the "work-shy" man is avoided. In the year ending January 17, 1914, the sum of $2,488,625 was paid out by this system in unemployment benefits.

In America, as well as in Europe, the importance of compulsory unemployment insurance is rapidly gaining recognition. The oft-recurring periods of general industrial depression and the prevalence of unemployment in the numerous seasonal trades are emphasizing the need for organized social action. In the winter of 1914–1915, particularly, the alarming extent of unemployment called forth general and deep interest, and among the methods most often urged for dealing with this evil was state supervised insurance. During the same winter unemployment insurance bills were drafted for introduction in several states. These bills provided

for compulsory, contributory insurance, jointly administered by employers and employees under public supervision, and with subsidies to organizations voluntarily entering the system. Ten weeks' benefit was tentatively proposed, with the proviso that the amount should be as large as possible. Refunds to employers who ran their plants steadily, and to workmen who were rarely out of employment, and corresponding penalties for casual labor, were included for the purpose of stimulating regularization of industry. To obviate unnecessary claims, close dependence upon an efficient system of public employment exchanges was insisted upon.

Insurance provides a dignified method of financial assistance to unemployed wage-earners, the majority of whom would be forced either to seek charity, with all its objectionable consequences, or to suffer privation. The out-of-work benefit, although amounting to but a fraction of the regular wage, is still sufficient to ward off for a time complete destitution; it thus contributes materially toward the preservation of the workers' character and physique during times of unemployment, and prevents their falling into the ranks of the unemployable where they would constitute a much more difficult problem.

But of equal significance with these financial arrangements is the power of compulsory insurance to prevent unemployment. Workmen's compensation laws have stimulated the development of the "Safety first" movement. The activity of the German sickness insurance funds affords an effective demonstration of the preventive possibilities of compulsory health insurance. Somewhat similar results can be secured from compulsory insurance against unemployment. An indispensable part of such insurance is a system of labor exchanges, the activity of which is a powerful means of reducing the amount of involuntary idleness. The financial claims of unemployment insurance on industry call the employers' attention to the regularization of business, for such regularization would reduce the amount of unemployment and also the cost of insurance. Refunds to employers for steadily employed workers, as provided by the English act, would also be an inducement to preventive measures. The indications are that this branch of social insurance can be made to accom-

plish with respect to involuntary idleness a very considerable prevention of the evil itself, which from every point of view is far more important than the payment of benefits. As eloquently stated by Léon Bourgeois, president of the International Association on Unemployment: "To relieve is to wait until the evil has befallen, to attempt to repair it. To relieve is to wait till misery has come, to give alms to the miserable. But alms remains at best a meritorious deed, not a social act."[1] Elimination of the condition which makes relief necessary is the social act contemplated by any adequate system of social insurance.

But in this matter, as in all matters of labor legislation, the results attained depend in the last analysis upon efficient administration.

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[1] Address delivered at the Ghent International Exposition, 1913, *American Labor Legislation Review*, March, 1914, p. 186.

CHAPTER IX

ADMINISTRATION

Notwithstanding all that has been said regarding the progress of legislation for the protection of the workers, it is scarcely worth consideration if the laws are not enforced. More important than the hasty enactment of additional laws is the adoption of methods of administration that will enforce them. It is easy for politicians, or reformers, or trade union officials, to boast of the laws which they have secured for labor, and it is just as easy to overlook the details, or appropriations, or competent officials, that are needed to make them enforceable. It is easy to say that little or nothing can be done by changing the "machinery of government" and that the real thing to do is to get "better officials" to enforce the laws and better judges to interpret them. But it is only through the "machinery of government" that such officials are found and selected, and that judges can have the facts needed for interpretation. Administration is more than mechanism. It is a method of legislation. It is the means of investigating, drafting, and adopting enforceable laws. It is the means of getting and keeping competent officials. It is the method of determining what authority or powers the officials shall have, how they shall execute the laws, what procedure they shall follow in court, what facts they shall investigate for the use of the court in its duty of interpretation. Administration is legislation in action.

In a constitutional government, executive officers are not supposed to go out with a club and, on their own initiative, force people into obeying what they happen to think is the law. Before they act, they are supposed to investigate. The legislature, too, is assumed to be a body possessed of all the facts and its acts are unconstitutional when they disregard

essential facts that could be ascertained by investigation. The court, through many centuries of experience, has developed the law of evidence and the procedure of investigation for the trial of individuals who are charged with the violation of law. Finally, when the higher court passes upon the constitutionality of the law itself, it does so with reference to whether the facts are such as call for the law and whether the law deals with the facts in accordance with the higher law of the constitution.

Thus each department of government is an investigating body. Only by investigation can each be restrained from the arbitrary and capricious acts that make despotism abhorrent. This is the significance of "reasonableness," which runs through every requirement of the constitution. Reasonableness is ascertained by investigating *all* the facts and giving to them "such weight as may be just and right in each case." [1] Thus we have executive, judicial, and legislative investigations, designed to guide each department of government in dealing with all the facts in its own field.

But modern industrial conditions have become so complex, and the laws deal with such a variety of facts, that a fourth department of government is emerging whose purpose is primarily investigation. This is administration. If administration is legislation in action, it is because administration is investigation. It unites in one department the investigating activities of all departments. First, as to the executive department and its field of investigation.

1. The Executive

The history of the so-called "factory acts" shows the beginnings of the special kind of investigation needed for the enforcement of labor law. The term "factory act" or "factory legislation" covers all legislation, whether applied to factories or to other establishments, respecting such matters as health and safety of workers, hours of labor, child labor, payment of wages, company stores, and so on. Factory acts

[1] Smyth *v.* Ames, 169 U. S. 466 at p. 547 (1897); Freund, *Police Power*, 1904, p. 58.

are distinguishable from those laws which determine the fundamental rights and duties of master and servant, employer and employee in the labor contract, such as mechanics' lien, wage exemption, employers' liability, and the law of conspiracy. The distinction is not always clear because the line between the two is drawn differently at different times and in different countries. In general, we may say that by factory legislation is meant that side of labor legislation which requires officials for continuous inspection and enforcement, whereas other labor laws are enforced only when a private individual brings a case in court. The distinction tends to disappear in proportion as special administrative machinery is adopted for the enforcement of other laws. For this reason the term "labor legislation" is taking the place of "factory acts."

The early factory laws provided no special officers for their enforcement. It was assumed that complaints would be made by the injured employees, and it was merely provided that the ordinary officers attached to the court, such as sheriffs, policemen, prosecuting attorneys, should attend to the prosecutions on complaint. Such is even now the theory and practice in some states, especially in the South.

It required several years to discover the futility of this kind of administration. Employees would not make complaints for fear of being discharged. The officials had other duties more urgent. They were local officials, usually afraid of the voters.

The next step, beginning in the decade of the 'seventies, was the creation of a class of special state police, known as factory inspectors, whose duty it was to investigate the conditions in the factories, to get their own evidence of violations and then to conduct the prosecutions without calling upon employees to testify.

The first state to appoint this class of special police was Massachusetts, in 1879. Since that time the method has been adopted in half of the states and the largest force of inspectors in any state is that in New York, numbering over 150.

The investigations made by executive officials, whether they are the ordinary officials or special police, have a limited and special purpose. The object is to secure evidence for

prosecutions against violators of the law. Having secured their evidence they must take it to the prosecuting attorney or district attorney, who then reinvestigates the facts in order to determine if there is a case made out that will probably result in a conviction when tried in court. Finally, when the case is brought to trial, the court again investigates all the facts, calling witnesses on both sides and providing for their cross-examination. It follows precise rules of evidence, rejecting what is immaterial to the point to be decided. This evidence may be heard and passed upon by a jury. The entire procedure of the executive, the prosecutor and the court in reaching a decision and enforcing the law turns upon an investigation of the facts of violation.

For various reasons, the enforcement of labor law in American states through investigations by factory inspectors has come to be recognized as ineffective. The inspectors are not trained for their work; they are frequently changed; they are poorly paid, and they have but little opportunity for promotion and a professional career. Their number is often inadequate for the amount of work required. Much of their time is often given to gathering and publishing large volumes of belated statistics that have but little value as an aid either to their own administration or to the legislature in improving the laws. Considerable attention has been given recently to these deficiencies and they are justly considered to be the most important problem of labor legislation. Useless statistics are giving way to timely bulletins on safety, health, and other specific conditions of labor. The New York State Factory Investigating Commission was created, after a deadly factory fire, to inquire why it was that the laws were not enforced.[1] The United States Bureau of Labor investigated the enforcement of woman and child labor laws.[2] The American Association for Labor Legislation devotes a large part of its attention to the improvement of administration.[3] Out of these investigations and a widespread distrust of the existing

[1] See New York State Factory Investigating Commission, *Preliminary Report*, 1912, pp. 13, 14.

[2] *Report on Condition of Woman and Child Wage-Earners in the United States* (Senate Doc. 645, 61st Congress, 2d Session), 1910–1913.

[3] See its official organ, the *American Labor Legislation Review*, published quarterly, beginning 1909.

methods of factory inspection have come the beginnings of serious attempts to improve the character of administration. The more promising of these attempts are described in the following pages. They involve not only the executive branch of government, but also the legislative and judicial branches.

2. The Legislature

In an executive investigation no question is raised as to the reasons for the enactment of the law itself. The question is merely whether the law was violated or not. Investigations take a much wider scope when the matter is being prepared for the legislature upon which it shall proceed to enact a law. The first investigations on a subject of legislation are usually made by private parties or by persons whose object it is to secure legislation. In the field of labor the American workingmen's organizations, as early as 1832, published reports upon the conditions of labor showing the need of new laws for their correction. These crude investigations have been followed and multiplied by a great variety of associations and organizations. In the decades of the 'forties and 'fifties industrial congresses were held in different cities and investigations of shop and factory conditions were made. The International Workingmen's Association, founded by Karl Marx and the British trade unionists in 1864, and spreading to the United States, contained as one of its objects the collection of information and carrying on of investigations of labor conditions in different countries of the world. The National Labor Union in 1868, the industrial congresses of 1873 and 1874, the Knights of Labor and the American Federation of Labor have all in turn conducted investigations on all the aspects of labor problems that in their opinion needed legislation.

In the decade of the 'eighties private organizations like the Consumers' League began investigations, especially of child labor and sweating systems. The National Child Labor Committee, founded in 1904, has had a systematic plan and a wide field of investigation. In 1900 the first international association for the investigation of labor conditions in all countries was organized at the Paris Exposition, under the name of the

International Association for Labor Legislation. It has organized sections in fifteen countries.[1] In some cases affiliations are made with previously existing private organizations such as the Union for Social Reform in Germany. The object of the International Association is to bring about uniform legislation through treaties entered upon by independent governments. Its procedure is to hold international biennial congresses in Switzerland, at which the conditions of labor and the laws of different countries are reported upon and plans for uniform laws are drafted. Through the courtesy of the government of Switzerland the diplomatic representatives of the different nations are then invited to meet and formulate "conventions" carrying out, as far as possible, the plans recommended by the preceding congress of the Association. When these "conventions" are agreed upon the several countries enact the desired legislation and enforce it in their own jurisdiction. When any country has adopted the recommendations of a convention it becomes equivalent to a treaty between that and other countries that have acted in the same way. The first international "conventions" of this kind were those forbidding the night work of women [2] and the use of poisonous phosphorus in the manufacture of matches.[3] The former has been adopted by fourteen nations and the latter by eleven.

The American section of the International Association was organized in 1906 with the object of investigating conditions underlying labor laws and disseminating information leading to the enactment and efficient enforcement of protective legislation. It has conducted investigations, held national conferences, published reports, drafted bills, and secured the enactment into law of progressive standards.

The characteristic of the activities of the International Association and its fifteen national sections is scientific investigations conducted with the definite object of securing needed legislation. Like other private associations its work is largely propagandist and does not carry official weight.

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[1] Austria, Belgium, Denmark, England, Finland, France, Germany, Holland, Hungary, Italy, Norway, Spain, Sweden, Switzerland, and the United States.

[2] See "Night Work," p. 248.

[3] See "Prohibition of Substances or Instruments," p. 325.

However, the International Association, with permanent headquarters in a government building at Basel, Switzerland, receives subventions from twenty-two different national governments. In this respect it marks the beginning of an affiliation between private investigations and those conducted by government.[1]

As early as 1838 the state legislature of Pennsylvania conducted an investigation of woman and child labor in the factories of that state.[2] Massachusetts followed in 1845. Many states and the national government have at different times carried on investigations of this kind for special purposes by temporary committees of the legislature or by commissions appointed for the purpose. During the years 1910 to 1915 there were nearly thirty state commissions and one federal commission for the study of industrial accidents and the drafting of laws on workmen's compensation. Another notable example is the Factory Investigating Commission of New York, whose careful investigation led to the adoption in 1914 of a large number of labor laws by the legislature of that state. In the broader field of federal investigations, a committee of the Senate of the United States in 1885 held extended hearings on the subject of capital and labor. The Industrial Commission, composed of members of Congress and appointees of the President, made a report of nineteen volumes on the same and other subjects in 1901. Other temporary federal commissions have been the one on Immigration in 1911, and the Commission on Industrial Relations of 1913.

The origin of these temporary legislative investigations was either a demand on the part of private organizations for definite legislation or for official inquiry which would have greater weight through the power of compelling witnesses to testify and the conclusiveness which could not be secured by private societies. Their intent was both to inform the public and to aid the legislature.

The first state in the world to establish a permanent bureau for the investigation of labor conditions was Massachusetts in 1869. Under the name of bureau of labor statistics, or

[1] See Bibliography, p. 488.
[2] Pennsylvania Senate, *Journal*, Vol. II, 1837–1838.

bureau of labor, such permanent machinery of investigation has been established in about forty states, by the federal government with its Department of Labor, first established in 1884, and by all national governments where the problem of labor and capital has become prominent. These bureaus were at first established primarily on the petition of labor organizations.[1] Their scope has been broadened in some cases but their largest activity has been the collection of statistics of wages, hours, and conditions of labor. At times they are called upon by the legislature to make investigations which otherwise would have been conducted by legislative committees or temporary commissions, such as the investigation of woman and child labor by the federal Bureau of Labor in 1908.

A certain ineffectiveness of these bureaus has sprung from their desire, as permanent bureaus, to maintain a non-committal attitude in presenting facts, and they generally refrain from making recommendations for legislative action. An obstacle, also, in the way of these bureaus for purposes of legislative investigation arises from the fact that they are, in nearly all cases, combined with the special police or factory inspection department, whose business is investigation for the purpose of prosecution. A person investigated for crime does not readily furnish the same investigator with information for statistics.

