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FACULTY COMMITTEE ON EXTENSION

LOUIS R. WILSON	M. C. S. NOBLE	COLLIER COBB	E. C. BRANSON
H. W. CHASE	L. A. WILLIAMS	E. R. RANKIN	A. H. PATTERSON
N. W. WALKER	M. H. STACY	C. L. RAPER	EDWIN GREENLAW

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THE BUREAU OF EXTENSION,
Chapel Hill, N. C.

The High School Debating Union

History and Purpose

The High School Debating Union was organized among the secondary and high schools of North Carolina by the Dialectic and Philanthropic Literary Societies of the University during the school year 1912-1913. It was organized to encourage debating in a definite, systematic fashion among North Carolina high school students. The query of that year was, RESOLVED, *That the Constitution of North Carolina should be so amended as to allow women to vote under the same qualifications as men.* Ninety schools took part in this State-wide debate on February 22, 1913. Sixteen schools won both debates and sent their teams to Chapel Hill for the Final Contest. The Pleasant Garden High School of Guilford County, represented by Messrs. Grady Bowman and S. C. Hodgin, was the winner in the Final Contest, on March 7th, and accordingly was awarded the Aycock Memorial Cup.

A Part of Extension Work

During the school year of 1913-1914 the High School Debating Union moved onward with splendid success. It received the additional support of the Bureau of Extension of the University, in order to insure its permanence and enlarge its usefulness and scope. Everywhere, all over the State, it was recognized as a definite, big part of the University's effort to bring itself into a helpful relation with every community and every person in North Carolina. One hundred and fifty schools enrolled in the Union and took part in the triangular debates on March 20, 1914. Forty-one schools won both of their debates and sent their teams, numbering 164 debaters, to Chapel Hill to compete in the Final Contest. Before an audience of 2,000 in Memorial Hall, on April 3d, the Winston-Salem High School, represented by Messrs. Charles Roddick and Clifton Eaton, won the Final Contest and was awarded the Aycock Memorial Cup. The query was, RESOLVED, *That the Constitution of North Carolina should be so amended as to allow the Initiative and Referendum in State-wide legislation.*

The Contest of 1914-1915

The contest of 1914-1915 was the most successful which had yet been held. Two hundred and fifty schools in 90 counties became members of the Union. Representing them, 1,000 student-debaters spoke, March 26th, before large audiences in cities, towns, and rural communities all

over North Carolina, on the query, RESOLVED, *That the United States should adopt the policy of subsidizing its Merchant Marine engaged in foreign trade.* Fifty schools won both debates and sent their teams to Chapel Hill to compete in the Final Contest. Before another splendid audience in Memorial Hall, on April 9th, the Wilson High School, represented by Misses Lalla Rookh Fleming and Ethel Gardner, won and was awarded the Aycock Memorial Cup.

The Contest of 1915-1916

Three hundred and twenty-five schools represented by 1,300 debaters enrolled in the Union during the fall of 1915 for a great State-wide debate March 31, 1916, on the query, RESOLVED, *That the United States should adopt the policy of greatly enlarging its Navy.* Sixty-eight schools won both debates and sent their teams to Chapel Hill to compete in the Final Contest. The Aycock Memorial Cup was won, on April 14th, by Miss Myrtle Cooper and Boyd Harden of the Graham High School. Five hundred visitors came to Chapel Hill for the Final Contest of the Debating Union and the other features of High School Week.

The Contest of 1916-1917

The query which was discussed in the fifth annual contest of the High School Debating Union was, RESOLVED, *That the Federal Government should own and operate the railways.* The State-wide contest on March 31, 1917, was participated in by 1,324 student-debaters representing 331 schools. Seventy-four schools won both debates and sent their representatives to Chapel Hill to compete in the Final Contest. Messrs. Vinson Smathers and Roy Francis of the Waynesville High School were victorious from the total number of 296 debaters present, and were awarded the Aycock Memorial Cup, the final debate being held in Memorial Hall before an audience which taxed to the utmost the hall's capacity. The number of visitors coming to the University for the exercises of High School Week was six hundred.

The Query for 1917-1918

The query which has been selected for the members of the Union this year is, RESOLVED, *That Congress should enact a law providing for the compulsory arbitration of industrial disputes.* The proper relation between labor and capital and the general public, or government, constitutes one of the biggest questions confronting the American people. Its solution challenges the Nation's best thought. A careful study of the question of the compulsory arbitration of industrial disputes promises for the debaters much of development for the duties, responsibilities, and privileges of citizenship.

Membership of the Union

Every secondary and high school in North Carolina is invited to become a member of the Union and participate in this State-wide debate. Every school that enters will, as usual, be grouped with two others in a triangle, each school putting out two teams, one on the affirmative and the other on the negative. Every school which wins both of its debates will be entitled to send its teams to Chapel Hill to contest for the State Championship and the Aycock Memorial Cup. The triangular debates will be held throughout the State during the latter part of March, and the Final Contest at Chapel Hill will be held early in April.

High School Week at the University

The Final Contest of the Union at Chapel Hill in April will be the main feature of the University's High School Week. Other features will include the interscholastic tennis tournament and track meet. All of the schools eligible to participate in the debates of the Union are eligible to send representatives to the track meet and tennis tournament. High School Week is now one of the most interesting and spectacular occasions on the University's calendar, and one of the most widely attended.

Regulations

1. The Dialectic and Philanthropic Literary Societies and the Bureau of Extension of the University of North Carolina shall suggest the query to be discussed by the schools entering the Union, and shall fix the dates for the various contests.

2. All secondary schools of North Carolina, however supported, offering regularly organized courses of study above the seventh grade, and not extending in their scope and content beyond a standard four-year high school course as defined by the State Department of Education, shall be eligible for membership in the Debating Union.

3. All schools accepting this offer, and thus becoming members of the Union, shall be arranged in groups of three for a triangular debate, the status and standards of the schools, their proximity, accessibility, and convenience of location to be considered in forming the groups.

4. Each school of each triangular group shall agree to furnish two debating teams of two members each, the one to uphold the affirmative side of the query and the other to defend the negative side.

5. The members of the debating teams must all be *bona fide* students of the school which they represent. To be *bona fide* students they must be in attendance at the time of the debate, and they must have been in attendance for at least 30 per cent of the school year up to and including the date of the debate, and must have made passing grades on a majority of their work.

6. The team debating at home in each case upholds the affirmative side of the query, and the visiting team the negative.

7. The schools themselves shall select and agree upon the judges of the local contests.

8. Each speaker shall have twenty minutes at his disposal, not more than fifteen of which shall be used in the first speech.

9. Any school which shall win both of its debates shall be entitled to send both of its teams to the University for the State Championship Contest.

10. In the event that one school of a triangle drops out and the committee at Chapel Hill is unable to secure a school to take its place, then the two teams remaining shall debate one another, each sending a team on the negative to the other. If either school wins both of these debates, then it shall send its teams to Chapel Hill for the Final.

11. In the event that two schools of a triangle drop out of the Union and the committee is unable to secure schools to take their places, then the remaining school shall be declared winner over the others, by their default, and shall send its teams to Chapel Hill for the Final.

12. The school having the strongest team on the affirmative side of the query and the school having the strongest team on the negative side shall be entitled to contest publicly at the University for the Aycock Memorial Cup. (The strongest team on each side of the query is to be determined by means of preliminary contests at Chapel Hill.)

13. The school which shall win the debate, thus finally held, shall have its name inscribed on the Memorial Cup, together with the names of its two winning representatives.

14. Any school which shall win in the Final Contest for two years in succession shall have the cup for its own property.

15. All high school representatives and principals coming to the University for this contest will be met at the station by a committee and will be entertained free of cost while in Chapel Hill.

Originality of Debates

The High School Conference in session at Chapel Hill during the summer of 1916 recommended, "That the principals of the schools in the various triangles be urged to take some steps among themselves looking toward the originality of the debates." The committee realizes that "The debate which a speaker produces should be his very best; but it should under no circumstances be better than his best"; that the success of the Union will be seriously hindered unless in each instance the speech of a debater represents his own individual work. It wishes, therefore, to ask the careful consideration, and action, wherever necessary, of the principals in the various triangles in regard to this matter.

Enter Your School Now

The High School Debating Union is essentially an organization for the secondary and high schools of the State. That it possesses unlimited possibilities for usefulness to every high school and teacher and to every community in the State goes without saying. Its success, however, and its benefits to those concerned are dependent upon the support accorded it by the students and school men of North Carolina. If your school has not yet enrolled, in order that its possibilities for usefulness to you may be realized, see to it that your school—the school of which you are principal, or the school which you attend, or the school in your community—enrolls immediately in the Union.

