LAW AND LABOUR

THE above title may cover a wide field of social problems and of social legislation. Indeed, modern society, faced with a very complex social situation arising from a highly developed economic structure, has built up a system of laws, hardly less complex than the social conditions they were intended to deal with. Yet despite factory acts, social insurance schemes, and trade union law, the existing English law is insufficient to deal with the industrial problems of the present time. Some measures are necessary to alter the legal status of labour and of industrial relations. Although practical steps along these lines have been frequently discussed at the meetings of Royal Commissions, and although some proposals of this nature have actually been realized in various English industries, the subject is still unfamiliar to the English public. Yet great importance is attached to such a way of social reform in other countries and considerable success has been achieved by it in Italy and Germany. While in the former of these two countries trade unions and employers' organizations have become mere instruments of the State—a solution hardly acceptable in a country like England—in Germany there developed after the war a well-balanced Labour Law of whose particular characteristics many may recommend themselves to people in this country. We will therefore describe the status of Labour and of industrial relations as created by the new German Labour Law, comparing it with conditions in England.

Law, by its very nature, regulates the relations between man and man, between individual and State, and their respective rights in regard to material things. So far it is only concerned with movements and relations inside an existing form of society. But it has also a bearing upon the social forms themselves whose organic growth may be fostered in particular aspects or discouraged by the prevailing law. The latter point is often overlooked in these times of social transition.

The present law, as far as we are concerned with it, gives a remarkable protection to private property and to freedom of contract. The status of these two social forms grew up during the last centuries and may truly be called the inheritance of the liberal spirit of the past. But while both were considered by our forefathers to be great achievements our own time regards them rather sceptically. It is extraordinary to what extent revolutionary and reformative ideas centre round these two social forms. Soviet Russia has abolished them both entirely, fascist Italy has curtailed them in the industrial sphere, fascist Germany seems to follow on the lines shown by Mussolini, and even in England we find a strong growth of collective bargaining, etc. This development certainly indicates the existence of defects in the policy of *laissez faire,* because the world-wide opposition to this doctrine cannot but have some deeper causes.

Indeed, the social conditions in modern industrial communities are sufficient evidence for the necessity of some measures of reform. Labour, which represents such an important section of our community, must achieve the same status as private property and the liberty of the individual. It may be objected that individual workers have their status as much as anybody else. They can conclude contracts in perfect freedom. But have not recent developments proved the insufficiency of this 'freedom'? Some of the followers of Adam Smith would have had us believe that the free play of economic forces would bring about a perfect economic equilibrium. Yet the result has been an economic crisis of unprecedented complexity.

Still, with the evils there usually grow the remedies. Complete disorder has been averted by collective bargaining, by conciliation, and arbitration between the two parties engaged in industry. One only needs to survey the extent and variety of these forms of industrial relations to get a proper impression of their importance.

Wide and manifold as the scope of industrial relations already is, there is still a lack of legal measures for their

regulation. Apart from the Railways, wages lists are still 'gentlemen's agreements,' which means that they bear no weight in a court of law. Only those between the railway companies and the respective trade unions enjoy some statutory force by the Act of 1927.

In addition, the status of labour needs some alteration to reduce the existing social tension which might become a menace to society. The free exercise of the rights of the owner must be curtailed in favour of labour. Property is protected to the utmost, but those masses of industrial workers who took their share in building up the works and shops, upon whom all industry depends, who sacrificed life and health for the protection of these industries, have practically no rights in them. Their welfare and even the determination of what is their just share of the profit is entirely left to the discretion of the owner and the conditions of the labour market—so far as the English law is concerned. German labour law has provided a slight measure of reform on this point by giving some powers to the works councils. The actual scope of the powers given is very small indeed, but, what is more important, a new direction is pointed out for the future development of social reconstruction.

Agreements between trade unions and employers in regard to wages, hours, conditions of work, etc., are common in every English industry. But many of the benefits of collective bargaining are lost in England because they have no force in law. Employers need not adhere to those agreements: those particularly who are not members of the contracting organization are under no obligation whatsoever. Trade union action often compels the individual employer to conform to the current agreement. But while this method of giving validity to the conditions agreed upon is undoubtedly very wasteful and costly, it also is ineffective in many cases. Individual employers may thus gain a competitive advantage over those who keep to the collective agreement. Very often the whole fruits of collective bargaining are endangered or destroyed because of these reluctant individuals.

In Germany a particular law (*Tarifvertrag-Gesetz*, 1918) has been created, which gives the force of statutory law to the conditions of work agreed upon in the collective contract (*Tarifvertrag*). The contracting parties cannot conclude any other contract of labour with individual workers which counteracts the provisions laid down in the collective agreement. Any default can be brought before special Labour Courts (*Arbeitsgerichte*), to which belong jurisdiction over the whole field of industrial relations.