3. The Judiciary

In the United States the judicial branch of government may be called upon to make investigations of labor conditions in order to render decisions on the constitutionality of laws enacted by the legislature. These investigations are quite different in character from those, previously described, in a trial for the violation of statutes. In a trial the question to be decided is that of a particular violation of a law. In questions of constitutionality the question is the conformity of the law with the constitution. Here the court must investigate the question as to whether there is really an evil condition that needs to be remedied; whether this condition

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[1] Powderly, *Thirty Years of Labor*, 1889, p. 303.

is a menace to the public or whether the statute is merely a benefit to private individuals without a public purpose; whether under the actual conditions the legislature confiscates property, discriminates between individuals, and thus denies the equal protection of the laws.[1]

In making such an investigation the court might appoint a referee or master in chancery to take evidence and investigate the facts. This procedure is often followed in the regulation of public utilities. The referee, usually a lawyer appointed by the court, calls before him accountants, engineers, experts, as needed, and makes a report to the court of the facts. Such a practice, however, has not been followed in cases where the constitutionality of labor laws is called in question. This is probably owing to the fact that legislation of this character covers a large variety of subjects, requires a variety of witnesses and extended technical investigations, and that the court is not itself equipped with the staff of investigators competent to secure and furnish the information. The result is that social and economic conditions are not investigated by the court and it is compelled to fall back upon the principles of constitutional law, without full knowledge of the conditions to which the statute applies. Examples of decisions without investigation of conditions are as follows:

The Colorado Supreme Court in declaring unconstitutional a law which limited the hours of labor in smelters to eight a day said:

This act is an unwarrantable interference with, and infringes, the right

[1] "The principle involved in these decisions is that where the legislative action is arbitrary and has no reasonable relation to a purpose which it is competent for government to effect, the legislature transcends the limits of its powers, in interfering with liberty of contract; but where there is reasonable relation to an object within the governmental authority the exercise of legislative discretion is not subject to judicial review." (C. B. & Q. Railroad Co. *v.* McGuire, 219 U. S. 549 (1911).)

"In every case that comes before this court, therefore, where legislation of this character is concerned, and where the protection of the federal constitution is sought, the question necessarily arises: Is this a fair, reasonable, and appropriate exercise of the police power of the state, or is it an unreasonable, unnecessary, and arbitrary interference with the right of the individual to his personal liberty, or to enter into those contracts in relation to labor which may seem to him appropriate or necessary for the support of himself and his family." (Lochner *v.* New York, 198 U. S. 56 (1905).) See also "Public Benefit," p. 24, and "Equal Protection of the Laws," p. 28.

of both the employer and employee in making contracts relating to a purely private business, in which no possible injury to the public can result.[1]

Likewise Judge Gray explained in the following language why the New York court nullified a law prohibiting night work for women:

I think that the legislature, in preventing the employment of an adult woman in a factory, and in prohibiting her to work therein before six o'clock in the morning, or after nine o'clock in the evening, has overstepped the limits set by the constitution of the state to the exercise of the power to interfere with the rights of citizens. . . . It is clear, as it seems to me, that this legislation cannot, and should not, be upheld as a proper exercise of the police power. It is, certainly, discriminative against female citizens, in denying to them equal rights with men in the same pursuits.[2]

In the following cases the court clearly states that sufficient facts have not been presented to prove that legislation of that character is necessary to conserve the public welfare:

In the first Ritchie case the Illinois Supreme Court said:

There is no reasonable ground—at least none which has been made manifest to us in the arguments of counsel—for fixing eight hours in one day as the limit which woman can work without injury to her physique, and beyond which if she works, injury will necessarily follow. But the police power of the state can only be permitted to limit or abridge such a fundamental right as to make contracts, when the exercise of such power is necessary to promote the health, comfort, welfare, or safety of society or the public, and it is questionable whether it can be exercised to prevent injury to the individual engaged in a particular calling.[3]

In the Lochner case, where a ten-hour law for bakers was tested, the court had before it only a limited amount of general information on the subject, without any special investigation. The majority ruled that the facts were not conclusive to warrant such legislation for the following reasons:

We think the limit of the police power has been reached and passed in this case. There is, in our judgment, no reasonable foundation for holding this to be necessary or appropriate as a health law to safeguard the

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[1] *In re* Morgan, 26 Col. 415, 47 L. R. A. 52 (1899).
[2] People *v.* Williams, 189 N. Y. 131, 81 N. E. 778 (1907).
[3] Ritchie *v.* People, 155 Ill. 98, at p. 113, 40 N. E. 454 (1895).

public health, or the health of the individuals who are following the trade of a baker. . . . We think that there can be fair doubt that the trade of a baker, in and of itself, is not an unhealthy one to that degree which would authorize the legislature to interfere with the right to labor, and with the right of free contract on the part of the individual, either as employer or employee. In looking through statistics regarding all trades and occupations it may be true that the trade of a baker does not appear to be as healthy as some other trades, and is also more healthy than still others. To the common understanding the trade of a baker has never been regarded as an unhealthy one. . . . There must be more than the mere fact of the possible existence of some small amount of unhealthiness to warrant legislative interference with liberty.[1]

The foregoing cases illustrate the attitude of the courts where investigations of the facts have not been brought to their attention, or where they have been compelled to depend upon such knowledge as they themselves might have regarding such facts. In such a case the court might take what it calls "judicial notice" of facts even though they are not presented in evidence, and might rely upon what it considers "common knowledge," or that kind of knowledge which a reasonable person ordinarily well informed might be supposed to have upon the subject. Common knowledge may go still further and include investigations made by private societies or by individuals or attorneys which appear to the court as presenting the facts pertaining to the case. "Courts will take notice of whatever is generally known within the limits of their jurisdiction." [2] "A common belief, like common knowledge, does not require evidence to establish its existence, but may be acted upon without proof by the legislature and the courts. While the power to take judicial notice is to be exercised with caution and due care taken to see that the subject comes within the limits of common knowledge, still, when according to the memory and conscience of the judge, instructed by recourse to such sources of information as he deems trustworthy, the matter is clearly within those limits, the power may be exercised by treating the fact as proved without allegation or proof." [3]

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[1] Lochner *v.* New York, 198 U. S. 45, at p. 58 (1905).

[2] Quoted from Brown *v.* Piper, 91 U. S. 37 (1875), in People *v.* Charles Schweinler Press, 214 N. Y. 395, 108 N. E. 641 (1915).

[3] Quoted from *In re* Viemeister, 179 N. Y. 235, at p. 240, 72 N. E. 97 (1904), in People *v.* Charles Schweinler Press, 214 N. Y. 395, 108 N. E.

The first notable example of a decision on the constitutionality of a law based upon investigations of this kind is that of the Holden *v.* Hardy case, in 1898. In that case the attorney in defense of the law made a partial investigation of the health of workmen in mines and smelters which was presented in his brief to the court. Upon this information the court took exactly the opposite view of the Colorado court above cited, and held that the law was constitutional upon the following grounds:

> While the general experience of mankind may justify us in believing that men may engage in ordinary employments more than eight hours per day without injury to their health, it does not follow that labor for the same length of time is innocuous when carried on beneath the surface of the earth, when the operative is deprived of fresh air and sunlight, and is frequently subjected to foul atmosphere and a very high temperature, or to the influence of refining or smelting.[1]

It is to be noticed that while the Supreme Court held that the questions of law—that is, the principles of public benefit and equal protection of the laws—were identical in the Lochner case and the Holden *v.* Hardy case, the former was declared unconstitutional while the latter was upheld because of difference in fact. Similarly, Mr. Brandeis in his brief in Mueller *v.* Oregon quotes the law as propounded in the Lochner case but argues that the facts "establish . . . conclusively, that there is reasonable ground for holding that to permit women in Oregon to work in a 'mechanical establishment, or factory, or laundry' more than ten hours in one day is dangerous to the public health, safety, morals, or welfare." The court, which sustained the law, concurred in counsel's contention, as indicated by the following quotation:

> In patent cases counsel are apt to open the argument with a discussion of the state of the art. It may not be amiss, in the present case, before examining the constitutional question, to notice the course of legislation, as well as expression of opinions from other than judicial sources. In the brief filed by Mr. Louis D. Brandeis for the defendant in error is a very copious collection of all these matters, an epitome of which is found

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641 (1915). See also cases quoted in Mr. Brandeis' brief, published by the National Consumers' League in Mueller *v.* Oregon, 208 U. S. 412 (1908).

[1] Holden *v.* Hardy, 169 U. S. 395 (1898).

in the margin. . . . The legislation and opinions referred to in the margin may not be, technically speaking, authorities, and in them is little or no discussion of the constitutional question presented to us for determination, yet they are significant of a widespread belief that woman's physical structure, and the functions she performs in consequence thereof, justify special legislation restricting or qualifying the conditions under which she should be permitted to toil. . . . When a question of fact is debated and debatable, and the extent to which a special constitutional limitation goes is affected by the truth in respect to that fact, a widespread and long-continued belief concerning it is worthy of consideration. We take judicial cognizance of all matters of general knowledge.[1]

A supreme court may even squarely reverse itself when it finds that a former decision was made without full knowledge of the facts. We have quoted above the language of the New York court, in 1907, in the case of People *v.* Williams, in which the court, without the aid of official investigation, held that a law prohibiting night work for women was unconstitutional. Eight years later the same court overthrew its former decision, when the legislature had again enacted a similar law, this time, however, following the recommendations of the state factory investigating commission. The court justified itself as follows:[2]

It is urged that whatever might be our original views concerning this statute, our decision in People *v.* Williams . . . is an adjudication which ought to bind us to the conclusion that it is unconstitutional. While it may be that this argument is not without an apparent and superficial foundation and ought to be fairly met, I think that a full consideration of the Williams case and of the present one will show that they may be really and substantially differentiated, and that we should not be and are not committed by what was said and decided in the former to the view that the legislature had no power to adopt the present statute. . . . While theoretically we may have been able to take judicial notice of some of the facts and of some of the legislation now called to our attention as sustaining the belief and opinion that night work in factories is widely and substantially injurious to the health of women, actually very few of these facts were called to our attention, and the argument to uphold the law on that ground was brief and inconsequential.

Especially and necessarily was there lacking evidence of the extent to which, during the intervening years, the opinion and belief have spread and strengthened that such night work is injurious to women;

[1] Mueller *v.* Oregon, 208 U. S. 419 (1908).

[2] People *v.* Charles Schweinler Press, 214 N. Y. 395, 108 N. E. 643 (1915).

of the laws, as indicating such belief, since adopted by several of our own states and by large European countries and the report made to the legislature by its own agency, the factory investigating commission, based on investigation of actual conditions and study of scientific and medical opinion that night work by women in factories is generally injurious and ought to be prohibited.[1]

Not only have the courts changed their opinion as to actual conditions because of investigations, but as the investigations educated the public and created sentiment in favor of such legislation, courts have even indirectly reversed themselves on principles of law. The two Ritchie cases in Illinois offer an instance. In the first case (1895) one of the determining objections that the court raised was that "it is questionable whether it (the police power) can be exercised to prevent injury to the individual engaged in a particular calling."[2] In other words, the court ruled that legislation protecting the health of the public or society was a proper exercise of the police power, but that it was improper when aimed to protect individuals against themselves.[3] The court, in the second Ritchie case (1910), found it convenient to avoid reference to this principle and scrupulously omits that portion in quoting from the case. According to the second opinion the difference turned, not on principle, but on fact. The court said:

The second proposition upon which the cases differ is this: the act of 1893 provides for an eight-hour day in which women shall be permitted to work in mechanical establishments, or factories or laundries. Can it be said if the limitation upon the number of hours which women were permitted to work in the designated callings in the act of 1893 had been

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[1] See also McLean *v.* Arkansas, 211 U. S. 539 (1909), in which the court upholds a screen law on the basis of investigations made by a commission; and State *ex rel.* Yaple *v.* Creamer, 85 Ohio St. 349, 39 L. R. A. (N. S.) 694 (1912), where the court accepts the findings of a special investigating committee as conclusive "to sustain the exercise of the police power" in workmen's compensation legislation.

[2] Ritchie *v.* People, 155 Ill. 98, 40 N. E. 454 (1895).

[3] For a critical discussion of this principle see Freund, *Police Power*, p. 141; for an acceptable presentation see *In re* Morgan, 26 Col. 415 (1899); and *In re* Jacobs, 98 N. Y. 98 (1885). In Holden *v.* Hardy the United States Supreme Court repudiates this principle, holding that it is constitutional under the police power to enact legislation either to protect the public or to protect individuals against themselves or acts of others. See "Public Benefit," p. 24.

fixed at ten hours instead of eight hours the court would have held the act unconstitutional as an unreasonable exercise of the police power of the state or that the act would have been held obnoxious to the constitution as special or class legislation? We do not think it can be so said, as there is throughout the opinion a veiled suggestion which indicates that it was the opinion of the court that the limitation of the right to work longer than eight hours was an unreasonable limitation upon the right of contract.[1]

The principle that the police power cannot be exercised to protect individuals against themselves would overthrow a ten-hour law as well as an eight-hour law. But the fact that a ten-hour law is less restrictive than an eight-hour law causes the Illinois court to abandon the principle and to inquire into the facts. By a similar reliance on facts the Supreme Court of the United States holds that an eight-hour law is constitutional and reasonable.[2]

The foregoing illustrations have been cited, among many that might be given, on account of the peculiarly high position occupied by American courts through their power to veto legislation on the ground of unconstitutionality. Abundant criticism of the courts for exercising this power, and insistent demands for constitutional amendments abrogating the power, have been repeatedly made for more than a hundred years. Without pretending to enter upon a full discussion of these criticisms and demands, one thing is apparent: they disregard the great importance which the court ascribes to reliable and complete investigations of actual conditions. The foregoing illustrations, as well as others found in this book, indicate that criticism should be directed rather against legislatures and administrative authorities who enact and administer laws without reliable knowledge of the conditions with which they are dealing. The principles of the constitution and the interpretations by the Supreme Court are, on the whole, broad enough to admit labor legislation in so far as based on authenticated facts, and much broader than is necessary to admit legislation that is actually enforceable by the existing defective machinery of administration. For the present, at

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[1] Ritchie *v.* Wayman, 244 Ill. 509, 91 N. E. 695, at p. 700 (1910).

[2] Miller *v.* Wilson, 236 U. S. 373, 35 Sup. Ct. 342 (1915). See "Maximum Daily Hours, Women," p. 223.

any rate, it is not so much attacks on the courts that may be expected to bring progressive labor legislation as reliable investigation of actual conditions by competent administrative authorities whose work will command the respect, not only of courts, but of legislatures, of employers and employees, of the people at large. It is this gap in the American system of labor law that is sought to be filled by the so-called industrial commission.