For fuller information, address

E. R. RANKIN, *Secretary*,
High School Debating Union,
Chapel Hill, N. C.

Compulsory Arbitration of Industrial Disputes

Query

RESOLVED, *That Congress should enact a law providing for the compulsory arbitration of industrial disputes.*

Explanation and Limitation

For the purpose of uniformity and definiteness of issue in the debates of the Union, the following explanations and limitations of the query are expressly laid down:

1. The constitutionality of the proposed compulsory arbitration measure is taken for granted.
2. It is understood that the query shall be considered as applying only to those disputes between employer and employee, capital and labor, which concern seriously or threaten to concern seriously the general public in two or more States, as distinguished from those disagreements which are purely or mostly local in their nature and import. A nation-wide or section-wide railway strike, telegraph operators' strike, or coal miners' strike, is an illustration of the nature of the disputes to be included under the query.
3. It is understood that the plan for the settlement of disputes would be through legally established courts of arbitration; these courts to be a part of the Government machinery, as are the courts of the present time, and their awards to be enforced by the full power of the Government. The present machinery for the conciliation and voluntary arbitration of disputes, as provided for in the Erdman Act of 1898 and the Newlands Act of 1913, could be continued in the main, to be amplified so as to include courts for compulsory arbitration for use when the other means have failed. These compulsory features to replace the "strike and lockout" under our present system.

Strikes and Lockouts in the United States

The following table from the Twenty-first Annual Report of the Commissioner of Labor (1906) gives important statistics concerning strikes and lockouts occurring in the United States from 1881 until 1905:

Calendar Year	Number of Strikes	Number of Lockouts	Establishments Involved	Average Days Duration per Establishment		Strikers	Employees Locked Out	Employees Thrown Out of Work
				Strikes	Lockouts			
1881	471	6	2,937	12.7	32.2	101,070	655	130,176
1882	454	22	2,147	21.9	105.0	120,860	4,131	158,802
1883	478	28	2,876	20.6	56.8	122,198	20,512	170,275
1884	443	42	2,721	30.4	41.4	117,313	18,121	165,175
1885	645	50	2,467	30.0	28.0	158,584	15,424	258,129
1886	1,432	140	11,562	23.3	32.2	407,152	101,980	610,024
1887	1,436	67	7,870	20.9	49.8	272,776	57,534	439,306
1888	906	40	3,686	20.3	74.9	103,218	13,787	162,880
1889	1,075	36	3,918	26.2	57.5	205,068	10,471	260,290
1890	1,833	64	9,748	24.2	73.9	285,900	19,233	373,499
1891	1,717	69	8,662	34.9	37.8	245,042	14,116	329,953
1892	1,298	61	6,256	23.4	72.0	163,499	30,050	238,685
1893	1,305	70	4,860	20.6	34.7	195,008	13,016	287,756
1894	1,349	55	9,071	32.4	39.7	505,049	28,548	690,044
1895	1,215	40	7,343	20.5	32.3	285,742	12,754	407,188
1896	1,026	40	5,513	22.0	65.1	183,813	3,675	248,838
1897	1,078	32	8,663	27.4	38.6	332,570	7,651	416,154
1898	1,056	42	3,973	22.5	48.8	182,067	11,038	263,219
1899	1,797	41	11,640	15.2	37.5	308,267	14,698	431,889
1900	1,779	60	11,529	23.1	265.1	399,656	46,562	567,719
1901	2,924	88	11,359	29.2	27.0	396,280	16,257	563,843
1902	3,162	78	15,552	25.4	158.9	553,143	30,304	691,507
1903	3,494	154	23,536	29.1	53.5	531,682	112,332	787,834
1904	2,307	112	12,518	35.5	69.4	375,754	44,908	573,815
1905	2,077	109	9,547	23.1	41.7	176,337	68,474	302,434
Totals	36,757	1,546	199,954	25.4	84.6	6,728,048	716,231	9,529,434

Loss Through Strikes and Lockouts

The following table, taken from the Sixteenth Annual Report of the Commissioner of Labor (1901), gives statistics concerning the loss from strikes and lockouts in the United States for the period 1881-1900:

Year	Wage Loss to Employees	Assistance to Employees by Labor Organizations	Loss to Employers	Total Loss
1881	$ 3,391,097	$ 291,149	$ 1,926,443	$ 5,608,689
1882	10,330,573	782,007	4,381,476	15,494,056
1883	7,343,692	563,486	4,993,124	12,900,302
1884	9,088,127	721,898	4,033,920	13,843,945
1885	11,564,421	555,315	4,844,370	16,964,106
1886	19,273,511	1,671,582	14,307,306	35,252,399
1887	20,794,234	1,277,400	9,518,231	31,589,865
1888	7,477,806	1,838,599	7,726,216	17,042,621
1889	11,789,408	707,406	3,243,877	15,740,691
1890	14,833,304	987,495	5,621,662	21,442,461
1891	15,685,214	1,182,752	6,793,576	23,661,542
1892	13,628,635	1,371,558	6,840,771	21,840,964
1893	16,597,449	927,451	4,440,615	21,965,515
1894	39,168,301	1,091,296	19,964,713	60,224,310
1895	13,836,533	626,866	5,656,437	20,119,836
1896	11 789,152	523,520	5,661,770	17,974,442
1897	18,052,510	768,490	5,165,731	23,987,731
1898	10,917,745	632,326	4,835,865	16,385,936
1899	16,643,139	1,882,671	7,822,772	25,688,898
1900	34,478,372	1,222,987	14,879,229	51,240,272
Totals	306,683,223	19,626,254	142,659,104	468,968,581

Strikes and Lockouts Settled

The following table from the Twenty-first Annual Report of the Commissioner of Labor gives statistics concerning strikes and lockouts settled in the United States during the period 1901-1905:

Year	STRIKES			LOCKOUTS		
	Number	Number Settled by Joint Agreement	Number Settled by Arbitration	Number	Number Settled by Joint Agreement	Number Settled by Arbitration
1901	2,924	149	49	88	10	2
1902	3,162	204	58	78	11	1
1903	3,494	246	66	154	18	3
1904	2,307	130	23	112	17	2
1905	2,077	74	27	109	10	3
Totals	13,964	803	223	541	66	11
Per cent	100	5.75	1.6	100	12.2	2.3

Summary of Industrial Legislation

The following statement shows in a summary form the status of existing legislation relative to strikes and the maintenance of industrial peace on the railways and in other public-utility service of the leading commercial nations of the world. This is taken from House Document No. 2117, 64th Congress, 2d Session, entitled "Railway Strikes and Lockouts: A Study of Arbitration and Conciliation Laws of the Principal Countries of the World Providing Machinery for the Peaceable Adjustment of Disputes Between Railroads and Their Employees, and Laws of Certain Countries for the Prevention of Strikes." This document was prepared by the United States Board of Mediation and was issued November 1, 1916.

AUSTRALASIA

Commonwealth of Australia: The Court of Conciliation and Arbitration consists of a president, who is a member of the Federal Supreme Court, and judges of the Federal or a State supreme court, appointed by the president as his deputies. Provision is also made for conciliation committees of equal numbers of employers and employees; assessors representing the parties appointed by the court to advise it, and local industrial boards, equally representative of workers and employers, presided over by a judge of the Supreme Court of the Commonwealth or supreme courts of the States. The procedure is varied. The president of the court may summon parties to a dispute and by conference aim

to reach an amicable settlement; or there may be an investigation as the basis of an amicable settlement; or temporary reference of a matter to a conciliation committee or local industrial board. All amicable settlements have the force of a formal award.

The initiation or continuance of any strike by any organization or person is prohibited. A penalty of £1,000 exists against any person or organization responsible for a strike or lockout.

New South Wales: In New South Wales the law is similar to that of the Commonwealth and of Queensland in that there are both an industrial court (which is a superior court and a court of record) and industrial boards for groups of industries or callings, awards by the latter being subject to amendment, variation, or rescission by the court.

Strikes and lockouts of all kinds are prohibited. An injunction may be issued by the industrial court. For violation, the employer is liable to a fine of £1,000; the worker is liable to a fine of £50, which is a charge on his wages. If the striker is a member of a union, he may be held liable for not exceeding £20 of the penalty. The penalty on union for aiding or instigating a strike is £1,000.

New Zealand: The legal machinery for the adjustment of disputes in New Zealand consists of a court of arbitration, consisting of three members appointed by the Governor to serve for three years, one "judge of the court" to have the tenure, status, and emoluments of a judge of the Supreme Court, and one each nominated by unions of employers and workmen, respectively; councils of conciliation, consisting of a conciliation commissioner appointed by the Governor for a term of three years, to have jurisdiction within a designated industrial district, and one to three assessors appointed by the commissioner for the occasion, on the nomination of the parties applying for a conciliation council, a like number to be appointed on the nomination of the respondents; boards of investigation appointed by court of arbitration. The procedure is for a council of conciliation, when requested, to attempt to adjust the controversy. Failing in this, the matter may be referred to the court of arbitration, which shall make a determination. Disputes involving workers on the Government railways or affecting more than one industrial district may be brought before the court in the first instance by application of a union of railway employees in the one case and of any party to the dispute in the other.

Conditions under which strikes are prohibited are as follows: (*a*) Under the industrial conciliation and arbitration amendment of 1908, which applies only to cases where an award or an industrial agreement is in force, strikes and lockouts are prohibited. (*b*) Under the labor disputes investigation act of 1913, which applies only to cases where there is not an existing award or industrial agreement, notice must be given to the minister, who must refer the matter to an industrial com-

missioner or committee. If no settlement is effected within fourteen days from delivery of notice to the minister, the Labor Department conducts a secret ballot, and then seven days must elapse before cessation of work.