The obligation to adhere to the wages agreement can be extended to those employers who are not members of the contracting employers' organization. This power to declare an existing collective agreement to be of general validity in the whole industry, district, or town is vested in the Ministry of Labour. He may do so after careful consideration and only if one or both of the parties request such a declaration.

The position of the two parties directly concerned with the industry is carefully safeguarded. Only they and no one else can conclude an agreement. The whole process is an interesting example of the State's delegating particular legislative functions to subsidiary organizations.

All these agreements terminate after a certain period of time which is fixed by the parties. It may happen that no agreement can be reached. In such a case the machinery of conciliation and arbitration is set in motion, and here again we find some differences between the English and the German methods.

In England no compulsion can be exercised to accept the decisions of arbitrating or conciliatory bodies. The liberty of the two parties to agree or to refuse is carefully preserved. On the question of compulsory arbitration in industrial disputes employers as well as trade union leaders are particularly sensitive. Whether this attitude is justified is certainly a matter of discussion. Is it practical experience that makes them so reluctant, or may it be, that the same psychological complex which makes slum dwellers cling to their accustomed surroundings affects also the attitude

adopted by our leading men against reform of industrial relations?

The basis of all arbitration in Germany is, as in England, the negotiation of a joint committee. Recourse to such a committee is usually agreed upon before the dispute arises. If these joint committees fail a further step may be taken by calling upon an Industrial Court. But while in England no compulsion can be exercised by the authority of the State, in Germany an element of jurisdiction has been introduced into the machinery of arbitration which may act to settle industrial disputes after the parties' own action has failed.

Three courts are established in Germany for the maintenance of industrial peace. The first one, a committee of conciliation (*Schlichtungsausschuss*), is precisely like the Industrial Courts in England. It consists of representatives of employers and trade unions, with an impartial chairman. Its decisions are not binding, but can be declared binding by the next Court, an Arbitrator (*Schlichter*), who is appointed by the Ministry of Labour and carries civil authority. The Reich is divided into nineteen districts, each with one Arbitrator. His function is to decide in cases of great importance—where a dispute endangers the common good—and he may declare binding the decision of the German equivalent of the Industrial Courts. When a dispute covers more than one district decision belongs to the Minister of Labour. The arbitrator cannot declare binding his own decisions; this also belongs to the Minister.

Although provision is made by the German Labour Law to terminate industrial disputes by the jurisdiction of the State, the voluntary element is again carefully preserved. A certain restriction is laid upon the liberty to carry disputes to an unreasonable length, but the whole system is designed to prevent undue government interference.

Of particular interest is the German Works Council system. It was begun by the Act of 1920 (*Betriebsrätegesetz*), which was designed to allow the growth of closer co-operation between the two factors engaged in industry. The Councils are similar to those existing in English industry,

but their powers and functions greatly exceed those of the English. The law gives certain rights to the council of a factory or shop, which far exceeds those based upon contracts. In other words, the principle that labour has some right in industry has been acknowledged here. Labour has got a legal status, however weak it may be.

Thus the employment itself is safeguarded by the Works Council. The termination of a contract no longer depends solely on the will of the employer, because the Council *must* be asked its advisory opinion. In particular cases action can be taken which makes it impossible for an employer to dismiss a worker. This is possible in case of victimization, or when great hardship is carried by the dismissal. Recourse may be had to the labour courts if the negotiations between employer and council fail.

Apart from these functions, the activities of the councils coincide with those proposed in the report of the Whitley Commission. Its functions are economic and social, with the general aim of promoting co-operation between management and men in the works.

The latter part of the post-war labour law met with success and failure evenly distributed. Works with over fifty employees usually benefited greatly by the establishment of a council, while little interest was shown or kept alive in smaller factories. But a great educational improvement is due to the co-partnership of the workers in the management, an effect which certainly will be of great value for the inevitable process of social reconstruction in the future.

Step by step post-war Germany has built up a new legal basis for industrial relations. State interference is carefully limited to absolute necessity. By delegating to the natural organizations of industry those powers which are best exercised by them and, on the other hand, extending the authority of the State in a sound way, order is established where formerly there was considerable confusion.

The Labour Law here described is of course far from being perfect. The new régime is already setting out to reform it and to adapt it to the requirements of its economic policy. The particular form does not concern us here.

What matters most for our argument is the possibility of creating a legal status for the factors engaged in industry, which might do much to overcome the social and economic troubles of our time. To a small extent such a way has been pointed out by the German Law.

Pope Pius XI, in *Quadragesimo Anno,* mentioned the value of legal reforms in this respect. May this essay stimulate further discussion and thought on these lines, so that further steps may be taken towards preparing the way to a better social order.

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