4. The Industrial Commission

In all of the investigations above mentioned, even those carried on by the best qualified experts, there is lacking the important feature of *prima facie* evidence, or of evidence that is conclusive as to the facts in a trial in court. Those investigations were not conducted under the rules of evidence which the court relies upon, and it therefore treats them merely as common knowledge. Even the factory investigating commission of New York, although created by the legislature, did not make an investigation that, in the eyes of the law, had binding force upon the court. It indicates, however, the kind of investigations which are the next step in the administration of labor laws. This is the transformation of the bureaus of labor statistics into permanent "factory investigating" commissions, with the object, not only of furnishing information to the legislature and to the people, but also of furnishing conclusions or findings of fact which shall be *prima facie* evidence of the truth, or even conclusive and binding upon the court. This object is sought to be obtained through the powers granted to an industrial commission.[1]

(1) *Administrative Investigations*

One reason for the breakdown of administration is the failure to provide for that executive discretion which is as in-

[1] To what extent this object can be accomplished constitutionally is not here discussed. The court is itself both an investigating body and independent of the legislature. It can evidently refuse to be bound by a creature of the legislature. At the same time the ingenuity of bill-

evitable and necessary as legislative discretion. The American theory of separation of branches of government assigns to the legislature the investigation of conditions upon which its policy or principle is adopted and enacted into statute law. With the growing complexity of conditions the legislature has been compelled to go into the investigation of minute details, legislation on which, if applied to every establishment, would be unenforceable. Consequently the factory inspectors or special police are compelled to decide upon their own executive investigations whether or not they will enforce these details.

The situation is similar to the history of railroad regulation. In the early "Granger laws" of forty years ago it was attempted to enact a detailed actual schedule of each rate for every shipment on every road, and then it was left to the individual shipper to bring suit in the courts to enforce the schedule. The later legislatures of the past twenty years have omitted these technical details and have contented themselves with laying down general rules such as that all rates and services shall be reasonable as between the roads and the shippers. They have then created railroad, or public utility commissions, whose powers, in the light of the constitution, are neither legislative, executive nor judicial, but *investigational.*

The problem which the legislature sets to these commissions for investigation is that of *reasonable* rates and services in each particular case where the question arises. The *principles* which enter into reasonableness are being continually laid down by the courts in long lines of decisions. Consequently the commission needs no power of discretion. It must follow the law—that is, the principles. It only investigates and ascertains the *facts* which those principles call for. The legislature meanwhile has enacted that, *when* these facts are ascertained and published, *then* the law shall go into effect. The *fact* is the rate or service which has been ascertained by the investigations of the commission to be reasonable. It is announced and published as a finding of fact, a "rule," or "regulation," or "order," not a statute, but having the force

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drafters has worked out methods of procedure which go far toward accomplishing the object. These are considered below.

of a statute. This is the finding or conclusion of the commission's investigations. It is *prima facie* valid in court and cannot be overthrown except by overwhelming evidence to the contrary.

Labor legislation has now reached an even more voluminous and technical stage than that which applies to railroad regulation. The legislature cannot possibly consider all the facts and details. Yet the legislature alone should determine the policies and the standards, and should go only into such details as have general application. The "industrial commission" corresponds to the public utility or railroad commission. The latter passes upon the opposing interests of corporations and consumers or shippers, epitomized in the price bargain. The former passes upon the interests of employer and employee, epitomized in the wage bargain. Such a commission investigates the facts and works out the details which the legislature cannot pass upon.

Various states have begun experiments in this direction. The problem is much more diversified than that of establishing reasonable rates and services. "Reasonableness" in railroad regulation has a comparatively definite meaning. But reasonableness in labor legislation is as complicated as human life and modern industry. A reasonable standard in one field has no meaning in another. There are health, safety, and welfare, for example, which require a variety of standards. There is the minimum wage for women and minors which requires several standards. There are hours of labor, days and periods of rest, age and sex of workers, with varying standards. There are private employment offices, workmen's compensation for accidents, and many other matters.

To meet these varying needs, and to set these different standards, the states have established special commissions. Ten states have minimum wage commissions, to determine by investigation the living wage that is necessary for women and minors. Twenty-two states have workmen's compensation commissions, to determine, under the rules laid down by the legislature, just how much is the loss of wages for which the employer shall make compensation.

Usually this new class of commission has been created in

addition to the existing department of labor and statistics. The existing departments continue to follow their old line of executive procedure, and consequently the states have an unnecessary number of bureaus and departments, all dealing with labor law by different methods, and often overlapping and conflicting. Thus the state of Illinois, as shown in the chart on page 435, has nine independent agencies dealing with labor. In the federal government at Washington, besides the Department of Labor and its bureaus of Labor Statistics, Immigration, and the Children's Bureau, there are the Public Health Service of the Treasury Department, the Bureau of Mines of the Interior Department, the Bureau of Standards of the Commerce Department, the Interstate Commerce Commission, and the Board of Mediation and Conciliation, all of them dealing directly with problems of labor.

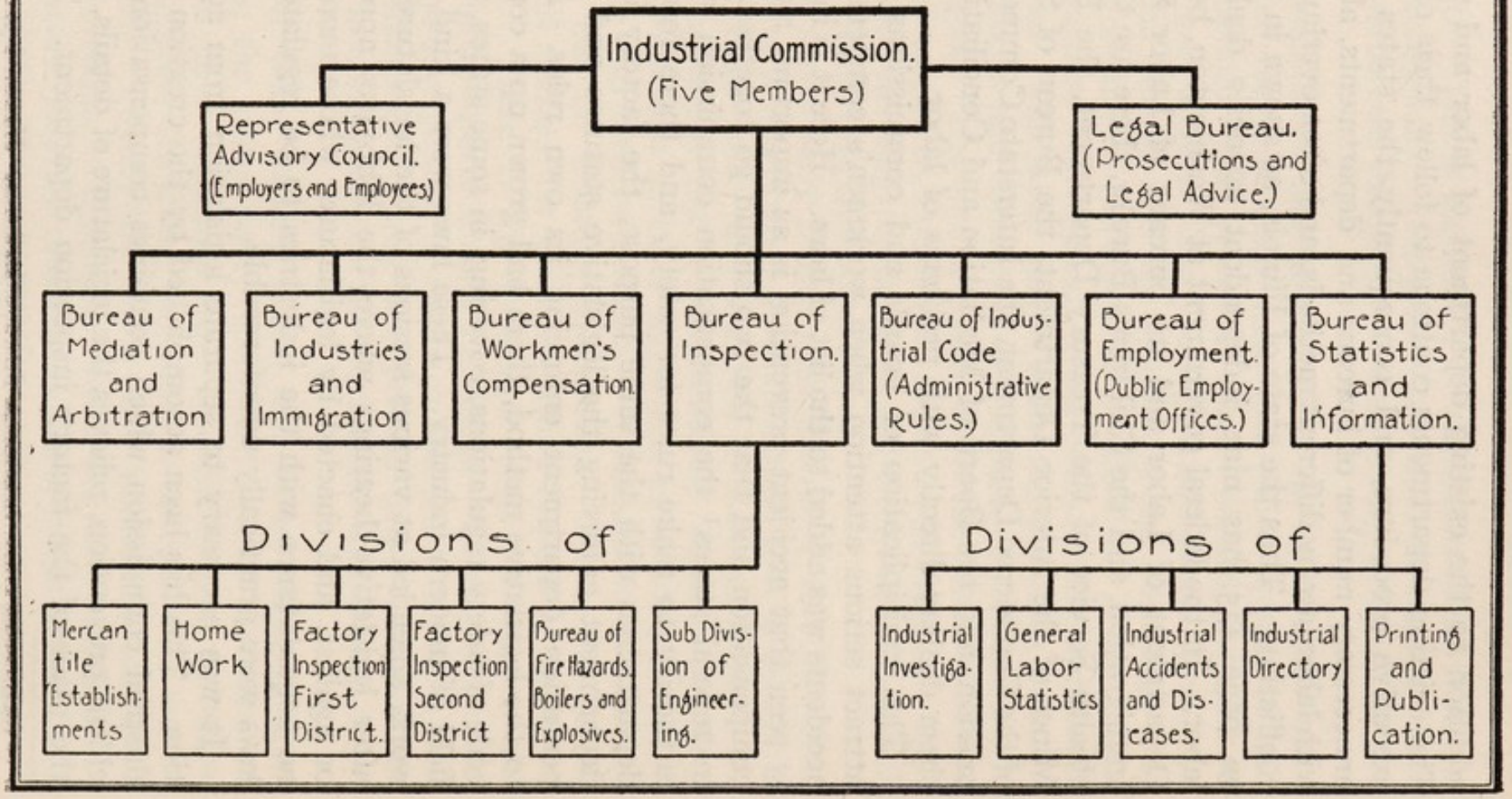
This multiplication of boards and commissions began to attract serious attention when workmen's compensation for accidents was added to the list of laws. Here it is immediately seen that accident prevention is as important as accident compensation and that the two should go together. Hence, in several states[1] the compensation commission was given authority to make rules for safety, and there resulted two departments with the same purpose, the factory inspection department enforcing the legislative statutes and the compensation department enforcing its own rules. According to the legislative method, there had grown up a complicated code of safety regulations, covering, in some states, the entire field of modern industry. These laws were a kind of patchwork, amended at various sessions of the legislature, adopted after legislative hearings where the lobbyists appeared for or against, and enacted by legislatures whose members had no acquaintance with the industries to be regulated. Such laws were practically unenforceable.

It was necessary to separate legislation from administration. This has been accomplished by the creation of the industrial commission which combines compensation with accident prevention, relieves the legislature of details, and takes the place of the factory inspection department. The legis-

[1] California, Connecticut, Iowa, Indiana, Kentucky, Maryland, Massachusetts, Nevada, New York, Washington.

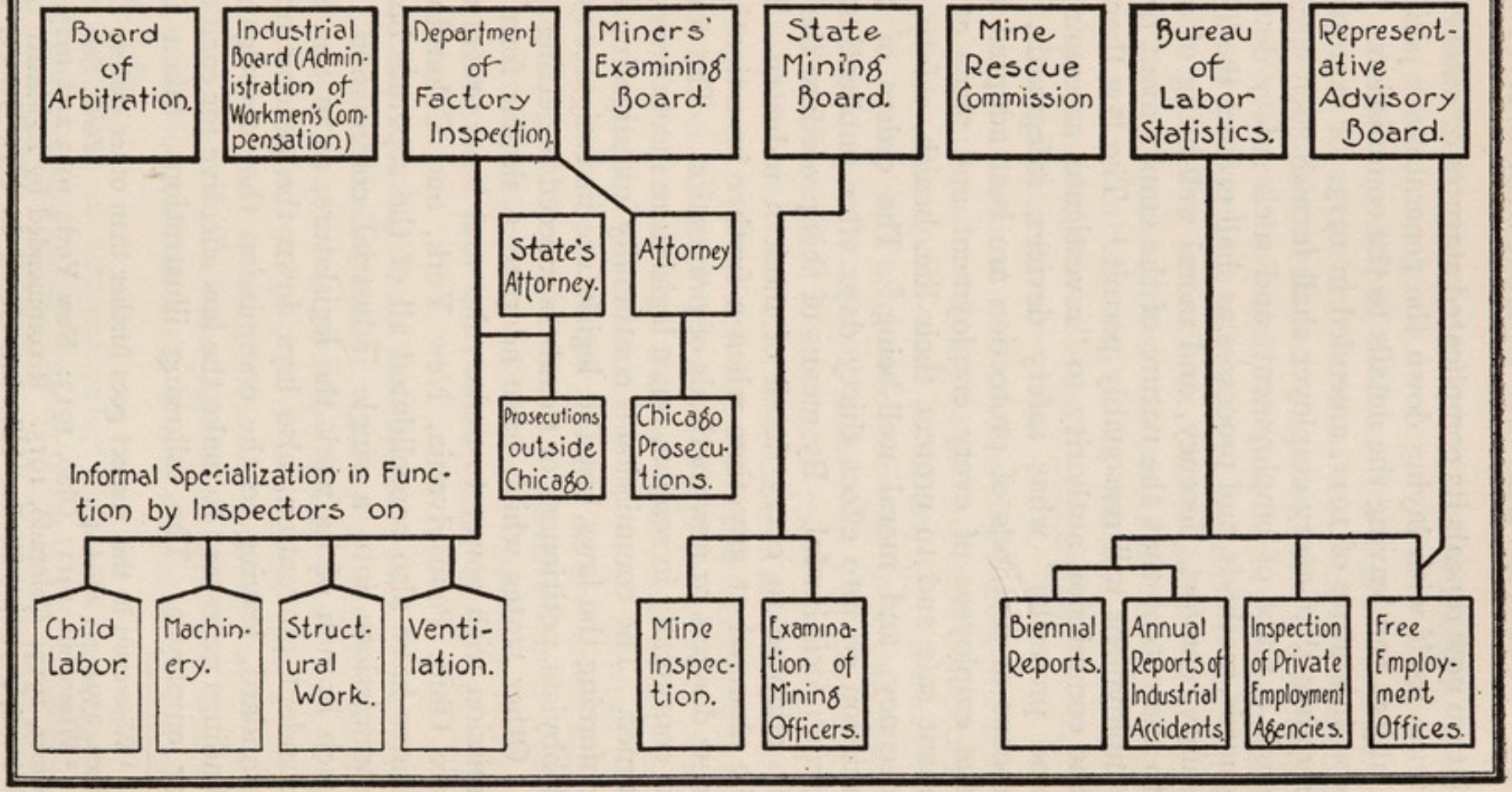
I. UNIFIED ADMINISTRATION.

Department of Labor, New York, 1915



II. DECENTRALIZED ADMINISTRATION.

Similar Functions, Illinois, 1915.



lature now repeals its complicated statutes on safety, and contents itself with laying down the general state policy on the subject and leaving the details to the commission. The Wisconsin statute of 1911, amended in 1913, for example, merely requires that every employer shall furnish such employment, such a place of employment, and such safety devices, safeguards, methods, and processes, as shall protect the life, health, safety, comfort, decency, and moral well-being of employees to the extent that the nature of the employment or place of employment will reasonably permit.[1] The law then gives to the commission authority to "investigate, ascertain, declare, and prescribe" what safety devices, safeguards, or other means or methods of protection are best adapted to render the employees of every employment and place of employment safe and to protect their life, health, safety, comfort, decency, and moral well-being.[2] The orders of the commission go into effect thirty days after publication and are *prima facie* lawful. By means of this procedure the laws can be adapted to every detail of modern industry. They can be changed at any time when a further investigation shows new dangers or new methods of prevention. The commission is continually in session, but a legislature meets only at stated times. The commission is continually investigating while it is enforcing the laws, but the legislature investigates only when lobbyists, petitioners, or members succeed in getting a hearing.

Other states which have adopted a similar form of commission with power to make rules and issue orders on safety are Ohio, Pennsylvania, New York, and Colorado. These states have also consolidated all of the separate boards and commissions into a single industrial commission,[3] and for each branch of its work the legislature, as in the branch of accident prevention, also lays down the general policy and standard, leaving to the commission the investigations and findings necessary to make the law effective for each employer or employee. The following illustrations, taken from the

[1] Wisconsin in this respect goes further than other states; Laws 1913, Secs. 2394–41, 2394–48.

[2] *Ibid.*, Sec. 2394–52.

[3] Wisconsin, 1911; Ohio, 1913; New York, 1913 and 1915; Pennsylvania, 1913; Colorado, 1915. Recommended by legislative committee, Missouri, 1914. Similar bills introduced in New Jersey, Maryland, Illinois.

laws of Wisconsin, are more or less typical of laws in other states:

For compensation in case of accident the legislative standard may require "reasonable" medical and surgical care, 65 per cent. of the average weekly earnings lost during disability, and so on, to be determined and awarded by the commission.