Penalties for enforcement of anti-strike legislation are as follows: (*a*) Employer is liable to £500 fine and employee to £10. In the case of public utilities the penalty to the worker is £25. For encouraging or instigating a strike or lockout the scale of fines is: Worker, £10; employer or union, £200. The wages of workers may be attached for fines. (*b*) Penalty for striking or locking out before notice is given or before expiration of seven days from the secret ballot, £10 to a worker and £500 to employer. Wages of worker may be attached.

At any time during the progress of a strike 5 per cent of the workers concerned may demand a secret ballot on any question relating to the strike.

Queensland: There is an industrial court administered by a judge appointed by the Governor in council. Local industrial boards are also created on the application of a prescribed number of employers and employees. The court has jurisdiction over certain classes of cases directly and over others on appeal from industrial boards.

In the case of public utilities, strikes and lockouts are illegal unless a conference has been held before an industrial judge and proved abortive and unless fourteen days notice has been given after termination of conference and a secret ballot has been taken. In all other cases fourteen days notice must be given and a secret ballot taken. A fine of £1,000 may be levied on employer or union, and £50 on worker. If worker is a member of a union, not to exceed £20 of the penalty may be levied against the union. Penalties are made a charge on wages and on funds of associations.

South Australia: The judge of the industrial court brings parties together when any dispute occurs, and may make an award in trades where there is none in force, or may change an existing award. When sitting to make a final adjudication, two assessors, representing the respective parties to the dispute, assist the judge if he thinks fit.

All strikes and lockouts are illegal. For a violation, a fine of £500 may be levied against an association and a similar fine of £500 against a person, or three months imprisonment. Fine of £20 or three months imprisonment for picketing. Fines are made a charge against funds of associations and on wages over and above £2 a week. An employer who refuses to employ or a worker who refuses to accept work, where there is an industrial agreement or award in operation, may be fined.

Tasmania: The Governor appoints wages boards. Determination of wages boards may be suspended by the Governor, and the boards are

then required to review their action. Appeals may be taken from the wages boards to the Supreme Court. No provision is made for conciliation.

All strikes and lockouts in wages boards trades on account of any matter as to which a determination has been reached are prohibited. A fine of £500 may be levied against an organization and £20 against an individual for a violation of anti-strike legislation.

Victoria: No legislation.

Western Australia: The court of arbitration consists of a judge of the Supreme Court and two representatives from employers and employees, all three being appointed by the Governor. No provision is made for local tribunals, and matters come directly before the court of arbitration or the presiding judge.

Strikes and lockouts are illegal. An employer cannot discharge a worker nor can a worker cease work (1) before a reasonable time has elapsed for the matter to be dealt with by the court, or (2) during the time the proceedings in court are pending. A fine of £100 may be levied against an industrial union or employer, and of £10 against the worker.

AUSTRIA

Strikes and lockouts on public utilities are prohibited. For violation the union may be dissolved and funds and property seized.

Before forming a union the organization must notify the Government authorities and send them a copy of the constitution and by-laws. The authorities may then forbid the formation of the union if they consider it will be dangerous to the State.

BELGIUM

Trades unions of employees of public utilities are permitted under Government supervision. Employees may present grievances or requests to the minister of railways, posts, and telegraph, through official channels.

Strikes and lockouts are prohibited on railroads and in all forms of the public service (railway, postal, telegraph, and telephone service, all of which are under State control). Imprisonment or fine is the penalty for enforcement of anti-strike legislation.

There has been no serious strike on Belgian railroads since their establishment. This is due to the fact that positions on the railways are much sought after because of stability of employment, pensions, and on account of the prestige of being in the Government service.

CANADA

The law is administered by the Minister of Labor and is under the immediate direction of the Registrar of Boards of Conciliation and

Investigation appointed by the Governor in council. Boards of conciliation and investigation are appointed by the Minister of Labor, one member being nominated by each party to the dispute, and the third by these two. If nominations are not made in due time, the minister appoints on his own motion. Jurisdiction by the minister is obtained by the request of either party for the appointment of a board of conciliation and investigation.

Strikes and lockouts are illegal in public utilities and mines until after an investigation by a Government board and the publication of its report. A fine ranging from £2 to £10 may be levied on each worker, and from £20 to £200 on each employer, for each day an illegal strike or lockout continues. Penalties are not imposed by the Government, but must be enforced by the injured party to the dispute.

The object sought in publishing the report of boards of investigation is to enlist the coercive force of public opinion upon the side of the right as found by the board.

DENMARK

By a law passed in 1910 provision is made for the appointment of a permanent arbitration court of six members selected from organizations of employers and employees, with a president and vice president with qualifications of an ordinary judge. It is the duty of this court to make the parties to a dispute respect any agreement between them. A Government conciliator is appointed for two years. Whenever a strike or lockout is impending (public notice being compulsory), it is his duty to intervene and attempt to effect a settlement.

Strikes or lockouts are prohibited in cases where court awards or trade agreements are broken. In cases where no trade agreement exists a strike is legal, but public notice must be given before it is started. Fines are imposed for violations.

ENGLAND

There is no legal machinery, strictly speaking, for the adjustment of wage disputes on the railways, but effective machinery is in existence which is quasi official, consisting of an agreement between the railroads and their employees, which was originally negotiated by a representative of the Board of Trade in 1907. It was amended as the result of conferences and the report of a royal commission in 1911. These changes were the outcome of the railway strike in 1911. By this agreement boards are created, with equal representation of railroads and employees, to perform the conciliation work not settled by direct negotiation between the parties. If a settlement cannot be reached, a neutral chairman or umpire, selected by the conciliation boards from a panel prepared by the Board of Trade, is called in, and his decision is final.

There is no legislation prohibiting or making illegal strikes and lockouts. There are no penalties against strikes and lockouts.

The adjustment of disputes on other public utilities and in the mining industry is provided for in the conciliation act of 1896. Conciliators or boards of conciliation are appointed on the application of both parties, selected from panels of employers, employees, and "persons of eminence and impartiality" established by the Board of Trade. For conciliation proceedings the Board of Trade acts on its own initiative or by the request of either party; for arbitration, on the application of both parties.

FRANCE

The only qualification as to complete freedom of action in the railway service is that any engineer, fireman, or trainman shall not desert his post during the progress of a journey. Postal employees and employees in shipping service controlled by the Government are prohibited from striking. Desertion of trains between terminals is punishable with imprisonment ranging from six months to two years. Postal and other civil employees may be dismissed or suffer losses in pay. The monopoly privilege may be withdrawn from the shipping service on which a strike occurs.

In all occupations except those mentioned the right of employers and employees to take concerted action in a peaceful manner with a view to cessation of work has been officially recognized since 1884. On October 2, 1910, the National Federation of Railway Employees of France and the Federation of Unions of Railway Engineers and Firemen called a general strike on all the railroads of the country. The Government, using its full authority under military laws, called for a mobilization of the strikers, and ordered them to do military duty for three weeks. Their military duties were specified as the keeping of the railways under normal working conditions under the orders of their superior officers. This measure defeated the strike, which was called off after six days.

GERMANY

Means for enabling railway workers of all groups to bring their requests and grievances to the notice of the authorities have been instituted by all the State railway administrations in Germany under the name of workmen's committees.

Strikes and lockouts are practically prohibited on public utilities. There are no specific laws forbidding strikes, but rules and practices of railway and other public utilities administration make strikes impossible. About 90 per cent of the organized railway employees belong to unions, the by-laws of which specifically waive all claim to the right to strike. No specific penalties exist for engaging in strikes, but workmen

are forbidden to belong to unions which assert the right to strike. All union organizations and by-laws are subject to governmental sanction. The coercive force of the law is found in the fact that a railway employee who engaged in a strike would be dismissed or fail of advancement in his work. Every Government employee looks forward to attaining the status of an "official," and this is practically impossible if he belongs to or is known to sympathize with a trade-union which does not meet with Government approval.

HOLLAND

Delegates are selected from different groups of railway employees who are authorized to present the wishes and complaints of railway workers before the managers. Arbitration boards have been established for the enforcement of penalties imposed because of infractions of working rules and conditions.

Strikes in railway service are prohibited. Imprisonment or fine is imposed for violations.

Legislation prohibiting strikes was the outcome of a general strike in the Dutch railway service in 1903.

ITALY

Strikes are prohibited in railway and public service. Fine and loss of employment are the penalties provided for enforcement of anti-strike legislation.

Legislation relative to fines and loss of employment would not practically prevent strikes, because of the impossibility of enforcing the law upon so many individuals. The real restraining influence is the power of the Government to call out the reserves and compel strikers to resume work under military law.

OTTOMAN EMPIRE

In the case of a dispute relative to wages or working conditions, a conciliation board is organized, composed of six members, three representing employers and three representing employees. The boards are presided over by an official appointed by the Government. The agreements reached by these boards are enforced by the Government. If the parties to the dispute cannot agree, the employees are free to stop work, but nothing must be done by them opposed to freedom of action.

Strikes in public utilities are unlawful until grounds of dispute are communicated to the Government and attempts at conciliation have failed. Imprisonment or fine is imposed for violations.

The organization of trade-unions in establishments carrying out any public service is forbidden.

PORTUGAL

Strikes and lockouts are illegal in public utilities until eight to twelve days notice has been given, together with a statement as to the causes for a strike. Loss of employment is the penalty for violations.

In all services, except public utilities, strikes have been expressly permitted since the establishment of the Republic in 1910.

RUMANIA

Strikes are prohibited in public utilities. Imprisonment and loss of employment results from violations.

No employee of a public utility can join a trade-union without the authorization of the Government.

RUSSIA

Strikes are prohibited among employees of public utilities. Imprisonment and loss of employment are penalties. Authorities may arrest or banish strikers without bringing them before a court.

SPAIN

Strikes are illegal in public utilities until five to eight days notice is given, together with a statement as to the causes of the strike. Leaders and officials of labor organizations or concerted movements who do not make a declaration as to the causes for a strike are liable to imprisonment.

In industries other than public utilities strikes are expressly allowed, provided they are not accompanied by threats or violence.

SWITZERLAND

The Canton of Geneva has established a system of conciliation and arbitration. Conciliators are elected directly by the two parties to the dispute. If they cannot reach a settlement, recourse is had to an arbitration board under Government auspices. There is no law for the settlement of disputes in the Federal railway service.

Strikes are prohibited in the Federal railway service and in the Canton of Geneva whenever an industrial agreement or award is broken. In the Federal service strikes are punishable by fines and reprimands. There are no penalties in the Canton of Geneva.

There have been no strikes on the railways of Switzerland since their nationalization in 1897.

TRANSVAAL

The Transvaal law is administered by a department of labor. Boards of investigation are appointed on the request of either party to a dis-

pute. The board has the power of the Supreme Court as to securing evidence, etc., but cannot make binding orders. Failing the adjustment of a dispute by agreement, the board reports to the Minister of Labor its recommendations, which are officially published and also given to the newspapers.

In public utilities, the mining industry, and in any other industry to which the provisions of the act are extended by proclamation, strikes are unlawful until after an inquiry by a Government board and until one month after the publication of the board's report. Any striker is liable to a fine of £10 to £50 a day, and, in default of fine, imprisonment, or imprisonment for three months without the option of fine. Any one encouraging another to strike may be fined £50 to £250 or six months imprisonment. Any employer declaring a lockout may be fined £100 to £1,000 a day, or given twelve months imprisonment.

The Transvaal law is based, as regards prevention and procedure, upon the Canadian industrial disputes investigation act of 1907.

UNITED STATES

There is a law providing for the conciliation and voluntary arbitration of disputes on railways which interrupt or threaten to interrupt the business of the employer to the detriment of the public interest, under the administration of a board of mediation and conciliation appointed by the President. The board attempts mediation and conciliation, which failing, the board seeks to procure the submission, through an agreement of the parties, of the dispute to a board of arbitration. Jurisdiction is obtained at the request of either party to a dispute, or the board may proffer its services.

There is no legislation by the Federal Government against strikes and lockouts. There are no penalties against strikes.

Brief

COMPULSORY ARBITRATION OF INDUSTRIAL DISPUTES

RESOLVED, *That Congress should enact a law providing for the compulsory arbitration of industrial disputes.*

INTRODUCTION

I. The question is important.
   A. The problem of the relation between labor and capital touches what many regard as the most important social question of the day.
   B. In its direct and indirect effects, its outreachings and ramifications, nothing so vitally affects the average man as does the matter of the relation between labor and capital.
   C. It is generally admitted that industrial warfare in the form of strikes and lockouts is disastrous to employee, employer, and the general public.

II. It is timely.
   A. The threatened Nation-wide railway strike of September, 1916, the passage of the Adamson eight-hour work-day bill, the Congressional investigation into the entire railway problem, the threatened coal miners' strike, and the present high cost of living, are among the elements which give peculiar significance to the question of the relation between labor and capital at the present time.
   B. All of the leading commercial countries of the world except the United States and England now have some form of legislation against strikes and lockouts.

III. The question arises as to whether in the future the United States shall continue its plan of mediation and conciliation and voluntary arbitration as provided for in the Erdman Act of 1898 and the Newlands Act of 1913, or adopt the plan of the compulsory arbitration of industrial disputes.

AFFIRMATIVE

I. The existing conditions in our National industrial system demand a remedy.
   A. Industrial warfare occurs frequently and is accompanied by many evils for employee, employer, and the public.

1. During the years from 1881 until 1905, 38,303 strikes and lockouts occurred in the United States, involving a total loss of $468,968,581, and affecting 9,529,434 employees who were thrown out of work.
2. Violence and disturbances of the peace often occur, as (*a*) the Pullman car strike of 1894, (*b*) the Colorado mine strike, and (*c*) the New York street railway strike.
3. By means of strikes and lockouts employees lose their wages, employers have their production hindered and stopped, respect for law and order is broken down, and the general public, by the interruption of service and the inability to secure necessaries of life, has to suffer needlessly and uselessly.
4. Boycotts and blacklisting often follow strikes and lockouts.

B. Our present methods and machinery do not afford the desired remedy.
1. The number, scope and extent of strikes increase each year.
2. The present cost of strikes annually in the United States is $250,000,000.
3. Voluntary arbitration and conciliation have proved utter failures in settling or preventing strikes.
   a. Only one and six-tenths of one per cent of the strikes in the United States between 1881 and 1905 were settled by voluntary arbitration.
   b. They have failed to settle the big strikes.
4. Voluntary arbitration is wrong in theory because boards of this kind lack the power to compel the parties to arbitrate and the power to enforce their awards.

C. The fact that Congress found it necessary in the late summer of 1916 to pass the Adamson bill, providing in effect for wage increases, in order to avert a threatened Nation-wide railway strike, furnishes in itself a striking indictment of our present methods of voluntary arbitration and conciliation.

II. Compulsory arbitration of industrial disputes is right in principle and is in harmony with the spirit of American democracy.

A. The right of the public is paramount to the rights of the participants in any strike of serious consequence.
1. The privilege of engaging in the various forms of industry is granted by charter from the body politic, or the State.
2. The general public is the chief loser by strikes and lockouts.
   a. Disasters resulting from railway strikes, coal miners' strikes, and other strikes of similar nature, affect the general public everywhere.

b. The public bears the cost of the strike and of increased wages, either in higher rates or poorer service.

B. It is the duty of the Government to provide for the promotion of peace and public welfare throughout the Nation.

1. The primary purpose of government and all public authority is the promotion of peace and public welfare. (Garner—*Introduction to Political Science.*)
2. It is the business of law in every department of life to see that reasonable expectation is fulfilled: the reasonable expectation of the employee that the conditions under which he makes out his scheme of life will have some permanence; the reasonable expectation of the employer that the conditions under which he contracts will have some degree of permanence; the reasonable expectation of the general public that it will not suffer privation and hardship needlessly and uselessly.

C. Compulsory arbitration embodies the ideas and principles of law and order as opposed to the use of force and violence.

1. The argument that compulsory arbitration is wrong in principle because individual liberty is interfered with is untenable.
   a. On every hand the individual is compelled to surrender his liberty for the good of society.
   b. No man can operate his business as he pleases. He is restricted by sanitary laws, building laws, child labor laws, and in numerous other ways.
2. Objections against compulsory arbitration might be urged with equal force against our entire judicial system.
   a. Men are forced to settle their disputes in civil matters in law courts.
   b. The court decides disputes between partners.
   c. The court enforces the specific performance of contracts.
   d. The court decides on occasion whether the man or wife shall have custody over children.

III. Compulsory arbitration of industrial disputes would remedy the present evils of our industrial system, and is practicable.

A. Strikes and lockouts, recognized as our greatest industrial evils, would be practically eliminated.

1. In the eighteen countries which have tried compulsory arbitration, or varying degrees of it, the number of strikes and lockouts has gradually decreased.

B. Compulsory arbitration would benefit the employers, employees, and the general public.

1. Employers could proceed without the fear of a strike or of being compelled to pay unreasonable wages.
2. Employees would be freed from the losses and hardships of strikes, and would have legal rights in regard to their wages.
3. The general public would be guaranteed public peace and continuous service.

C. Public sentiment would be behind such a law and enforcement would not be difficult.
1. Capital and labor would at once abide by the decisions, as they do in other cases, and the intervention of the marshal, or other officer, would be necessary only rarely, if at all.
2. Provision could be made for the enforcement of the awards by fine or imprisonment, or both.

D. Unjust awards of the arbitration courts would be improbable.
1. Workingmen do not expect a wage higher than an industry can pay.
2. If conditions make it impossible for an employer to pay any certain wage, he can easily establish that fact in court.
3. A wage is always the result of a compromise, and the effect upon industry is the same whether the compromise is brought about by collective bargaining, conciliation, or in a court of industrial justice.
4. Either party could take the initiative in bringing a dispute before an industrial court.