For private employment offices the legislative standard may prohibit misleading statements, discriminatory fees, and the like, and then give the commission power to "fix and order such reasonable rules of conduct of the business of any employment agent as may be necessary adequately to carry out" the sections of the law.

For the wages of women and minors the legislature may require employers to pay a "living wage," or such compensation "whether by time, piece-work or otherwise," as shall be "sufficient to enable the employee receiving it to maintain himself or herself under conditions consistent with his or her welfare." The commission, then, must carry on extensive investigations, must make various classifications and determine for each the amount of the wage that the legislature intended.

For the hours of labor for women the legislature may prohibit the employment of any female "for such period or periods of time during any day, night, or week, as shall be dangerous or prejudicial to the life, health, safety, or welfare of such female," and then authorize the commission to "investigate, ascertain, determine, and fix such reasonable classification" and such periods of time as shall carry out the purposes of the law.

For dangerous employments the legislature may provide that "no employer shall employ, require, permit, or suffer any minor or any female to work in any place of employment, or at any employment, dangerous or prejudicial to the life, health, safety, or welfare of such minor or female," and then authorize the commission to investigate, classify, and determine the specific occupations from which women and minors shall be excluded.

For the regulation of apprenticeship the legislature may require an indenture stipulating the hours for work, the hours for attendance at school, the compensation, etc., and authorize the commission to draft, approve, and enforce the same.

For industrial and vocational education, the legislature may require employers to permit children to attend continuation schools a certain number of hours each week in the daytime, without deduction of pay, and then authorize the commission to issue and revoke permits to work based on investigations showing what is necessary to secure compliance with the law.

The foregoing illustrations show the distinction between a legislative policy which sets up a standard, and an administrative investigation which applies the standard to each case or each class of cases. The principles of standardization have two aspects, which may be designated as *diversity* and *generality*. There is a wide diversity of standards, simply because there is a wide diversity in the subject-matter of legislation, all the way from safety and health to wages and education. Diversity requires specialization on the part of investigators, and consequently the staff of a commission requires physicians and hygienists for some of the standards, accountants and actuaries for others, engineers and mechanics, economists and statisticians, business men and workingmen, according to the peculiarities of each subject and the special or general knowledge required.

Much more difficult and debatable is the question of generality of the standards. The most general standard is "reasonableness." Reasonableness, in law, means simply that *all of the facts* must be investigated and *due weight* must be given to each. If the legislature merely required that wages or hours should be "reasonable," then the commission would have almost as wide discretion as the legislature itself. If, at the other extreme, the legislature prescribes minute details for every act of the commission, then the investigations are reduced to those executive investigations already described as the means of securing evidence of violations for prosecution. Between these two extremes of generality and particularization there is room for wide differences of opinion and policy. In some subjects the legislative standards must necessarily be much more general than in others. A "living wage" can scarcely be ascertained as precisely as the age of a child. The number of hours of continuous work that are injurious to the health of women cannot be as accurately de-

termined as the dangerous character of a set screw or a buzz-saw. Only this is to be noticed: If the legislature goes too far in specifying details of each standard it forces widely different factories, shops, ages, conditions, into the same mold, and assumes to have an intricate knowledge of conditions and a foresight of changing conditions which its brief and crowded sessions do not permit. Consequently, the law is unenforceable. On the other hand, the commission is continuously in session. It is not hurried. It can adopt a general rule or can go into the details as far as it has information. It has its staff of investigators and inspectors who are continually furnishing new information, and it can change its rules as needed. It has its representatives of employers and employees who testify to the actual conditions that need remedying and the actual workings of the rules already adopted. It can make classifications and issue different rules for different conditions, and can change its rules when the conditions change or when it discovers new and more effective remedies.

The principal value and importance of administrative investigations is their conclusiveness. No matter how indefinite or general is the legislative standard, it must be reduced to a definite rule upon which prosecutions and penalties can be based. A decision must be reached and enforced. We have seen that the investigations of private associations, of experts, of attorneys on either side of a case, or even of legislative committees and temporary commissions, are not conclusive. If the court accepts these investigations it does so as facts of "common knowledge" of which the judge takes "judicial notice" without proof. And, in so doing, every reasonable doubt is resolved against them and in favor of the alleged violator. To be conclusive, an investigation must be clinched by proof, and the procedure by which this is accomplished is prescribed by the courts in their decisions on due process of law. An administrative investigation must usually follow this procedure: First, the inspectors and investigators assemble their facts. The commission then draws its tentative conclusions and gives notice officially of a public hearing for all persons whose interests will be affected by the rule. Opportunity to be heard is essential to due process of law. After the public hearing the commission drafts

its rules in final form, and, when they are officially published, they go into effect on such date as the legislature has previously designated. But, even with this procedure, the rules and orders of the commission are not legally conclusive and binding on the court. If an employer violates them and then attacks them in court, he does so on the ground that they are unreasonable in some respect, such as class legislation or discrimination, instead of reasonable classification. If they are unreasonable, then they are unconstitutional. The court may decide to reinvestigate the facts on its own account. It is an independent branch of government and cannot be deprived of its powers by the legislature. But the legislature may prescribe the court's procedure and may give to the rules of the commission, when based on full investigation, a preferential position as proof. It makes them *prima facie* lawful, valid, and reasonable, so that the burden of proof is on the employer to prove affirmatively that they are unreasonable. It may require the court to send the case back to the commission for reinvestigation if the employer attempts to bring to the court any evidence that he had withheld from the commission. The commission may then, if it so decides, change its orders to cover the omitted facts. In these and various other ways suggested by the ingenuity of bill-drafters, the investigations, findings, and orders of administrative commissions are given, not actually binding and conclusive weight on the courts, but such a high degree of conclusiveness that for ordinary, practical purposes they are final.[1]

In this respect, administrative investigations are a necessary aid to the court and serve to place in evidence the industrial facts which otherwise would not receive due weight. The court is intrusted with the final authority to apply the principles of justice and the constitution to the acts of legislatures and administrative commissions. It decides whether or not the act accomplishes a public purpose and affords equal protection of the laws. These are questions of fact in each particular case. A question of fact resolves itself into a question

[1] For different methods of securing different degrees of conclusiveness, consult the minimum wage laws of various states, the industrial commission laws already referred to and the laws creating state public utility commissions, the Interstate Commerce Commission and the Federal Trade Commission. See also "Penalties and Prosecutions," p. 454.

of classification. Does the particular act apply to some people and not to others who are similar? Or, does it enforce the same arbitrary rule on a variety of persons who are not really similar? If so, it is discriminatory and unequal in that it is based on a false classification. Does the act benefit a class of people who do not need the aid of the police power and whose private benefit is not a public benefit? Does the act impose burdens on some that are so far in excess of the benefits to others that they are unreasonable?[1] These are some of the questions of classification asked by the courts, and, evidently, they require accurate investigation and well-established facts in order to avoid the charge of false classification. Speaking of the need of administrative investigations that shall approach the standard of conclusiveness in establishing the facts for classification, Professor Ernst Freund has recently said:[2]

> The equal protection clause of the fourteenth amendment will, of course, be thought of at once as a possible weapon of defense against unwarranted class legislation. However, a study of the operation of this clause in the past must produce considerable skepticism as to its availability in the future. There are some states in which it plays a considerable part in the judicial overthrow of statutes, and Illinois is conspicuous in this respect. In that state, however, the application of the rule of non-discrimination has been so capricious that the impossibility of foretelling what kind of classification for purposes of welfare legislation will stand the test of judicial scrutiny has become a notorious grievance. The Supreme Court of the United States, on the other hand, having applied the rule in one case (that of the antitrust act of Illinois, Connolly *v.* Union Sewer Pipe Co., 184 U. S. 540, 46 L. ed. 679, 22 Sup. Ct. 431) with surprising strictness, has since practically taken the position that a legislative classification will be sustained if there is any reasonable possibility of its justification, and in the last ten years no measure has been declared invalid by reason of undue partiality or discrimination. No jurisdiction has developed any constructive theory of classification which might serve for guidance or protection.
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> The reason for this failure is tolerably clear. The legitimacy or illegitimacy of classification can be established only on the basis of social

[1] In passing upon the law prohibiting night work for women, the New York court said: "The only chance for debate would be whether the prohibition is so wide and so universal that it can be said it is so out of proportion to the benefits sought that it is burdensome and unreasonable to a degree which transcends the discretion of the legislature." People *v.* Charles Schweinler Press, 214 N. Y. 395, 108 N. E. 642 (1915).

[2] "Problems of the Police Power," *Case and Comment*, Vol. XX, 1913, p. 303.

or economic data of great complexity. It presents a question of fact for the examination of which the courts are not equipped. It is always a condition as well as a theory which underlies public welfare legislation; and while the courts can deal adequately with the theory, the condition must elude them unless it is notorious, and at present the causes of social or economic grievances are rarely notorious.

Conceivably this defect of judicial action might be overcome by new powers or facilities for independent inquiry placed at the disposal of the courts; but it is not likely that these will be resorted to if experience shows that the same function can be better performed by other organs. And the remedy appears to be coming from another direction. In an increasing number of cases important legislation is being prepared by commissions of inquiry composed of experts and having adequate resources for investigation at their command. The conclusions of such a commission will carry weight which unfortunately has long ceased to attach to the mere fact of the enactment of a statute. The courts may of course still reject an act thus recommended; but the case of the workmen's compensation law of New York shows not merely with what unfeigned respect the work of such a commission will be commented on by a court, but also that public opinion will not be inclined to treat a decision adverse to its conclusions as final. A proper development of scientific methods of legislation will reduce the conflict between legislation and adjudication to a minimum.

A similar result may be expected from the growing legislative practice of delegating in appropriate cases powers of quasi-legislative or quasi-judicial determination to administrative commissions. It is now generally conceded that no other form of railroad control is adequate or satisfactory, and the superseding of the Massachusetts advisory railroad commission—for many years the model of its type—by the mandatory commission act of the present year, marks the final victory of this phase of railroad legislation. Again, the establishment of an industrial board in New York, likewise in the present year, and in pursuance of the recommendations of a notable commission, marks the adhesion of the leading state of the union to a similar method of labor legislation, first introduced in Wisconsin. And it is noteworthy that of the minimum wage laws enacted during the year only one does not pursue the commission plan.

In proper hands and under proper safeguards the system of leaving to an administrative commission the development of principles laid down by the legislature in broad terms carries with it guaranties of reasonableness and impartiality which a political body can never afford. The system is based upon the theory that when once an agreement has been reached regarding the principle of a measure, the development of that principle into detailed rules is a process determined by the logic of ascertained facts. It thus represents a separation of that which is matter of choice, or expediency, *viz.*, the adoption of a policy, from that which is matter of argument and judgment; namely, the application of the policy to particular circumstances. Viewed in this light the delegation constitutes

not a violation, but a more perfect development of the principle of the separation of powers, and this should be borne in mind when the system is attacked as an unconstitutional delegation of the legislative power.[1] In any event some such method of dealing with complex social and economic problems seems an almost indispensable corrective of the possible abuse of a police power extending to every interest that can be reached or affected by governmental action.

(2) *Representation of Interests*

From what precedes it will be seen that the highest place in the American scheme of constitutional government is that occupied by investigation. But the investigations required are not merely those of experts, as seems often to be assumed when the term "scientific" legislation is used. The investigations of experts, such as physicians, engineers, economists, statisticians, and lawyers, are likely to end in conclusions that may be ideally perfect from a technical point of view, but not *reasonable* from the constitutional point of view. They do not include *all* of the facts. The latter can be ascertained only through adding the experience and testimony of employers and employees—those who are daily in contact with the facts, and whose common knowledge corrects the narrow knowledge of specialists. The public hearings required by due process of law are the legal and constituted devices contrived to make sure that all sides will be heard. But these public hearings are formal, disputatious, indiscriminate, and indecisive. They do not offer the common man an equal opportunity with the lawyer or expert to get his common experience written into the conclusions. The commission is not bound in any direct way by what was offered at the public hearing. The latter becomes a formality and a mere technical compliance with the constitutional requirement of "due process." The officials withdraw and formulate their own rules as they please.

This is the essence of bureaucracy. It is often charged

[1] The laws which were invalidated by the decisions cited in "One Day of Rest in Seven," p. 255, and "Lighting, Heating, and Ventilation," p. 333 were not of this class. They made no provision for investigation and ascertaining of facts, but merely stated that certain action might be taken by the commissioner of labor "in his discretion" or if "it appears" to him that certain results could be obtained.

that the efficient methods of administration employed in leading European countries are not adapted to American democracy because they are "bureaucratic." But American officials, as a rule, are more truly bureaucratic than those of Europe. It is not rotation in office that cures bureaucracy. The most democratic of Americans become bureaucrats as soon as installed in office. Bureaucracy is just the ordinary human instinct for exclusive possession of power. Its essence consists in imposing its will upon others without really consulting them. Whether the office-holder is an expert, a democrat, or a politician, makes little difference. It seems easier to reach a decision in one's mind and then to force others to obey than to submit to the criticism or to profit by the advice of those who are not officials.

The situation is different in a legislature where each member is compelled to listen to his opponents as well as his partisans, and to modify his individual opinion in order to get a majority opinion. A similar arrangement is called for in the administration of labor law. Here the conflict of interest is often more intense than it is in a legislature, rising at times to the pitch of incipient civil war. It is not surprising, therefore, that, in many states and countries, the officials who administer labor law are required to submit their investigations and proposals, before action, to the representatives of employers and employees. These representatives owe allegiance, not to the government officials, but to the interests which select them. Wherever these interests are organized into employers' associations and trade unions, there the representatives may be elected or designated and recalled in some way by the organizations. In some cases these representatives have an actual veto on the proposals of the officials; in others they are more or less advisory, but entitled to participate in the official deliberations. In France, Belgium, Italy, Germany, and Austria a large part of the labor law is administered in this way. There may be a national superior council of labor, as in Belgium, France, Switzerland, Italy, Norway, and other countries, nominated in such a way as to represent employers, unions, and the general public. Then there are inferior councils in districts or cities. These councils take part in drafting legislation,

formulating decrees and administrative rules, conducting investigations, and supervising the collection of statistics on all subjects connected with labor. The administration of free employment offices is more and more conducted by joint committees of employers and employees, going so far in Denmark as to include the joint selection of subordinate officials. The Industrial Council of Great Britain is a large representative body of employers and trade unionists selected to assist the board of trade in matters of mediation and conciliation. The industrial courts of France, Germany, and other countries, composed of employers and employees, take the place of ordinary minor courts of law in disputes, whether individual or collective, growing out of wage bargains. In Germany and Austria the administration of social insurance is entrusted in various ways to organizations of employers and employees. A complete list of these arrangements, adopted during the past twenty years, would show that every branch of labor legislation is coming to be administered on the principle of representation of interests.