IV. Compulsory arbitration has proved successful where it has been tried.

A. It has proved successful in New Zealand.
1. No important strike or lockout has occurred since the compulsory arbitration act went into effect in 1894.
2. Capital and labor have been on better terms.
3. Production has increased. More wage-earners have been employed.
4. The condition of workingmen and women has been improved.

B. It has solved industrial problems in Australia.
1. Chief Justice Higgins of the Commonwealth Arbitration Court asserts that the system has been a success in Australia, and that the arbitration system of Australia helps rather than hinders labor organization.
2. Industrial peace has been the rule and there have been but few strikes.

C. Compulsory arbitration has proved successful in Italy and Norway.

D. Compulsory arbitration has been successful in Belgium.

E. All of the leading commercial countries of the world except the United States and England have some form of legislation against strikes and lockouts, as the Commonwealth of Australia, New South Wales, New Zealand, Queensland, South Australia, Tasmania, Western Australia, Austria, Belgium, Canada, Denmark, France, Germany, Holland, Italy, Norway, Ottoman Empire, Portugal, Rumania, Russia, Spain, Switzerland, and Transvaal.

NEGATIVE

I. Compulsory arbitration is unnecessary and undesirable in the United States.

A. Voluntary arbitration and conciliation have proved generally effective in the United States.

1. A large number of boards have been established.
2. Strikes and lockouts have been avoided and ended.
3. Better relations have been fostered between capital and labor.
4. These are the democratic methods of settling disputes.
5. Every railway dispute that has threatened the interests of the public seriously has been settled by conciliation, voluntary arbitration, or legislation.

B. Many of the subjects of dispute could not be settled by compulsory arbitration, as they are matters of principle.

1. A principle cannot be arbitrated.

C. Compulsory arbitration is opposed by employees and employers, and is not favored by public opinion.

1. Organized labor is opposed to it.
   a. Distrust always prevails as to the fairness of the award.
   b. In the threatened railway strike in 1916 it was the employees who refused to arbitrate.
2. The employers generally oppose it.
   a. Many of them feel that the causes for dispute are not matters for arbitration by a third party. They feel that they have a right to deal with their own workers as they see fit.
   b. In the street railway strike in New York City it was the managers who refused to arbitrate.
3. Employers and employees hesitate to give power to those who they feel do not understand conditions.
4. There has been no expression of public opinion throughout the country in favor of compulsory arbitration.

D. Strikes are not a sufficient necessity for the adoption of so radical a departure as compulsory arbitration.

1. Less than 4 per cent of the men engaged in industry are involved in strikes annually. (Report of the Industrial Commission.)
2. Only one workday in 500 is lost in strikes, one five-hundredth part of the time.
3. Strikes are decreasing proportionally.

E. Strong factors are now making for industrial peace.
1. Voluntary arbitration by National and State boards are great aids to industrial peace.
2. Trade agreements and collective bargaining help.
3. Public opinion in condemning unreasonable action is aiding industrial peace.

II. Compulsory arbitration of industrial disputes is wrong in theory and is not in harmony with the ideals of American democracy.

A. It would destroy the individual liberty of employer and employee and involve involuntary servitude, which is never justifiable.
1. Men would be forced to work against their will.
2. Employers would be forced to employ others against their wishes.
3. It would destroy the right of free contract.
4. It would give the court too great powers.

B. It would violate the principles of democracy.
1. Democracy teaches that every man can attend to his own business better than some one else can attend to it for him.
2. The public has no right to interfere with private business.

C. The argument that labor and capital should be compelled to settle their disputes in courts just as individuals settle their civil suits is unsound.
1. Civil suits always have to do with the exchange of commodities, or values.
2. Labor cannot be conceived of as a commodity.

D. It would hinder economic progress, working injustice to employer and employee, and governing industry by artificial and not by natural laws.
1. Employers have property and could be more easily reached by the courts. In New Zealand only licensed unions can be made party to a suit. Workingmen may act as individuals and keep out of reach of the courts, but employers could not.
2. The courts could not prevent boycotts which hurt employers seriously.
3. It would increase cost of production and drive capital out of the country.

4. It would weaken labor unions if not destroy their usefulness.
5. It would encourage increased disrespect for law.

III. Compulsory arbitration is impracticable and would be harmful in operation in the United States.
   A. It is too great an experiment.
      1. There is nothing in our system of government preliminary to it.
      2. Anglo-Saxon institutions are always a gradual growth; an evolution, not a revolution.
      3. Drastic legislation is seldom good legislation.
      4. The territory covered would be too great, and the expense too great, for the efficient operation of the law.
   B. Compulsory arbitration could not be enforced.
      1. Awards could not be enforced on employees, employers, or their sympathizers.
         a. It would be impossible to imprison or collect fines from large bodies of workers.
         b. The great corporations could not be compelled to obey an award.
         c. A court could not compel 200,000 men to resume work. In addition, involuntary servitude would not be tolerated in this country.
      2. Substitute skilled labor could not be found competent to perform the work.
      3. The attempt at compulsory arbitration would result in inefficiency.
   C. Such a system would not eliminate strikes and lockouts nor materially reduce the number occurring now.
      1. It would be practically impossible to compel by legislation one set of men to work for the profit or convenience of another set of men.

IV. The results obtained from the working of compulsory arbitration elsewhere have not been such as to warrant its adoption in the United States.
   A. Strikes have occurred both in Australia and New Zealand since the compulsory arbitration law has been in effect.
      1. The courts have been unable to enforce their awards.
      2. The ill-feeling between capital and labor has been increased.
      3. The system has been abandoned in West Australia.
   B. Compulsory arbitration is untried in England and virtually untried in France.
   C. The Canadian plan fails to provide sufficiently expert service for judging the cases that come up.

D. Even if compulsory arbitration has been somewhat successful in the antipodes, that fact would prove nothing for the United States.
   1. New Zealand has only 800,000 people and is smaller than Colorado.
   2. New Zealand has no modern industry. Only 27,000 persons are employed in factories.
   3. Conditions are the same throughout the two small islands of New Zealand, but are very different in the different sections of our vast country, north and south, east and west.
   4. The Government of the United States is a decentralized or federal government, while the governments of New Zealand and Australia are highly centralized.
   5. Non-interference of personal liberty has always been the American principle, while New Zealand and Australia have been the lands of government-owned railroads, telegraphs, telephones, gas plants, electric plants, insurance companies, mines, and factories.

E. European countries which have adopted compulsory arbitration are likewise countries holding greatly different ideals and principles from those of the United States. The principle of non-interference of personal liberty has not held sway with them as it has in the United States.

References—Affirmative

INDUSTRIAL PEACE OR WAR

(By Everett P. Wheeler, in the *Atlantic Monthly*, Volume III, pages 533–539, April, 1913.)

The strikes that destroyed the peace of England during 1911, the coal strike in this country, which lasted from May 12 to October 23, 1902, and its threatened renewal during 1912, the threatened strike of locomotive engineers and firemen, the Lawrence strike, the hotel-waiters' strike in New York, the strike on the Boston Elevated Railroad, and the garment-makers' strikes, have led thoughtful men to realize the danger to American prosperity and liberty from the unsettled relation between capital and labor.

The old conception that the laboring man was weak and needed protection, that he could not stand out and higgle for terms, and must therefore receive special consideration from philanthropic people, still lingers, but is no longer true. Laboring men in many vocations have organized. They have energetic leaders whose counsels in the main they follow loyally. These labor organizations confront organizations of capital. In many parts of the country the two face each other with mutual distrust and animosity, like hostile camps. When the skirmishers give the alarm the armies are ready for battle, and enter upon the fray with no consideration for the suffering caused thereby to the great majority who take no part in the particular industry threatened by the war, but who are in various ways dependent upon the results. Of course, in one sense, everybody is a capitalist and almost everybody is a laborer. But in this article I use the words in the ordinary sense. The capitalist, in our usual parlance, is the man who controls large accumulated capital, much of it his own, much of it that of stockholders who intrust their share to his care. The laborer is he who earns wages in some business carried on by the capitalist.

Let us consider what can be done to prevent these disastrous wars. The fundamental American principle is "Liberty, protected by law." Edward Everett said that the love of this "gave to Lafayette his spotless fame." It is the principle embodied in the American Constitution. The latter undertook to insure to each man liberty to use his talents and opportunities in the way that seemed wisest to him, provided he did not infringe upon the equal right of his neighbor. The whole machinery of government described in the Constitution has for its principal object the protection of the individual in the exercise of this right. The right of the capitalists to combine for any lawful purpose,

and that of the laborers to combine for any lawful purpose, are equally sacred. But each combination should be subject to laws made for the general welfare.

How, then, shall the enjoyment of the rights of each be secured without infringing upon the rights of the other? In an uncivilized country men fight for their rights. Civilization should provide tribunals before which individuals must appear who cannot agree, and who claim rights that conflict with each other. It enforces the judgment of these tribunals by the sheriff or marshal, by the *posse comitatus*, and, if necessary, by the military. For it is an essential characteristic of a government really civilized that the decision of the tribunal previously established, rendered after a full and fair hearing of both sides, must be obeyed.

One of the most familiar and accessible illustrations of the application of this principle is to be found in what is perhaps the earliest recorded account of a trade-union riot.[1]

"A silversmith named Demetrius, who made silver models of the shrine of Artemis, and so gave a great deal of work to the artisans, got these men together as well as the workmen engaged in similar occupations (a sympathetic strike), and said: 'Men, you know that our prosperity depends upon this work, and you see and hear that, not only at Ephesus, but in almost the whole of Roman Asia, this Paul has convinced and won over great numbers of people by his assertion that those gods which are made by hands are not gods at all, so that not only is this business of ours likely to fall into discredit, but there is the further danger that the Temple of the great Goddess Artemis will be thought nothing of, and that she herself will be deprived of her splendor, though all Roman Asia and the whole world worship her.' When they heard this, the men were greatly enraged, and began shouting, 'Great is Artemis of the Ephesians!' The commotion spread through the whole city, and the people rushed together, dragging with them Gaius and Aristarchus, . . . who were Paul's traveling companions. . . .

"When the recorder had succeeded in quieting the crowd, he said: 'Men of Ephesus, who is there, I ask you, who needs to be told that this city of Ephesus is warden of the Temple of the great Artemis and of the statue that fell down from Zeus? As these are undeniable facts, you ought to keep calm and do nothing rash; for you have brought these men here, though they are neither robbers of temples nor blasphemers of our goddess. If, however, Demetrius and the artisans who are acting with him have a charge to make against any one, there are court days and there are magistrates; let both parties take legal proceedings. But if you want anything more, it will have to be settled in the regular assembly.' "

[1]Acts xix, 24-29, 35-39; Twentieth-Century Testament Version.

In short, there was, under the Roman law, in effect, a court of arbitration, and an assembly to which matters justiciable before this court could be referred. Violence and riot were unlawful, and were promptly suppressed.

How comes it, then, that in this twentieth century we have not machinery adequate to accomplish this result? Our method is that of Sangrado: "Warm water and bleeding—the warm water of our mawkish policy, and the lancets of our military."

The old English law dealt with this subject in a different way. On the one hand, it allowed a borough to prohibit the exercise of a particular craft except by those who belonged to the guild of that craft. This was the closed shop, and in fact it existed in many English boroughs. This exclusive privilege was abolished by one of the reform laws of 1835. This law was considered, and was, in fact, an act of emancipation. The legalized closed shop had caused such grievous abuses that it was no longer tolerable.

On the other hand, by the old English law, strikes were unlawful, and heavy penalties were imposed upon workmen who refused to work for the rate of wages fixed by local law. This combination act was repealed in 1825. Since then, in England and America, we have been trying experiments. Capitalists have formed their combinations; laborers have formed theirs. The power and wealth of each have increased. The wars between them have become more bitter and more injurious to the public.

Finally came the great strike in the year 1894. This grew out of a controversy between the Pullman Company and the workmen in the model town of Pullman—a town that had the most perfect system of drainage and the most comfortable tenements in the world. Nevertheless, owners and tenants could not agree. The tenants procured a sympathetic strike. Railway trains on all the railways leading into Chicago were held up by force. The United States mails could not be transported. Governor Altgeld refused to interfere, and had it not been for the courage and determination of Grover Cleveland and of Richard Olney we should have had chaos in Illinois. The Federal troops were ordered out. General Miles took command. He replied significantly to the threats of Altgeld: "If you persist in defying the laws of your country we will give you another Appomattox." And the insurrection was suppressed.

In this case the judicial power was appealed to. The judges of the Federal Circuit Court granted an injunction against the rioters. This was sustained by the United States Supreme Court in the Debs Case.[1] That injunction is sometimes cited as an instance of the hostility of the courts to organized labor. It was no more that than was the indictment

[1]Reported 158 U. S. Rep., 564.

of the McNamaras or of Darrow. It was hostility to murder and violence, and that hostility the judicial branch of the Government should always manifest.

But this decision of the Court was not, and under our present system could not be, rendered until violence was threatened. In fact, neither that decision nor its enforcement by the army could have been obtained unless there had been actual riot and bloodshed. That is the defect of the present American system.

The suffering and loss of life caused by this strike led to the passage of the Erdman Act, June 1, 1898. This relates to carriers engaged in interstate commerce and their employees. It provides that when a dispute arises between them either party may appeal to a tribunal of mediation consisting of the Commissioner of Labor and a member of the Interstate Commerce Commission. Since the organization of the United States Commerce Court a judge of that court may be called in. If this tribunal fails to secure an agreement, it endeavors to induce the parties to submit the controversy to arbitration. If arbitration is agreed upon, each party selects one arbitrator, and these two choose an umpire. If they do not agree, the mediators name the umpire. The act provides "that the respective parties to the award will each faithfully execute the same." During the pendency of the arbitration both lockouts and strikes are unlawful. Discrimination against members of labor organizations and blacklisting are prohibited by the act.

This act has been invoked in nearly sixty controversies during the last five years, and in every instance both parties have executed the award. It does not, in terms, provide for compulsory arbitration. It is like a law which should enact that if two neighbors cannot agree as to the boundary line between their property they may submit the question to arbitration in a certain prescribed manner. Failing this, they may fight it out. That certainly would not be considered a civilized way of settling such a controversy. Unfortunately, there is such a lack of mutual confidence between labor and capital that nothing better has yet obtained their joint approval. And the majority, the general public, have been so busy about their own affairs that they have let the thing alone.

A bill to extend the provisions of the Erdman Act to the owners and lessees of coal mines, the produce of which enters into interstate or foreign commerce, and their employees, was introduced in the Sixty-second Congress by Mr. R. E. Lee of Pennsylvania, was amended and reported by the Committee on Interstate and Foreign Commerce, but unfortunately did not become a law. It is a step in advance, and will, we hope, be pressed in the next Congress. It may lead to enactment of a more comprehensive measure, not only by Congress, but in every

State. The need for this has never been better stated than by Governor Stone of Pennsylvania in 1902:

"A law that would settle labor disputes between employer and employed must of necessity be a compulsory arbitration law, and the award must be final and conclusive. The law must be drafted for the protection of society, and must not be drawn in the interest of employer or employee. Experience teaches that strikes endanger life and property. When life and property are in jeopardy, society is menaced. The right of the public, the right of society, is greater than the rights of the participants on both sides in any strike."

The objections to compulsory arbitration might be urged with equal force against our whole judicial system. This has jurisdiction over the most sacred of human relations. If a man and his wife cannot agree as to the custody of their children, either may compel the other to submit the controversy to the arbitrament of a judge. The court decides disputes between partners. It compels the specific performance of contracts. Why, then, should not the majority of our people provide by law a tribunal with powers adequate to decide controversies between capital and labor, and with power, if necessary, to enforce its decision?

But forcible enforcement would be unnecessary. Not once in a thousand times is the power of sheriff or marshal invoked to enforce the judgment of a court. The awards of the arbitral committees of the various exchanges are obeyed without formal compulsion.

In labor controversies the most effectual compulsion is the indirect method of prohibiting strikes and lockouts pending the arbitration. This prohibition obviates controversy as to whether picketing is peaceful and as to whether persuasion has developed into physical violence. In short, it provides for peace and prohibits war, and substitutes for war a tribunal with powers to decide conflicting claims upon their merits.

This system of conciliation and arbitration has been tried by several of the governments which are federated in Australasia, and on the whole with success. That does not of itself prove that it would work well in America. But we should be foolish, indeed, if we did not profit by the experience of others. No better plan has been suggested. The present situation is intolerable. Let us, then, give heed to the report of the State Labor Bureau of New South Wales for the year ending June 30, 1909:

"The act has already lived down the bitter hostility of a section of the trades unions, the majority of them having already applied for the appointment of wages boards to determine rates of wages and conditions of labor in their particular industries. The opinion is fast gaining ground in industrial circles that greater benefits are likely to accrue

from the operations of the act than could be expected from the methods of a strike."

The award of the board of arbitration which a few months ago considered and decided the controversy as to wages between the locomotive engineers and the railroads of this country had under consideration also the subject of arbitration. The facts presented to this board showed very clearly the great danger to the whole community incident to the possibility of a general railroad strike. It recommends a system of compulsory arbitration. The only dissent by one of the members of the board was on the ground that such a system would be impracticable. The answer to that is that it is competent for the Legislature to declare that either a strike or a lockout is illegal until after a hearing before, and an award by, an arbitration tribunal. Such a system has succeeded in Canada and other countries where it has been tried. There seems to be no reason to doubt that it would be successful in the United States.

WHY I BELIEVE THE INTERSTATE COMMERCE COMMISSION SHOULD HAVE POWER TO FIX WAGES AND HOURS OF LABOR ON INTERSTATE CARRIERS

(By O. W. UNDERWOOD, United States Senator from Alabama, in the *Annals of the American Academy*, Volume 69, pages 229–236, January, 1917.)

You have asked me why I believe the Interstate Commerce Commission should have the power to fix wages and the hours of labor on interstate carriers.