In American states the substitution of administrative rules for legislative details makes it possible to adopt similar representation of interests. If the legislature lays down the general rule that every place of employment shall be made "safe" it naturally follows that those who can best pass upon the safety devices and processes, as to whether they are *practical*, in addition to being *scientific*, are the employers and employees who must install and use them. In the four or five states which have adopted the principle of administrative investigations these joint committees actually draw up the rules for safety and health, assisted by the staff of the commission and the various classes of experts who may be called in. In Wisconsin, for example, there is a general committee named by the Merchants' and Manufacturers' Association and the state Federation of Labor. Under this general committee are subcommittees on boiler rules, elevator rules, shop lighting, ventilation, wood working, and other specialties. These committees visit the factories, try out all devices by extensive tests, and, when they have finally agreed upon a recommendation, it is adopted by the commission and issued as an order without change.

Thus there are two kinds of publicity, the public hearing usually required by the formalities of due process of law, and the *representative publicity* participated in by the chosen agents of the interests. The latter is the more effective, because it is carried on with experiments and tests, over a period of time, by those whose personal interests and knowledge are keen. It is a process of cooperative investigation. And when an investigation of this kind is completed it fulfils all the constitutional requirements of "reasonableness." It includes all of the facts, because it is conducted by those whose interests are opposite on some points and common in others. It gives "due weight" to the interests of employer and employee, and thus conforms to the "equal protection of the laws." Furthermore, a rule thus agreed upon has the backing of the representative employers of the state, and their approval carries such weight in court that other employers, who would ordinarily violate the laws enacted by a legislature, do not violate the administrative rules approved in joint conference.

What is true of safety is also true in a greater or less degree of all branches of labor legislation where administrative rules can be substituted for legislative statutes. As we have seen, this is possible in minimum wage laws, hours of labor, excluded employments, public and private employment offices, and workmen's compensation. In some of these branches the opposition of interests is less reconcilable than it is in others, and there the commission itself must exercise greater authority. For the representative committees are, after all, only advisory. They have no legal power, no veto, on the commission. The rules and orders that carry penalties are the commission's rules and orders, and not those of the representatives. But, while the committees are advisory, the legislature may make it mandatory upon the commission to consult them. In view of the fact that the bureaucratic impulses of officials stand in the way of such consultation where it is optional, this mandatory provision is neccssary. The industrial commission law of New York, enacted in 1915, has taken this further step in the recognition of representatives. It requires the commission to submit its proposals and investigations to an "industrial council" of representative employers and employees, for their advice. Minimum wage laws are similar and require investi-

gation by wage boards composed of employers and employees of the district.

The economic principle underlying this representation of interests is the well-known fact that competition tends to drag down all employers to the level of the worst. But labor legislation is designed to bring the worst employers up to the level of the best. Yet it cannot be expected that legislation will ever be able fully to accomplish this. Individuals here, as elsewhere, will always be ahead of what the state can do. With each rise in the level of standards required by the legislature, individual employers will be free to rise still higher. Here is exactly where the field of administration lies. An industrial commission, with representation of interests, can do what the legislature cannot do. If it is given leeway in drafting rules and regulations, it can call upon the more advanced employers and the representatives of labor to assist in setting higher standards, and it can then enforce these standards on the more backward ones. It can bring out the divisions that already exist among employers, and, instead of permitting the worst to set the standards for the best, it can assist the best in setting standards for the worst. The legislative method treats all employers alike as criminals, and forces all to combine and to support the same lobbyists, in order to resist what they consider destructive laws. The administrative method permits the leading representatives of employers to consult with the representatives of labor and with the commissioners who represent the state, regarding all of the details necessary to carry the law into effect and to adjust it to all conditions. The method is practically that of the voluntary joint conference of collective bargaining in which a trade agreement between an employers' association and a union is drawn up. Neither the union, the employer, nor the politician dominates. The decisions are not hastily adopted by a majority vote, but are given sufficient consideration, accompanied by thorough investigation and complete publicity. The process is educational and cooperative, rather than argumentative and coercive. It is not the struggle of two lobbies to win over a committee or a legislature, but it is a substitute for the lobbies, sitting in continuous conference, under state supervision, working out the rules and regulations which

give effect to the legislature's standards of industrial welfare.

This representation of organized interests in the administration of law is peculiarly fitted to bridge the gaps caused by our constitutional separation of the branches of government. In other parliamentary countries the heads of executive departments, such as cabinet officers and ministers of labor, are also members of the legislature. Any member of the legislature, or the opposition parties in the legislature, can call them to account, on the floor of the house and before the audience of the people, for their methods of administration. A hostile vote can dismiss them from office. Thus their acts are scrutinized and their responsibility is enforced.

But in the American system the "minister of labor" is the "commissioner of labor," the "state factory inspector," or the "Secretary of Labor." In theory he is responsible, but in practice the machinery is lacking to enforce responsibility. Those who are most concerned in holding him responsible are, not "the public" at large, but the employers and employees who must obey the laws which he enforces. At the same time they have no voice, no *representation*, that is theirs as a matter of right and law. They can only exert themselves through the devious ways of "politics" and lobbyists.

For this reason, in American states and the federal government, it has been necessary to create "commissions," where in foreign countries the same duties would be entrusted to political departments. The Interstate Commerce Commission, the Federal Trade Commission, the Federal Reserve Board, the public utility commissions of the states, are fourth branches of government, separated from the other branches and performing duties which in other countries are under a cabinet officer, such as the chancellor of the exchequer, or the minister of commerce and industry, who has a seat in parliament. A leading object, in all of these American cases, is to take the question "out of politics"—that is, out of the partisan contests that go on in the legislature. This would probably not be necessary if the chief executive officer having them in charge were a member of the legislature, as in parliamentary countries, liable to be dismissed if he and his colleagues fail to get a majority vote in the legislature.

The situation is even more serious in dealing with labor legislation. Here, the conflict of classes is more menacing to peace than it is in matters of railroads, trusts, and banks. The labor question, of course, cannot and should not be taken out of the legislature. It is always a question of politics—that is, of public policy—as to what shall be the standards and what laws shall be enacted. But the industrial commission takes out of the legislature the intricate details of investigation, after the standards have been enacted into law. And, most important of all, it permits the creation of an inferior industrial legislature, composed of the real representatives and leaders of both interests, continually in session under state supervision, and working upon those details of administration, which, after all, are the actual substance of such legislation as is enforced.

Of course, various problems arise in the constitution of these representative councils. One is the representation of unorganized workers. As yet, no device has been discovered by which they can be directly represented. It may be said, perhaps, that they are partly represented by employers who need them to offset the unions, partly by the unions, many of whose demands would benefit both organized and unorganized labor, and partly by the commission which represents the public.

Another problem is the compensation and expenses of the representatives. If they are compensated by the state their allegiance to their organizations is weakened. One of the disasters of trade unionism is the ambition of its own members for political jobs and salaries. To be truly representative, the representative must depend on his organization for his compensation and expenses. It follows, in the case of unions, if the state does not pay salaries or expenses, that the individuals named on the representative councils are usually the salaried officials and business agents of the union. These are their representatives already chosen for the purpose of dealing with employers, and it is but a short step from dealing with employers in private bargains to dealing with them on governmental bodies. In all cases it is found by experience that the representatives on either side should not be lawyers. The object is not to win a case in court, but to reach an agreement by conference. Neither should the employers' repre-

sentatives come from the financial or commercial side of the business. They should be the men in charge of production, who have grown up in the industry and know the labor conditions. The amount of time required is not so great as to prevent attendance. The investigations are made by a staff continuously employed and are then laid before the representatives, and their familiarity with the business enables them immediately to pick out the weak spots. These are referred back for further investigation, so that the various brief meetings of the representative council are enough to accomplish the purpose. Such investigations are not hastily made, as they are in the case of legislatures in session. The conferences are not required to act within a limited time, and if they cannot cover the whole ground they cover a part of it and wait for future investigations to make the necessary amendments. The representatives do not need to be officials with governmental powers to enter factories, but they must have a staff in which they have confidence. This is the problem of civil service.

(3) *Civil Service*

We have already seen how the administration of labor laws has required the building up of a special police. This was an advance over the enforcement of law by general officers, but it brought many difficulties. It created salaried positions, which political parties seized upon for political purposes, and a mere ostensible enforcement of the law. Even more serious than party politics was the struggle of employers and employees to get control of these offices. The trade unions claimed the right of appointment, because largely through their efforts the positions had been created, and because they considered that the laws would not be enforced except by friendly inspectors. The result has been that, in many states, the unions themselves have been split by internal politics over the personal candidacies of their members for the positions. The unions also have been compelled to make alliances or compromises with the political parties, and thus has resulted the "labor politician"—selected, not to enforce the law effectively, but to get the "labor vote." On the other

hand, the employers also make their political alliances, and then the selection of factory inspectors is often designedly made to prevent the enforcement of the laws. Thus both political and industrial partisanship have joined, either to defeat altogether the factory laws through hostile inspectors, or to make them ineffective through political trade union inspectors.

The next step is the effort, made in a few states and by the federal government, to adopt civil service examinations, tenure of office on good behavior and promotion in the service, as a substitute for political appointments. These civil service laws, beginning in the decade of the 'eighties, were designed primarily to prevent the use of public offices as a part of the political "machine." Indirectly they have secured greater efficiency, in so far as they have been able to prevent officials from being changed at each change in the elections. But it has required several years for the more experienced civil service commissions to reach the point where they could learn to conduct examinations directly for efficiency and for the peculiar fitness of the applicant for the particular position. This point has not even yet been reached in the case of applicants who may be called upon to enforce the labor laws. Here industrial antagonism must be recognized, just as political antagonism has been recognized and provided against. Factory inspectors, who do not have the confidence of both employers and employees, either as to their practical knowledge or their impartiality, are as inefficient for their positions as those who are avowed politicians. And this distrust of civil service appointees by both manufacturers and workmen is so general and deep that it is almost as difficult to get their approval of "civil service reform" as it is to get the approval of the politicians. Just as civil service reform is designed to secure officials who are non-partisan as respects political antagonism, so it should secure factory inspectors who are impartial as respects industrial antagonism. It is in the legislatures and Congress that organized labor and organized capital should fight out their legal battles. There it is proper that each side should have its lobbies and its recognized leaders, and should carry its fight "to a finish." It is there that public policy is determined and that opinions, partisanship, and prejudice have full play in working out that legislative

discretion which constitutes public policy. But when the law is once enacted the battle should cease, and the officials selected to enforce the law should enforce it efficiently, exactly as it stands, in harmony with its policy, and yet impartially as between the two interests. This is the present problem of "civil service reform" as respects labor legislation. Labor law cannot be enforced if either employers or trade unionists distrust the officials, on account of either their incompetency, their politics, or their partiality. Even in states having civil service commissions this distrust continues to exist. This is partly due to the bureaucratic exclusiveness of the commissions themselves. An essential thing in their method of administration is that they should admit the recognized leaders of employers and unions to a share in conducting the examinations. This is partly provided for in the industrial commission law of New York, which makes the representative council of employers and employees the assistants to the civil service commission for the examination of applicants. It is provided for in the free employment offices of Wisconsin and of Denmark, where the employment officials are selected by the joint committees of employers and employees.

It has been implied above that the inspectors under an industrial commission become investigators as well as police. They cooperate with the employers and workmen in drafting the rules. Their work consists more of instructing employers and workmen in the devices and processes of safety, sanitation, and welfare than in mere prosecutions. But they can occupy this enviable position only to the extent that they are skilful, efficient, and impartial. "Politics" is fatal. As soon as organized employers and employees have become accustomed to cooperate in the administration they tend to exclude the politician, because he drives capital and labor apart instead of bringing them together.

(4) *Bill Drafting*

The history of labor legislation is the history of an art as highly technical and expert as that of engineering science or that of an inventor in electricity or chemistry. Like other

arts, it is a history of trial, experiment, failure, until something workable is produced. In early days an inventor might be merely an ingenious mechanic. Now he is frequently a scientist, with a staff of assistants, supported and financed by large expenditures of money. Great private corporations keep ahead of competition by means of their laboratories, scientists, investigators, inventors. When the government takes up invention, as it has done in agriculture, it supports costly experiment stations and sets scientists and inventors to work.

Yet in the equally technical field of legislation the drafting of bills remains largely in the stage of the mechanic. There are two very distinct divisions in the process of legislation. One is the discussion of policy, the other the framing of bills that give effect to policy. The former is the division belonging to the legislature, drawn from the ranks of the people. The latter is the technical work of experts. In a private corporation the line of demarcation corresponds to that between the board of directors and the engineers, architects, or lawyers. In lawmaking it corresponds to that between the legislature and an administrative commission. The latter is conducting experiments in a great laboratory. The enforcement of law is, in fact, a series of experiments and tests upon the actual workings of the law. The commission's investigations reveal the gaps and defects. When the legislature meets, these tests and investigations furnish the technical information for amendments. The commission, indeed, when it drafts its own rules and orders, is doing the same kind of technical work as when it assists the legislature in drafting its bills.

But administrative commissions are like the courts in that they follow precedents, and are conservative in that they do not willingly take up new things. Their administrative problems are sufficiently great, so that they will not of their own volition initiate and push new lines of public policy. Their work is the perfection and elaboration of policies already adopted.

The business of pioneering new lines of labor policy belongs to the legislature and to private associations, or to a legislative reference bureau or a political department of labor. But when there is sufficient public opinion, and a legislative de-

mand for these new lines of legislation, then administrative investigation is superior to any that has been devised for ascertaining the facts and preparing machinery for administration. It follows that private societies, such as labor unions, associations for labor legislation, child labor committees and consumers' leagues, are needed not only to watch the existing administrative machinery, but to pioneer on new lines of legislation. The functions of such private associations are even greater than they have been before. They criticize where needed and assist where practicable.

(5) *Penalties and Prosecutions*

Behind all laws and administrative rules having the force of law lies the penalty for violation. No matter how efficient the administration or how actively employers and employees may assist, the administration would remain but a voluntary cooperative society if not supported by penalties imposed on those who refuse or neglect to assist.

Yet too much reliance is generally placed on penalties and punishment. Officials sometimes point to their record of numerous prosecutions as evidence of their efficiency in office. Such a record may prove exactly the opposite. Penalties should be looked upon as only a *potential* power, whose strongest evidence of *actual* power is sometimes found in the least necessity of resorting to them. A record of a small number of prompt and impressive convictions may mean more for the enforcement of law than several pages of statistics of prosecutions. At the other extreme, many factory inspectors who in American states furnish little or no evidence of any prosecutions are probably not enforcing the laws.[1] No subject of labor legislation is more uncertain and unsatisfactory than this of penalties and prosecutions.

The difficulty in securing convictions is shown by a statement of the commissioner of labor in New York in 1908.[2]

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[1] The *Report on Condition of Woman and Child Wage-Earners in the United States*, Vol. XIX, 1912, pp. 23–88 (61st Congress, 2d Session, Senate Doc. No. 645), gives results of the most extensive effort yet made to investigate the subject of prosecutions.

[2] *Ibid.*, p. 44.

In thirty-two cases of illegal employment and overtime work of women and children tried before juries in a period of three months not a single conviction was obtained, although it was shown in one instance that a woman worked seventeen hours in one day and in another that a child was only seven years old. The inspector's report for 1907 showed that in one-half of the 294 cases where conviction was secured the court remitted the fine, and in most of the other cases only the minimum fine was imposed, averaging about $26 a case.[1] Other states show a similar leniency.

In American labor legislation, little attention has been paid to the careful adjustment of penalties to offenses. The amount of penalty seems to be determined very largely at random, and there is a great variety of penalties in the same state and in different states. Too frequently the idea seems to be that the more severe the penalty the greater the likelihood of enforcing compliance. This frequently fails of its purpose, because courts and juries often permit an offender to escape entirely rather than subject him to a penalty out of proportion, as they see it, to the offense.

Yet a distinction must be made between penalties for a single offense, and penalties for a continuing offense. Failure to return a child worker's employment permit may be treated as a single offense; but employment of the child beyond working hours may be treated as a continuing offense, repeated every day that the child is so employed. Here is a cumulative injury to the child which the law seeks to prevent, and, very properly, a cumulative penalty might be imposed, making each day for each child a separate and distinct offense. If the penalty, for example, is $10 to $100 for each offense, even the minimum penalty would accumulate effectively. Otherwise, if treated as a single offense for each child, no matter how long continued, the penalty might bear no adequate proportion to the profit derived from the child's labor.

This method of cumulative penalties has been more or less adopted in the industrial commission laws of several states, thereby making each day during which an employer fails to observe or comply with any order of the commission or any

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[1] *Ibid.*, p. 48.

section of the statute a separate violation.[1] Cumulative penalty provisions, however, are construed very strictly by the courts, and the language of the statute must be made perfectly clear.

Another distinction of importance is that between a criminal action and a civil action. Formerly, when employers were mostly small employers with but little property, the criminal penalties of fine or imprisonment, which are the ordinary penalties for violation of police regulations, seemed to be appropriate. But these criminal penalties are practically out of date when it comes to enforcing the law against corporations. Moreover, in criminal prosecutions the individual employer has many technical defenses based on the presumption of innocence. A readier and simpler method is the "action of debt," a civil action employed to recover taxes or penalties under the guise of a debt owing the state.[2] This form of action is now generally adopted in the case of railroad commissions and industrial commissions, along with the cumulative penalty. It is more effective against corporations, and it recognizes the cold fact that courts and juries are loath to impose criminal penalties on employers when their offense is the violation of laws enacted for the protection of labor.

Prosecutions are generally brought in justice courts or other inferior criminal courts. It is obvious that such courts are not equipped to decide technical questions, and the limitations imposed by rules of evidence on the admissibility of testimony make it practically impossible for the court to obtain the expert information and opinion essential to intelligent decision of such cases.

There are two classes of questions, often equally technical. One is the question of fact, the other of constitutionality of a statute or of reasonableness and validity of an administrative rule. A technical question of fact is, for example, whether a certain room is sufficiently ventilated, or sufficiently lighted. A question of constitutionality or reasonableness is whether a statute or administrative rule limiting a woman's work to

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[1] Wisconsin, Laws 1911, Secs. 2394–60; Ohio, Laws 1913, Secs. 871–44; Colorado, Laws 1915, C. 180, Secs. 44, 45.

[2] Stockwell *v.* U. S., 13 Wall 531 (1871); Chaffee *v.* U. S., 18 Wall 516 (1873); Fla. Central Ry. *v.* Reynolds, 183 U. S. 471 (1902).

a certain number of hours is valid. Both involve questions of fact, but the two questions can be separated. If a justice's court, or a jury, as in the instance above referred to, refuses to convict an employer who is shown to have allowed a woman to work seventeen hours in face of a law restricting her work to ten hours, it is really deciding not only the fact of violation, but also the reasonableness of the law. Hence it is that in states which have industrial commissions with power to issue rules the attempt is made to separate the two questions. The question of fact is determined in a lower court. But the question of reasonableness or validity can be raised only in a different suit in a higher court. The employer is permitted first, by the provisions of the law, to test the reasonableness or validity of the rule in a hearing before the commission. Next he has a right of appeal to a higher court on questions of law. If no such hearing or appeal is taken within a specified time, then no question can be raised in the inferior court except the fact of compliance or non-compliance with the rule or order of the commission.[1]

A similar facility is afforded to the inferior court, in passing upon questions of fact, by the provision that the commission may draw up specific standards fitted to each occupation, or even to a single shop, where the legislative standard is liable not to take into account real differences. These standards, if previously passed upon by representative committees of employers and employees, can be made both definite and practicable, and therefore not a matter of such controversy or opinion as to require expert testimony in the lower court.

This simplifies the work of the factory inspector in the field. He is the prosecuting witness. His opinion of whether the law is violated or not is set up against the opinion of the employer or his representative. All doubts are resolved in favor of the defendant. But with the more precise standards set by a commission there is less dependence on weight of opinion. If a statute merely says that workshops shall be "sufficiently lighted," the factory inspector must set up his opinion against the employer's opinion as to whether the light in his shop is sufficient. The jury must then pass upon both

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[1] See Wisconsin, Laws 1911, Secs. 2394–57, 2394–59.

the fact of violation and the opinion of the inspector. But if the commission upon investigation ascertains that one-quarter candle-power for every square foot of floor space is sufficient for that class of shops, then the inspector needs to prove only that the amount of light was less than this standard.

These provisions do not mean that less competent inspectors may be employed. They mean that much more time may be given to actual inspection and less to prosecutions. The inspector, in the ordinary prosecutions, wastes an incalculable amount of time in assembling and producing in court the evidence of the alleged violation. His current inspection work must be neglected in order that he may attend court, awaiting the trial of the case, or attempting to convince a court or jury of the accuracy and honesty of his observation of conditions out of which the alleged violation grew. Where he should be engaged in discovering violations and suggesting means of compliance, he is marshaling evidence and trying to convince third parties of deviations from ambiguous standards.

An interesting method of enforcing compliance, which is more and more coming into prominence, is to give the authorities power to stop work on a machine or in an establishment which violates the law. Thus in several states inspectors may place upon machinery a notice forbidding its use until specified safety measures have been taken. In some states mines may be absolutely closed, and in 1915 legislation in Montana and in Delaware extended the same principle to certain factories and workshops. According to the Delaware statute, a cannery violating the law may upon a third conviction be closed by the court, and the person convicted may be prohibited from engaging in the cannery business until further court order. California, also, in 1915 authorized the closing by the courts of labor camps, upon their failure to comply within reasonable time with the sanitary provisions laid down for them.

Various devices have been invented in the drafting of labor laws to determine whether the provisions of the law are being complied with. The possibility of detecting all violations by official inspection are obviously limited. An army of inspectors making constant visits would be required. The pros-

ecution may be relieved of a portion of its burden of proof by a provision that certain facts shall constitute *prima facie* evidence. The burden is always on the prosecution to prove circumstances which constitute a violation of a statutory provision. Thus where a statute forbids the employment of children under sixteen except under specified conditions, the prosecution for an alleged offense must prove the employment of the child, must prove that the child was under sixteen, and must prove that the circumstances authorizing the employment of a child of that age were not present. This ordinary rule respecting the burden of proof may, however, be altered by the legislature. The difficulty of enforcing the one day of rest in seven law [1] has been considerably lessened in New York by a requirement that the employer shall post "a schedule containing a list of his employees who are required or allowed to work on Sunday and designating the day of rest for each," and shall file a copy of such schedule with the industrial commission. This provision reduces the necessity of inspection to the single question whether any employee named on the schedule as entitled to rest on any day is at work on that day. That in itself constitutes a violation of the substantive provision that "no employee shall be required or allowed to work on the day of rest so designated for him." Similar provisions are employed in enforcing laws regulating hours of labor.[2] The New York law regulating the employment of children under the age of sixteen requires the employer of such children to keep a record of the name, birthplace, age, and residence of such children and to produce such record for inspection by the agents of the industrial commission. The employer is also required to keep on file and to furnish on demand of the commission the child's employment certificate. If he cannot furnish the certificate of employment, the employer is required within a specified time to produce satisfactory evidence that the child is over sixteen, or to discontinue his employment. Proof of the commission's demand for evidence of the age of the child and of the employer's failure to produce such evidence is made *prima facie* evidence in a prosecution for the violation of a provision

[1] See "One Day of Rest in Seven," p. 253.
[2] See "Maximum Daily Hours, Women," p. 219.

of the law that the child is under sixteen and unlawfully employed.[1]

Of the devices to assist the officials which have been made use of in this country, those which impose upon the employer the duty to keep some sort of current record of conditions or happenings in his plant are the most important aids to official inspection. Records of accidents, certified daily time reports, registers, and account books are frequently required by labor laws.

There is, however, a limitation on the extent to which the employer can be compelled to collect and record for official use the evidence of his own violation of the law. Our constitutions generally protect the individual against a requirement that he testify against himself. When the requirement of records becomes practically a system of compelling testimony against himself, the employer may refuse to comply and depend upon his constitutional guaranty.

Licensing a business practice or place of employment affords another means of increasing the possibilities of enforcement, especially if the licensee be required to give bond. This method is employed in the regulation of employment offices and sweatshops. License requirements are ordinarily supplemented by a prohibition of action without the license. Failure to produce the license is thereby made proof of violation. The license is usually issued on condition that the standards imposed by the law be complied with.[2] Fear of loss of the license and of summary recovery on the bond affords strong inducement for compliance. The license, however, does not entirely obviate the necessity for inspection or other means of obtain-

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[1] New York, Consolidated Laws, 1909, C. 31, Sec. 76.

[2] Examples of such laws applied to employment offices are found in California, Code, 1906, Sec. 3580; Colorado, Laws 1909, C. 164; Massachusetts, Revised Laws 1902, C. 102, Sec. 23; Minnesota, Laws 1905, C. 274. Tenement-house manufactures must be licensed in Indiana, Annotated Statutes 1901, Sec. 7087n; Maryland, Public General Laws 1911, Art. XXVII, Sec. 240; Massachusetts, Laws 1909, Sec. 106; Michigan, Laws 1909, No. 285, Sec. 22; New Jersey, Compiled Statutes 1910, Sec. 46; New York, Laws 1913, C. 260; Pennsylvania, Brightly's Digest, 1893–1903, p. 825, Sec. I. A similar idea is expressed in the "sanitary certificate" required for bakeries and establishments manufacturing food in some states, for example, New York, Laws 1913, C. 463; Washington, Codes and Statutes 1910, Sec. 5487.

ing evidence as to compliance by the licensee with the requirements of the law or the conditions of the license.

In the effort to secure enforcement of laws prohibiting or regulating sweatshops, resort has been had to the device of tagging the products of sweatshops.[1] In some cases the value of the tag is not due so much to the fact that it aids enforcement of provisions regulating the sweatshop industries as to the discouragement of that industry by branding its products and discouraging their purchase by the public.

After the evidence of violation of the requirements of the law is secured, the marshaling and presentation of that evidence to the court in which a prosecution is conducted is of the greatest importance. Ordinarily, it is the business of the district attorney or the attorney-general to conduct prosecutions. The department, however, which administers the law violated is under obligation to secure the evidence of violation and present it to the prosecuting officer. In practice, other duties so absorb the time and attention of the attorney-general and the district attorney that they give little consideration to the preparation of prosecutions for violation of police regulations. The rules of evidence, especially in criminal prosecutions, are very technical. It is difficult even for a lawyer to determine what is relevant testimony. It frequently happens that a factory inspector, without legal training or sympathetic legal advice, bases a prosecution on testimony which, because of technical rules, will not be admitted by the courts, and therefore the prosecution falls. This need of sympathetic, constant legal assistance to administrative officials in securing and furnishing the evidence of violation has resulted, in many jurisdictions, in the assignment of a special assistant attorney-general, district attorney or city counsel to attend to prosecutions for violations of laws enforced by a particular administrative department. An assistant to the corporation counsel in New York City devotes his entire time to advising the tenement house department and prosecuting violations of the tenement house law. In New York, instead of having a special deputy attorney-general assigned to the industrial commission, the legislature provided for a counsel and three as-

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[1] New York, Laws 1913, C. 260.

sistants whose duty it is to assist in the preparation of prosecutions and in the conduct of such prosecutions in the courts. By arrangements with district attorneys, counsel to the commission actually conducts the prosecutions in the criminal courts, but he does this subject to the control of the district attorney.

(6) *Cooperation by Pressure*

Penalties and prosecutions are coercive methods of administration. But the workmen's compensation laws adopted in several states indicate a new and important administrative principle. Prior to the adoption of these laws, the only inducements offered to the employer to prevent accidents to his employees were the liability laws and the factory acts. The employer was treated as a criminal, and naturally he revolted and obeyed only as little of the laws as he might be exposed to on account of his lack of political influence or the inefficiency of inspectors. But the compensation laws, by requiring him to pay for *all* accidents, instead of merely those he cannot escape, tend to bring upon him a universal pecuniary pressure, like that of taxation, which induces him to prevent *all* accidents and to provide for early recovery of the victims. This is especially true if the law is so drafted as to lay the emphasis on prevention and medical and surgical treatment.

This class of legislation is *cooperative*, instead of *coercive*. The employer now takes as much interest as the employee in having the factory inspectors efficient and helpful. Furthermore, he establishes his own "safety department," which is always watchful and far more efficient than the small number of state inspectors that the taxpayers will allow. In this way "social insurance" in its many forms of accident, health, invalidity, old age, and unemployment insurance, may be expected, if the laws are properly drafted and then properly administered, to bring about the cooperation of employer, employee, and the state, where the older methods of coercion were ineffective and productive of antagonism.

The insurance principle also provides an inducement for employers and employees to give sufficient of their time to the administration of labor law. This is the peculiar need and

weakness of American administration. Private citizens leave administration to professional politicians. Employers hire attorneys to represent them in legislation. A kind of constant pressure is needed that will induce them to take part themselves in public administration exactly as they do in the administration of their factories. Financial gain or loss is this universal pressure, not depending on exhortation or public spirit. Social insurance, properly organized and administered under the supervision of those who pay the bills, converts the prevention of accidents and the preservation of health from sentiment and humanitarianism into business and profits. It makes it worth while for employers to give time to public service.

Thus social insurance accomplishes what, in France, is called *solidarism*, as a correction of individualism.[1] The health and welfare of every wage-earner is "affected by a public interest" when the industry or the community is required to make good the loss. Each laborer then becomes a "public utility." Individualism, while it highly rewards the fortunate individual, carries with it the sole responsibility and liability for his own misfortunes. The solidarism of social insurance enforces the joint responsibility of employer, employee, and the community.