I might answer you that the rights of society and the progress of civilization demand it. It would be a captious answer, and yet it would tell the truth.

Since the dawn of civilization the laws have been written to protect the rights of property. Courts have been established to interpret the law and determine what man's rights were under the law. No one questions that a dispute about property should be finally settled in the courts. Should either side to such a controversy resort to force instead of the law, the strong arm of the Government would intervene and punishment would swiftly come to the party at fault.

Centuries have piled on centuries without the law's recognizing the right of labor in the aggregate to have a court determine what was a fair and reasonable wage, with the resultant effect that when labor was dissatisfied with the wage paid, its only recourse was to quit work. When there were few men employed and there was opportunity for other employment, this was not a serious hardship to the employer or to labor itself, nor did it endanger the peace, happiness, and prosperity

of the public at large. But when hundreds of thousands of men are engaged for work under the same terms and the same conditions, and are paid the same wage, then it is practically impossible for one of the men employed in such a service to secure a raise of wages, on his individual merits, as long as he remains in the service because the individual equation is lost in the necessity for uniform hours of service and rates of wage, and if he is not satisfied with the terms of his employment he can only separate himself from his occupation.

On the other hand, if the men engaged in certain occupations are united in a society or labor union for the improvement of their condition and the increase of their wages, and they make demands on their employer that he is not willing to accept, the only recourse that they have, unless there is a mutual agreement to arbitrate the questions in dispute, is to declare a general strike, with all the resultant injury both to themselves and their employer—loss of wages and distress conditions in the home on one side, and loss of business and the destruction of property on the other. And arbitration is merely the establishment of a court, not by law but by the parties to the controversy, to pass on the points at issue. Strike conditions are always wasteful of time and money, dangerous and disorganizing to human society even where they are localized in area and resultant effects. But when the controversy goes far afield and involves not only the man who earns his bread by his daily toil and the man who has his money invested in the property that is giving employment to labor, but also, as was threatened recently, when the public is more seriously affected by a war between labor and capital than is either labor or capital, then the time has come when neither of the primary parties to the controversy has interests involved that should be considered in preference to that of the public, which has a right to demand that in the settlement of all such controversies the public interests shall be fairly and justly considered. In controversies involving the hours of labor and the rate of wages on the great railroad companies of America, no one can deny the importance of the questions involved to the men who do the work. Nor can it be denied, since at least 43 per cent of the cost of operating and maintaining the transportation companies of the United States is labor cost, that the invested capital in these companies has great interests at stake in determining what is a fair and reasonable wage for its employees, especially when the employer has no power under the law to fix the price of the product of his industry, the law itself fixing the price for which transportation of passengers and freight must be sold.

To state the equation differently, the law, acting through the Interstate Commerce Commission of the United States, fixes the rates of transportation for freight and passenger service and limits the earning capacity of the railroad companies. It is, therefore, apparent that if

the expenses of the railroad companies are greatly increased, either by reason of increased interest on their bonded indebtedness, increases in taxes, increases in the cost of supplies, or increases in the rate of wages, a profitable business may be changed to an unprofitable one, success into bankruptcy, unless the Interstate Commerce Commission grants the transportation companies the right to increase their rates of transportation so as to meet as fully as may be necessary the increased cost of operation. If this is done, of necessity the increased cost falls on the public; the shipper and the traveler must bear the burden. When a controversy that involves the increased cost of transportation arises between employers and employees surely the rights of the public are at stake as much as the rights of the principals to the controversy. Should these differences be settled as has been the case in the past without the opportunity for intervention on the part of the shipper and traveler? Manifestly their rights have not been protected, but have been ignored entirely.

For the interests of the immediate parties to the controversy and all of the rights for which they contend are not commensurate with those of the general public. You may say that the rates of wages on the inland transportation companies of the United States amount to more than the annual expenditures of the Federal Government. You may say that the capital invested in the railways of the United States amounts to more than fourteen billions of dollars. You may say that the daily wage paid to 1,800,000 railroad employes affects the lives of 8,000,000 people. On the other hand, you may say that the fourteen billions of dollars representing the capital of the railroads of the United States is not owned by a few millionaires, but is in the hands of the savings banks, the trust companies, and the insurance companies of America; that the investment bank takes care of the savings of the frugal public; that the reserve funds of the insurance companies guarantee the policies that protect the homes of millions of the good citizens of the republic; that the trust company manages the estate of the widow and orphan. However, both sides of this controversy must pale into insignificance when you recall that the productive capacity of the industrial workmen of America amounts to more than thirty billions of dollars each year, and that this productive capacity is of no value until it reaches the market of the ultimate consumer, markets which must be reached by transportation at least a part of the way over the railroad lines of America. To stop transportation for an hour must of necessity paralyze industry for the same hour; to stop transportation for a week would not only stop industry for a week, but would throw out of employment millions of men who are dependent upon industry for their daily wage. To stop transportation for a month in the United States would not only destroy industry and deprive labor of employment, but would produce a

scarcity of the necessities of life that would cause actual suffering to the hundred millions of people in continental United States. Therefore it would be idle to contend for a moment that either the labor or the capital employed in inland transportation has an interest in the matter of the stoppage for any cause of the movement of railroad trains that is at all comparable with the interest of the whole people of the United States.

And yet it is claimed by some in this twentieth century since the birth of Christ, in this day when both labor and capital encroach upon the rights of freemen, that the only parties who are entitled to be heard in a controversy as to whether wages shall be increased or the hours of labor lessened are the men who work on the railroads and the men who represent the capital invested in the railroads; that for others to intervene is to interfere with the privileges of the contending parties; that, like two battle chieftains of old, these two parties alone are entitled to divide the spoils of war. In this era of advanced civilization must we admit that, if the contending forces of labor and capital cannot agree as to the matter in dispute, they are entitled to resort to the wager of battle and fight out their controversy by blocking the channels of trade, by stopping the natural flow of the nation's commerce, by paralyzing the industry of the people of the United States and by bringing distress and starvation to the homes of the innocent people of America?

This has been the viewpoint of the past, but as sure as man was born of woman, a new birth has come to the thought and the life of the people of the United States. A reactionary labor leader or a predatory capitalist may contend for such positions in the future, but the enlightened thought of clean Americans will wash their hands of the brutality of such transportation controversies for the future, and demand of the Government of the United States, in no uncertain tones, that the same government which protects us from a foreign foe, which was established "to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity," shall maintain a permanent court in this land where the controversies of all men relating to the commerce among the several States, or to the instrumentalities of such commerce, may be heard, and where the rights of all the people of the United States may be fairly and justly protected. This of necessity is the step forward, and this is the step that must be taken. To say that an organization of 400,000 men can stand in the way of the happiness and prosperity of 100,000,000 people is a proposition that cannot be contended for and maintained in any public forum or sustained in the hearts of the people of the United States.

It is clear to me that the same power that has the right to fix the rates of transportation should have the power to fix the rates of wage and the hours of labor on the great transportation companies of the United States, and that this power and this duty should be given irrevocably to the Interstate Commerce Commission in order that it may do justice between employer and employee. The granting to the Interstate Commerce Commission of the power to determine the hours of labor and the rate of wage will solve the problem for the future. Men cannot strike against the decrees of the Government. After a fair determination of the controversy by an impartial tribunal, public sentiment would force the contending parties to accept the verdict rendered as final. It must be so in the interest of the happiness of the men involved, the prosperity of the people, and the peace of the nation.

Until recently the court of arbitration has occupied the same position in labor disputes that the white flag holds in international law. Both have been the pledge of a higher civilization, and their abandonment portends ill to our future progress along lines that lead to the high ideals. The settlement of disputes by arbitration should not be abandoned. It is a step in the direction of law and order, but it is only the half-way house to the final solution of the matter we have under consideration. Arbitration cannot solve the greater question of the public rights, and it calls for a controversy before it can be adopted as a settlement of the pending issue. Labor has heretofore appealed to the Congress to fix the hours of labor and the rate of wage in gainful occupations. The Supreme Court of the United States has held that the Congress may by law regulate the instrumentalities of interstate commerce, and there can be no question as to the constitutional right of the legislative power to do so. Let us hope that the Congress will do its full duty and remove this question from the field of uncertainty by giving ample authority to the Interstate Commerce Commission to decide these questions.

The Congress has recently passed a law temporarily granting ten hours present pay for eight hours work in the future, with standard pay for all overtime to the men engaged in the movement of trains; it is said that this increase in wage amounts to 25 per cent of the amount formerly paid and will go to about one-fourth of the men employed by the railroad companies. The combined pay roll of the railroads in the United States amounts to $1,005,277,249. If the Congress should grant a like increase to all the men employed by the railroads it would amount to something like a quarter of a billion dollars. Such an amount of necessity must be paid by the public or certain if not most of the railroads would go into the bankruptcy court. The railroad men involved have heretofore received fair wages, the average daily wage in the United States having been for engineers, $5.40; conductors, $4.60; fire-

men, $3.25; and other trainmen, $3.15. Under these conditions it is only just and fair that the public, which in the end must pay the bill, should be represented in the court of final arbitration. And where else can the public have its day in court if the rate of wage and the hours of pay are not determined by the Interstate Commerce Commission?