But social insurance is an administrative rather than a judicial problem. It takes the question of individual liability out of the hands of the courts and places it in the hands of executives. It avoids litigation over past misfortunes and substitutes "social prevention" of future misfortunes. For this reason, the administrative officials of the state cannot successfully deal with social insurance except through the cooperation of employers and employees, and the latter will not effectually cooperate except through the inducement of financial gain. Hence it is that well-considered schemes of social insurance distribute the burden of expense between employer, employee, and the state. This is plain in the form of health insurance, where the employee contributes a share of the insurance premiums. It may also be brought about in non-contributory schemes of accident compensation, where, in

[1] Léon Bourgeois, "International Organization of Social Policies," *American Labor Legislation Review*, March, 1914, p. 186.

place of denying the employee any compensation at all in case of "wilful misconduct," his compensation is reduced, say, 10 or 15 per cent. This minimizes contests in court over "wilful misconduct," but, at the same time, forces the workman to contribute when he is plainly responsible.

This and other devices illustrate the differences between legislation with its court procedure, which penalizes the individual for past acts, and administration based on insurance which induces him to avoid future acts. The matter resolves itself into a series of adjustments which balance the motive of pecuniary gain or loss against the carelessness, greed, or oppression that produces misfortune and suffering. These nice adjustments can be worked out only through the accumulated tests and trials of administrative investigations, where employers, employees, and officials join together, and not through partisan conflicts in legislatures or legal battles in court.

Thus "solidarism" is that goal of labor legislation, where it can be truly said that "an injury to one is the concern of all." On the financial side it is such an arrangement that all will equitably bear the burdens that fall upon each individual. On the side of human motives it is a departure from litigation and the fear of occasional criminal penalties to the adoption of continuous inducements for the prevention of misfortune and oppression. On the side of administration it is the cooperative investigation of conditions by employers, employees, and the state through representatives and officials in whose ability and integrity all have confidence. On the side of a broader social philosophy it is the recognition both of class struggle and common interest as permanent facts, and then the adjustment of laws and administration so as to equalize the struggle and utilize the common interest for a public benefit.

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3. Coercion by Government

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See also under Safety and health: Keeling.

VI. UNEMPLOYMENT

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Kellor, Frances A. Out of work. New York, Putnam, 1915. 569 p.

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Account of a detailed investigation of unemployment in York, together with suggestions for remedying the evils which it disclosed.

United States. Bureau of education. Juvenile labor bureaus and vocational guidance in Great Britain. (Its Bulletin, no. 482: 13–17.)

.....The school and the start in life: a study of the relation between school and employment in England, Scotland, and Germany. (Its Bulletin, 1914, no. 4, whole no. 575.) Washington, Govt. print. off., 1914. 146 p.

Contains much information of value in regard to methods of juvenile labor exchanges and juvenile placement work.

.....**Bureau of labor statistics.** Statistics of unemployment and the work of employment offices. (Its Bulletin, no. 109.) 147 p.

Comprehensive study, including work of private and of philanthropic exchanges.

.....Unemployment in New York City, New York. (Its Bulletin, no. 172.) 24 p.

Report of a study conducted in February, 1915, resulting in an estimate of 398,000 unemployed in that city alone at that time.

Von Mayr, G., and Varlez, Louis. La statistique du chômage. Ghent, 1913. 186 p.

Report of the special committees appointed by the International statistical institute and the International association on unemployment, with recommendations for more frequent, general, and uniform gathering of statistics.

Webb, Sidney. Seasonal trades, by various writers, with an introduction by Sidney Webb. London, Constable, 1912. 410 p.

The outcome of a seminar at the London school of economics and political science during the session of 1910.

Webb, Sidney, and Webb, Beatrice. The prevention of destitution. London, 1911. 348 p.

Treats of sweating and unemployment as causes of destitution, how to prevent unemployment and underemployment, insurance, the enlarged sphere of voluntary agencies in the prevention of destitution, the need for a common registrar of public assistance, the "moral factor."

Williams, R. First year's working of the Liverpool docks scheme. London, King, 1914. 192 p.

Account of a successful attempt to abolish casual labor on the docks of Liverpool; the high water mark of efforts in this direction.

See also under The minimum wage: Andrews.

VII. SAFETY AND HEALTH

American association for labor legislation. American labor legislation review. New York, 1911–

Contains articles by economists, physicians, and technical experts; published quarterly. Among the issues which deal especially with safety and health are: V. 1, no. 1, Proceedings of fourth annual meeting, 1910; no. 2, Comfort, health, and safety in factories; no. 4, Prevention and reporting of industrial injuries. V. 2, no. 1, Proceedings of fifth annual meeting, 1911; no. 2, Second national conference on industrial diseases (includes critical bibliography); no. 4, Immediate legislative program.

Eastman, Crystal. Work-accidents and the law. New York, Charities publication committee, 1910. 345 p.

Chapters on the "Personal factor in industrial accidents," "Distribution of the burden of income loss," and "The effect of industrial fatalities upon the home."

Hayhurst, Emery R. Industrial health-hazards and occupational diseases in Ohio. Columbus, Ohio state board of health, 1915. 438 p.

Classification of industries and a study

of the causes of hazard in each, including dust, lighting, ventilation, sanitation, fatigue, poisons.

Illinois. Commission on occupational diseases. Report. Chicago, 1911. 219 p.

Authoritative treatise based on original investigations by experts with general description of the work, discussion of principles of effective legislation, text of proposed bills, suggestions for cards of instruction for employees in dangerous trades, provisions of protective laws in states of the union and in European legislation.

International congress on hygiene and demography. Transactions of the 15th international congress, Washington, Sept. 23–28, 1912. 6 v.

V. 1, part 2 contains article on "Industrial accidents and trade diseases in the United States," by Frederick L. Hoffman, p. 763–803. V. 3, part 2 on Hygiene of occupations contains a collection of papers dealing with various phases of occupational hygiene. Among the subjects considered in their relations to industrial hygiene are child labor, tenement house manufacturing, and industrial accidents.

Keeling, Frederic. Child labor in the United Kingdom, a study of the development and administration of the law relating to the employment of children. London, King, 1914. 307 p.

Gives minimum standards required for entrance to dangerous trades.

National child labor committee. Child labor bulletin, New York, 1912–

Quarterly, dealing with prevalence of child labor, special occupational hazards, and enactment and enforcement of protective legislation.

National council for industrial safety. Proceedings of safety congresses, 1912–

Articles on fire, accident, and occupational disease prevention, effective legislation, and organization of efforts to promote safety.

New York. State factory investigating commission. Reports, 1912–1915.

Results of investigations into fire hazard, tenement labor, occupational diseases, sanitary conditions, and accident prevention in mercantile and manufacturing establishments.

Occupational mortality statistics. Experience of thirty-four life companies upon ninety-eight special classes of risks. Compiled and published by the Actuarial society of America. New York, 1903. xiv, 479 p.

Experience of leading life insurance companies with regard to specially hazardous occupations and groups of persons.

Oliver, Thomas. Dangerous trades: the historical, social, and legal aspects of industrial occupations as affecting health, by a number of experts; edited by Thomas Oliver. London, Murray, 1902. 891 p.

Authoritative discussions by specialists of international reputation.

.....Diseases of occupation from the legislative, social, and medical points of view. London, Methuen, 1908. xix, 427 p.

Comprehensive clinical and industrial descriptions.

Persons, Charles E., Parton, Mabel, and Moses, Mabelle. Labor laws and their enforcement. New York, Longmans, 1911. "Unregulated conditions in women's work," p. 131–155.

Conditions of work in rubber, cordage, and twine factories, and instances of violation of health laws.

Price, George M. The modern factory. New York, Wiley, 1914. xx, 574 p.

Safety, sanitation, and welfare in the workplaces as affected by private effort and by legislation.

Schwedtman, Ferdinand C., and Emery, James A. Accident prevention and relief. New York, National association of manufacturers, 1911. xxxvi, 481 p.

An investigation of the subject in Europe with special attention to England and Germany, with recommendations for action in the United States.

Thompson, W. Gilman. The occupational diseases, their causation, symptoms, treatment, and prevention. New York, Appleton, 1914. 724 p.

Detailed study of causes and symptoms, with methods of treatment and prevention.

Tolman, William H., and Kendall, Leonard B. Safety; methods for preventing occupational and other accidents and disease. New York, Harper, 1913. 422 p.

The philosophy of safety, and suggestive descriptions of the need for and success of preventive devices.

United States. Report on condition of woman and child wage-earners in the United States. (Senate doc. 645, 61st Cong., 2d sess.) Washington, Govt. print. off., 1910–1912. 19 v.

Discusses the working hours and hazards in the cotton textile industry, clothing, glass, silk industry, and laundries.

.....Report on conditions of employment in the iron and steel industry in the United States. (Senate doc. 110, 62d Cong., 1st sess.) Washington, Govt. print. off., 1911–1913. 4 v.

V. 3 treats of various factors affecting the health and efficiency of the working force, such as heat, speed, and severity of work. V. 4 treats of accident rates, relation of night work and long turns to accidents, and organization for safety.

.....**Bureau of labor statistics.** Bulletins. Washington, Govt. print. off., 1895–

Among the bulletins containing important articles on industrial safety and health are: No. 44, "Factory sanitation and labor protection," C. F. W. Doehring; No. 75, "Industrial hygiene," G. M. Kober; No. 79, "Mortality from consumption in dusty trades," F. L. Hoffman; No. 86, "Phosphorus poisoning in the match industry in the United States," J. B. Andrews; No. 90, "Fatal accidents in coal mining," F. L. Hoffman; No. 95, "Industrial lead poisoning," T. Oliver, "White lead industry in the United States," A. Hamilton, "Deaths from industrial lead poisoning," J. B. Andrews; No. 100, "List of industrial poisons," compiled for the International association for labor legislation by T. Sommerfeld and R. Fischer; No. 104, "Lead poisoning in potteries, tile works, and porcelain enameled sanitary ware factories," A. Hamilton; No. 120, "Hygiene of the painter's trade," A. Hamilton; No. 127, "Dangers to workers from dusts and fumes, and methods of protection," W. C. Hanson; No. 141, "Lead poisoning in the smelting and refining of lead," A. Hamilton; No. 157, "Industrial accident statistics," F. L. Hoffman; No. 165, "Lead posioning in the manufacture of storage batteries," A. Hamilton.

.....**Bureau of mines.** Bulletins and technical papers. Washington, Govt. print. off., 1910–

Especially valuable are the following technical papers: No. 40, "Metal mine accidents in the United States during . . .1911," A. H. Fay; No. 46, "Quarry accidents in the United States during . . . 1911," A. H. Fay; and No. 48, "Coal mine accidents in the United States, 1896–1912," F. W. Horton. Bulletin No. 333, "Coal mine accidents: their causes and prevention," C. Hall and W. O. Snelling, is also noteworthy.

VIII. SOCIAL INSURANCE

General Works

American medical association. Judicial council. Excerpts from the report of the judicial council submitted to the house of delegates at San Francisco, June 21, 1915. (American medical association bulletin, May 15, 1915, v. 10: 341–396.)

Report on development of all branches of social insurance, statistics, scale of benefits, and effect on medical profession.

Congres international des assurances sociales. Rapports, Paris, 1889; Berne, 1891; Milan, 1894; Brussels, 1897; Paris, 1900; Düsseldorf, 1902; Vienna, 1905; Rome, 1908; The Hague, 1910.

The name of this congress has gone through several changes. The name given is the latest. The proceedings contain valuable articles by specialists in the field in English, French, and German.

.....Comité permanent. Bulletin des assurances sociales. Paris, 1889–

Contains articles of specialists, in English, French, and German.

Dawson, William H. Social insurance in Germany, 1883–1911. New York, Scribner, 1912. xi, 283 p.

An up-to-date historical and critical treatise on social insurance legislation in Germany, with special emphasis on prevention.

Frankel, Lee K., and Dawson, Miles M. Workingmen's insurance in Europe. New York, Charities publication committee, 1910. xviii, 447 p.

A study of insurance systems in force in Great Britain, Holland, Belgium,

France, Switzerland, the Scandinavian countries, Italy, Germany, Austria, with numerous tables. Convenient for reference and international comparison.

Henderson, Charles Richmond. Industrial insurance in the United States. Chicago, University of Chicago press, 1911. x, 454 p.

A revised and enlarged version of the author's Die Arbeiterversicherung in den Vereinigten Staaten von Nord America, Berlin, 1907. Describes the various forms of social insurance known in the United States and Canada. Contains a summary of European laws on workingmen's insurance against accident, sickness, invalidity, and old age, with statistics to 1911.

Kennedy, James Boyd. Beneficiary features of American trade unions. Baltimore, Johns Hopkins press, 1908. 126 p.

Description of benefit systems of American trade unions.

Rubinow, I. M. Social insurance, with special reference to American conditions. New York, Holt, 1913. vii, 525 p.

Study of the social results of industrial accident, sickness, old age, invalidity, death, and unemployment, with the principles and development of social insurance against these contingencies.

.....Social insurance and the medical profession. (Journal of the American medical association, Jan. 30, 1915, v. 64: 381–386.)

Plea addressed to physicians for support of and cooperation with social insurance.

Seager, Henry Rogers. Social insurance. New York, Macmillan, 1910. 175 p.

A sympathetic discussion of the need and the principles of social insurance and the extent to which it can and should be introduced in the United States.

United States. Bureau of labor statistics. Bulletins. Washington, Govt. print. off., 1895–

These contain much material not elsewhere found. No. 90 contains a summary of foreign compensation acts and an article by Miles M. Dawson on the cost of workmen's insurance in various countries. No. 91 contains translations of the old-age and invalidity pension acts of Germany and France, and a reprint of the Australian act. No. 92 on "Industrial accidents and loss of earning power: German experience," is an elaborate analysis of accident experience in 1897 and 1907, published too late to be included in the 24th annual. The purpose of the study is to indicate the possible measures for the prevention of accidents, medical treatment, etc. No. 96 contains a translation of the recent industrial insurance code of Germany, 1911. No. 101 forms a study by F. L. Hoffman on the care of tuberculous wage-earners in Germany under the invalidity insurance act of January 1, 1900. No. 102 is a reprint of the British national insurance act, 1911. No. 103 is a translation of the Swiss sickness and accident insurance law, February 4, 1911. No. 107 is a translation of the law relating to insurance of salaried employees in Germany, December 20, 1911. No. 111 on labor legislation for 1912 contains the compensation laws passed in that year. No. 126 contains a review of compensation legislation in the United States, with a summary of the operations of the recent laws; complete texts of all United States laws, including legislation of 1913, are given, with summaries of all foreign laws. No. 155, on "Compensation for accidents to employees of the United States" is a report of operations under the act of May 30, 1908.

.....Workmen's insurance and benefit funds in the United States. Twenty-third annual report of the U. S. commissioner of labor. Washington, Govt. print. off., 1908. 810 p.

Study of 1200 relief funds or insurance societies established by trade unions, by groups of workingmen, by employers, and by the last two conjointly. The final chapter treats of the legal status of benefit and relief organizations. Valuable descriptive material and many otherwise unpublished statistics.

.....Workmen's insurance and compensation systems in Europe. Twenty-fourth annual report of the U. S. commissioner of labor. Washington, Govt. print. off., 1909. 2 v., 2749 p.

Contains extensive information on social insurance in Austria, Belgium, France, Germany, Great Britain, Italy, Norway, Russia, Spain, and Sweden. Texts of the laws on compensation for industrial accidents in twenty-four countries.

1. Industrial Accident Insurance

American association for labor legislation. Standards for workmen's compensation laws. (American labor legislation review, Dec., 1914, v. 4: 585–594. Also reprint. Revised ed. Sept., 1915.)

Essential features of satisfactory law, with annotations showing states already possessing such provisions.

.....Three years under the New Jersey workmen's compensation law. (American labor legislation review, Mar., 1915, v. 5: 31–102. Also reprint.)

Striking picture of inadequacy due to court method of administration, lack of security for payments, and low scale of compensation.

American federation of labor and National civic federation. Report of commission on workmen's compensation. (Senate doc. 419, 63d Cong., 2d sess.) Washington, Govt. print. off., 1914.

Report on operation of state laws.

Andrews, John B. Compensation for occupational diseases. (Survey, Apr. 5, 1913, v. 30: 15–19. Also reprint.)

Concise, popular argument for extension of the compensation principle to cover occupational diseases.

Downey, E. H. History of work accident indemnity in Iowa. Iowa City, State historical society of Iowa, 1912. xiii, 337 p.

Traces the development of legal responsibility for work accidents in Europe and America, with special reference to Iowa.

Eastman, Crystal. Work-accidents and the law. New York, Charities publication committee, 1910. xvi, 345 p.

A study of the causes of industrial accidents, and the remuneration therefor, in Allegheny county, Pa., in 1906–1907, with argument for a more just law.

Fisher, Willard C. The field of workmen's compensation in the United States. (American economic review, June, 1915, v. 5: 221–278.)

Argues for uniformity and comprehensiveness in the field of employments covered by compensation laws.

Friedensburg, Ferdinand. The practical results of workingmen's insurance in Germany. Translated from the German by Louis H. Gray. New York, The workmen's compensation service and information bureau, 1911. 62 p. (Published originally in Zeitschrift für politik, Berlin, 1911, v. 4: 329–369.)

A severe attack on the German system.

McGillicuddy, Daniel J. Workmen's compensation for federal employees. (American labor legislation review, Mar., 1915, v. 5: 11–14.)

Shortcomings of law of 1908 and advantages of proposed measure to replace it.

Progressive national service. Standards on workmen's compensation — with annotations. New York, Progressive natl. serv., 1915. 64 p.

Detailed analysis of effective provisions.

See also under General works: Dawson, Henderson, Rubinow, U. S. Bureau of labor statistics; under Safety and health: Schwedtman and Emery.

2. Health Insurance

American association for labor legislation. Health insurance; standards and tentative draft of an act. New York, 1915. 28 p.

Outline in bill form with explanatory notes.

Fabian research department. Committee of enquiry. The working of the insurance act. (New statesman, Mar. 14, 1914, v. 2, no. 49, special supplement. 32 p.)

Discusses operation of the health insurance part of the British national insurance act, points out shortcomings, and suggests important improvements.

Fuerth, Henriette. Die Mutterschaftsversicherung. Jena, Fischer, 1911. 220 p.

A presentation of the case for maternity insurance and a résumé of maternity insurance legislation in all countries.

Gibbon, I. G. Medical benefit; a study of the experiences of Germany and Denmark. London, King, 1912. xv, 296 p.

A critical work on the health insurance laws of Germany and Denmark, their operation, and benefits resulting from them.

Great Britain. Departmental committee on sickness benefit claims under the national insurance act. Report. London, Unwin, 1914. 87 p.

Excellent report upon the alleged excessive claims on the sickness benefit funds, with an analysis of causes and suggestions for readjustment.

.....**National health insurance joint committee.** Reports on the administration of the national insurance act, part I, health insurance. London, Darling, 1912–1913, 1913–1914,–
Detailed descriptive and statistical reports on numbers insured, methods of operation, finances, and administrative problems.

Progressive national service. Sickness insurance. New York, Progressive natl. serv., 1915. 64 p.
Suggestions as to adequate provisions in America, and citations from European laws.

Warren, B. S. Sickness insurance: its relation to public health and the common welfare. (Reprint no. 250 from the Public health reports.) Washington, Govt. print. off., 1915. 16 p.
Brief, pointed study of economic needs, contributions, and relations to the medical profession.

See also under General works: Dawson, Henderson, Kennedy, Rubinow, Seager, U. S. Bureau of labor statistics.

3. Old Age and Invalidity Insurance

Alden, Percy. Democratic England. New York, Macmillan, 1912. xii, 271 p.
Accounts of insurance against sickness and old age in England, together with references to insurance legislation in Australia, p. 122–165.

Coman, Katharine. Sweden and old age pensions. (Survey, Dec. 14, 1913, v. 31: 318–321.)

Massachusetts. Commission on old age pensions, annuities, and insurance. Report. Boston, 1910. 409 p.
The report covers the origin of old age pensions, foreign systems, proposed plans and their estimated costs. The commission concludes that it would be inexpedient for an individual state to adopt a system of old age pensions, and that only national legislation can prove effective.

.....**Commission on pensions.** Report. House doc. no. 2450. Boston, 1914. 345 p.
Describes pension systems in effect in Massachusetts and other states, with an investigation of probable costs. Recommends a compulsory contributory pension system for employees in the public service.

Nassau, Mabel. Old age poverty in Greenwich village: a neighborhood study. New York, Revell, 1915. 105 p.
Description of 100 individuals over 60 years of age, a study of the effects of dependency where it exists, and arguments in favor of an old age pension system, contributed to by the state, employers, and some employees.

Squier, Lee Welling. Old age dependency in the United States. New York, Macmillan, 1912. xii, 361 p.
The author treats of the causes of old age dependency, the efforts at relief, and plans for prevention, and concludes that old age pensions are the best solution for the problem in the United States.

Wisconsin. Industrial commission. Report on old age relief. Madison, 1915. 76 p.
Study of the condition of the aged in Wisconsin, with suggestions for voluntary state insurance. Contains a description of foreign systems of old age relief.

See also under General works: Dawson, Kennedy, Rubinow, U. S. Bureau of labor statistics.

4. Widows' and Orphans' Insurance

Carstens, C. C. Public pensions to widows with children; a study of their administration in several American cities. New York, Russell Sage foundation, 1913. 36 p.
An adverse analysis of the workings of widows' pensions in several states and cities, with suggestions for other methods of meeting the problem. An advance report by Mr. Carstens appeared in the Survey, Jan. 4, 1913, v. 29: 459–466.

Devine, Edward T. Report of an investigation of matters relating to the care, treatment, and relief of dependent widows with dependent children in the city of New York. New York, The committee, 1914. 58 p.

Recommends social insurance to prevent commitment of children.

New York. State commission on relief for widowed mothers. Report. Albany, Lyon, 1914. 584 p.

A careful study of the provisions for the support of dependent widows and children in New York state and in European countries. Recommendations for county boards of child welfare with power to grant allowances to deserving widows with children.

New Zealand. Government insurance department. A brief survey of New Zealand's state life insurance. Wellington, 1906. 36 p.

Description of regulations and management of the department, with tables.

United States. Children's bureau. Report of laws relating to mothers' pensions in the United States, Denmark, and New Zealand, 1914. (Its pub., no. 7.) Washington, Govt. print. off., 1914. 102 p.

History and texts of laws, with concise report of their operation.

Wisconsin. Insurance investigation committee. Report. Madison, 1907. Majority report of the senate committee on the practicability of government and state insurance. iv, 52 p. Minority report of the senate committee on the practicability of government and state insurance. ii, 18 p. (Printed separately but bound in back of joint committee report.)

Majority report gives arguments for and against state life insurance, and recommends postponement. Minority report makes a vigorous argument for immediate steps toward establishing state life insurance.

See also under General works: Dawson, Rubinow.

5. Unemployment Insurance

American association for labor legislation. Present status of unemployment insurance: prepared by the German imperial statistical bureau. (American labor legislation review, May, 1914, v. 4: 373–387.)

Tabular summary of European laws, number of persons covered, and amount of benefits paid.

Bailward, W. A. Some impressions of the first six months' working of compulsory insurance against unemployment in England. (Quarterly bulletin of the International association on unemployment, April, 1914, v. 4: 480-499.)

Interesting study of operation of English act and of problems arising under it.

Beveridge, William H., and Rey, C. F. State unemployment insurance in the United Kingdom. (Quarterly bulletin of the International association on unemployment, Jan., 1914, v. 4: 129–187.)

Detailed statistical study of operations under the act.

Coman, Katharine. Unemployment insurance: a summary of European systems. New York, Progressive natl. serv., 1915. 21 p. (Also Survey, 1913–1914.)

Discusses briefly the Ghent system, Norway, Denmark, France, and Great Britain.

Gibbon, I. G. Unemployment insurance. London, King, 1911. xvi, 354 p.

A study of the various schemes of unemployment insurance in continental Europe, with the author's conclusion of the necessity of state voluntary unemployment insurance. The advisability of encouraging the formation of private voluntary insurance associations, and of labor exchanges to cooperate with the state system, is discussed.

Great Britain. Board of trade. Unemployment insurance. First report on the proceedings of the Board of trade under part II of the National insurance act, 1911. London, Darling, 1913. 82 p.

A complete descriptive and statistical statement of the operation of national unemployment insurance in Great Britain during the year ending July, 1913.

.....Sixteenth abstract of labour statistics of the United Kingdom. London, 1913. "Unemployment insurance," p. 12–21; Seventeenth abstract, p. 169–175.

.....National insurance act, 1911, part II. Unemployment

insurance. London, Eyre and Spottiswoode, 1913. 82 p.

.....Unemployed benefits of trade unions. London, 1911. 327 p.
Gives unemployed benefits of trade unions and earnings in insured trades, with tables showing the rules and expenditure of trade unions in respect of unemployed benefits and also showing earnings in the insured trades.

.....Unemployment insurance (umpire regulations). London, Eyre and Spottiswoode, 1912. 6 p.
Contains regulations, dated March 26, 1912, made by the Board of trade under section 91 of the National insurance act, 1911.

.....Unemployment insurance. Regulations made by the Board of trade under part II of the National insurance act, 1911. London, Eyre and Spottiswoode, 1912. 27 p.

.....Decisions given by the umpire respecting claims to benefit. London, Darling, 1914. v. 1, 327 p.

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Workings of English act.

Pigou, Arthur Cecil. Unemployment. New York, Holt, 1913. 256 p. "Unemployment insurance," p. 203–228.
Popular statement of subject.

Schloss, David F. Insurance against unemployment. London, King, 1909. x, 132 p.
Suggestions for organizing a national system of unemployment insurance, by trades, in cooperation with labor registries.

See also under General works: Frankel and Dawson, Kennedy, Rubinow, U. S. Bureau of labor statistics.

IX. ADMINISTRATION

American association for labor legislation. American labor legislation review. Quarterly, 1911–
Issues which have dealt especially with administration are v. 2, no. 4, Dec., 1912, "Immediate legislative program," and v. 3, no. 4, Dec. 1913, "Administration of labor laws."

American bar association. Special committee on legislative drafting. Report. (Senate doc. 262, 63d Cong., 2d sess.) Washington, Govt. print. off., 1913.

Andrews, Irene Osgood. The new spirit in factory inspection. (Survey, Dec. 21, 1912, v. 29: 355–359.)
Handicaps of policing method, and principles for reorganization.

Andrews, John B., and Andrews, Irene Osgood. Scientific standards in labor legislation. (American labor legislation review, June, 1911, v. 1, no. 2: 123–134.)
Defects of early legislation and advantages of advisory board method.

Bourgeois, Leon. The international organization of social policies. (American labor legislation review, March, 1914, v. 4: 186–202.)
Necessity for international cooperation in labor legislation.

Brown, Edward F. The efficiency of present factory inspection machinery in the United States. (American labor legislation review, Feb., 1913, v. 3: 24–28.)
Inadequacy of then existing administrative agencies.

Calder, John. Scientific accident prevention. (American labor legislation review, Dec., 1911, v. 1, no. 4: 14–24.)
Emphasizes need for cooperation between employer, employee, and engineering expert.

Commons, John R. Labor and administration. New York, Macmillan, 1913. vii, 431 p.
Essays on various labor questions, the last in the book taking up the subject of administration in connection with the Wisconsin workmen's compensation act.

.....The industrial commission of Wisconsin. (American labor legislation review, Dec., 1911, v. 1, no. 4: 61–69.)
Principles of commission plan.

.....How the Wisconsin industrial commission works. (American labor legislation review, Feb., 1913, v. 3: 9–14.)

Operation of commission plan.

Gettemy, Charles F. The Massachusetts bureau of statistics, 1869–1915; a sketch of its history, organization, and functions, together with a list of its publications and illustrative charts. Boston, 1915. 115 p.

Written by the director in connection with the exhibit of the bureau of statistics at the Panama-Pacific exposition.

Goodnow, Frank J. Comparative administrative law; an analysis of the administrative systems, national and local, of the United States, England, France, and Germany. New York, Putnam, 1897. 2 v.

Detailed comparative account of the organization and working of the administration in these countries, describing also the relations between the administrative, judicial, and legislative branches of government.

International association for labor legislation. Publications.

In addition to the Bulletin of the international labor office, published monthly in English, in French, and in German, the fifteen national sections, including that in America, issue periodically reports on labor legislation and its administration.

Kaiser, John Boynton. Law, legislative, and municipal reference libraries. Boston, Boston book co., 1914.

Comprehensive exposition of the legislative drafting research movement.

Kingsbury, Susan M. (ed.). Labor laws and their enforcement, with special reference to Massachusetts. New York, Longmans, Green, 1911. xxii, 419 p.

Historical and critical studies on the administration of labor laws in Massachusetts, special chapters being devoted to woman and child labor and employment offices.

McNeill, Joseph H. The Massachusetts board of boiler rules. (American labor legislation review, Dec., 1911, v. 1, no. 4: 70–80.)

Description of the joint board plan and its operation.

United States. Report on condition of woman and child wage-earners in the United States. (Senate doc. 645, 61st Cong., 2d sess.) V. 19, "Labor laws and factory conditions." Washington, Govt. print. off., 1912. 1125 p.

Summary of laws on child labor, safety, health, and comfort, and study of their enforcement.

.....Senate hearings on a legislative drafting bureau and legislative reference division of the library of Congress. (Senate rept. no. 1271, 62d Cong., 3d sess.) Washington, Govt. print. off., 1911.

Testimony of experts from all parts of the country.

.....**Bureau of labor statistics.** "Administration of labor laws and factory inspection in certain European countries," George M. Price. (Its Bulletin, no. 142.) Washington, Govt. print. off., 1914. 310 p.

Deals mainly with factory inspection. The countries included are: Great Britain, Germany, France, Austria, Belgium, Switzerland.

.....**Commission on industrial relations.** Final report. Washington, 1915. 448 p. "Report of commissioners John R. Commons and Florence J. Harriman," p. 307–403.

Breakdown of existing labor laws and proposals for securing more thorough enforcement.

Wisconsin. Industrial commission. Report on allied functions. Madison, Wis., 1914. 102 p.

Summary of work done 1912–1914, together with a statement of expenditures.

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