HAS COMPULSORY ARBITRATION FAILED?

(By Edward Tregear, Ex-Secretary of Labor for New Zealand, in the *Independent*, Volume 72, pages 885–887, April 25, 1912.)

Sadness will fall upon some of us here in New Zealand if we are forced to accept the doleful views expressed by some recent writers in America as to the utter failure of compulsory arbitration in a country whose chief claim to notice from students of political economy appears to be the success or failure of this one bold industrial experiment.

Has compulsory arbitration failed? I certainly will not admit such failure till the principle is assuredly acknowledged generally to be "down and out." Let me briefly summarize the accusations which, if substantiated, imply failure: (1) The Arbitration Act was intended to prohibit strikes, yet strikes have taken place. (2) The act is unjust, because you can enforce it on employers but not on workers, since the latter cannot be compelled to work, nor to pay fines, nor can they be sent to prison in any number. (3) The strong unions are withdrawing from under the act, and, although the arbitration court still sits, it is only as a mockery and to "save the face" of the act's supporters.

I will try to answer these challenges, each in turn:

(1) That the act was intended to prohibit strikes. I do not believe that any men in full possession of their senses would pass a law pretending to prohibit murder if by "prohibition" is meant the absolute stoppage or cessation of murder. No lawmaking can absolutely prevent murder; it can only punish for breach of prohibition. No law can stop men from striking or ceasing to work; it can only punish those who violate the law—and that, of course, after the law has been broken. The New Zealand Industrial Arbitration Act did not attempt the impossibility of preventing men from striking; what it tried to do was to foster conditions which would make striking unnecessary and foolish, and also cause discomfort to those who, having made an agreement not to strike, still persisted in doing so. When an industrial union registers itself under an arbitration act it virtually renounces its power of striking in favor of the benefits of arbitration, and what our law attempts to punish is not the act of striking, but the breach of the social contract.

(2) As to the unjust incidence on employer and employee, it is true that in a few cases it has been found difficult to collect fines from strikers

or to imprison those who refuse to pay the fines. In by far the majority of cases, however, the fines have been collected; but it is not easy in any new country, where the population is to some extent shifting and unfixed, to pursue a wandering worker unless he is regarded as a criminal and tracked with police assistance. It may be theoretically unjust that an employer's property should prove a better mark for distraint than the chattels (if any) of a poor man; but this is a weakness found in civil cases brought under any statute; it is always easier to make a rich man pay when he loses than "the man of straw"—at all events, that is the case in New Zealand.

(3) The third indictment is partially, but only partially, true. Some of the strong unions, especially coal miners' unions, have withdrawn from under the act, so as to get liberty to strike if they will—that is, they are no longer parties to the contract of arbitration. But to say that the act is regarded as a mockery or a farce in this Dominion is a judgment that in my opinion will not bear examination.

What are the facts generally concerning compulsory arbitration? We have had it in operation about seventeen years, and during that time have lived in what may be considered a state of industrial peace. When I say "we" I mean the great majority of citizens, the general public. The half-dozen so-called "strikes" during that period would be laughed to scorn in any other country. They have been little, trivial affairs, confined strictly to localities, and involving no disturbance or inconvenience to other trades or to their branches of the same trade elsewhere. They have been settled quietly, and the main body of the strikers in every case punished, although perhaps a few individuals have slipped through the meshes of the legal net. What is there to put on the other side of the account against these microscopic disturbances? First, immense general prosperity, largely caused by the stability of trade conditions. The employers have benefited so greatly by the industrial equilibrium that their establishments in regard to values of land, plant, production, and the employment of workers have more than trebled since the act came into force seventeen years ago. The employers are now the supporters of the act they at first feared and reviled, and strange to say (through the workers' ingrained belief that, under the wage system, industrialism is war), much of the workers' expressed suspicion of the act arises from the warm favor in which it is held by employers. Next, the workers must have benefited to the extent of hundreds of thousands—if not millions—of pounds by the action of awards fixing minimum wages. Let me give an example. Some ten years ago hundreds of girls were working in this city as waitresses at confectioners, tea-rooms, restaurants, etc., for wages sometimes as low as $2.50 for a week of ninety hours. An industrial union was formed by the girls, an award obtained, and there is now a mini-

mum wage of $6.25 for a fifty-two-hour week. There is thus a margin of thousands of dollars every week between the old "freedom of contract" wages and present wages. Multiply these thousands of dollars for hundreds of localities and hundreds of weeks and you will find the amount considerable for this one trade alone. Then consider similar "weak" trades (that is, where their members are easily replaced), trades in which by sex or occupation strikes are almost out of the question, and any one can see that the act has been of immense value, even financially, to the workers; especially when, in strong unions as in weak, the prosperity of general business has induced working full time for year after year instead of the old frequently broken periods. It is true that the coal miners have withdrawn many of their unions from under the act, but their action needs further explanation than to refer their conduct wholly to the act or its shortcomings.

Lately there has been formed here an organization called "The New Zealand Federation of Labor." It declares craft unionism to be a failure, and preaches the submergence of craft unions in one great union which can, if necessary, bring about a universal strike. The miners have joined this society, and to be ready for emergencies have withdrawn their unions from under the Arbitration Act, but they have not struck, nor will they probably strike until the time is ripe. This new departure does not prove in any way the error of principle in industrial arbitration; it only shows that they believe they have found a more valuable and effective weapon with which to wage the fight. The great majority of unionists still trust in argument as being better than display of force, and this is proved by the continually augmented numbers which each year sees registered under the act, in spite of the withdrawals to join the Federation of Labor. The industrial unrest now pervading all classes of workers everywhere would, I believe, have had the effect of uniting the more unquiet spirits in some similar organization whether the Arbitration Act be more valuable or less valuable than it is.

Here we have tens of thousands of workers quietly engaged in their occupations month after month, apparently content with compulsory arbitration. They are not quite satisfied, for the modern "divine discontent" would prevent that under what I think (as they think) an unfair and immoral economic system by which few workers are allowed to be employed—that is, to live—unless they can make profit for others than themselves. Putting that view aside, human weakness in the administration as well as in the observance of the act has caused friction and grumbling; but to say that the court is regarded as a farce appears to be a totally inadequate presentment of the situation. Why should we worry ourselves about the punishment of strikers when practically we are still "a land without strikes"? Why push things to unnecessary conclusions and worry while eating your dinner as to what will happen

if you eat to repletion? We shall probably have strikes, severe strikes, before long, but they will not have their place of primary origin in these islands or in the failure of the Arbitration Act. They will arise because of a great object-lesson given recently in London and Liverpool as to the power of organized labor to get almost anything it chose to demand if it would only carry on the necessary functions of production or transport, and not cut off national supplies. This movement will trouble you as it will trouble us; and it will make you, who have no compulsory arbitration, feel your social edifice shake, as we, who have the principle working, will feel the tremors of the economic earthquake. Our humble buildings will be comparatively safe, but one day there will be crashings among the "skyscrapers" of the world's great cities.

COMPULSORY ARBITRATION NECESSARY

(JOSEPH M. BROWN, Governor's Message to the General Assembly of Georgia, June 25, 1913, pages 24–38.)

During the fall of last year there occurred a strike by the employees of the street car company in Augusta, and another strike by certain employees of the Georgia Railroad, which, for a number of days, prevented the public from having the benefit of the operation of these common carriers.

By the census of 1910 the city of Augusta had a population of 41,040 people, and the counties served by the Georgia Railroad had an aggregate of 582,182. These figures give an idea of the widespread wrong these striking employees committed.

These two corporations were chartered by the State for the purpose of conducting commerce and the carriage of passengers. The primary object of their charters was service to the public. Consequently, when the charters were granted and these roads were built a contract was virtually entered into by the owners of these properties and the State whereby the former bound themselves to perform the duties of common carriers for the public, and the latter bound herself to protect them in the peaceable performance of those duties. Not one word was said in those charters giving the owners the right to suspend the operation of the roads to the detriment of public convenience, or giving the employees the same right. So long, therefore, as either of those companies attempts to perform the duty it assumed the State is under obligation to use extreme force, if necessary, to protect it in thus serving the public.

Furthermore, in the amended Railroad Commission law, as embodied in sections 2663 and 2664 of the Code of Georgia, the Railroad Commission is authorized to require all common carriers and other public service companies under its supervision "to establish and maintain such public

service and facilities as may be reasonable and just." Also, "to order and compel the operation of sufficient and proper passenger service when in its judgment inefficient or insufficient service is being rendered the public or any community."

Again, it has been very aptly said by one writing on the status of the State in relationship to the common carriers:

"The power to fix rates and charges for transportation is an attribute of sovereignty, because in operating a public highway a transportation corporation exercises the power of a sovereign. This power over public highways constructed for public use to accommodate public travel and secure public convenience is a matter of public concern and is absolutely essential to government."

Hence, it necessarily follows that any person or combination of persons who obstructs, intimidates, or otherwise prevents the operation of the common carriers strikes a blow at the interests of the public and puts his or their will in conflict with the mandate of the sovereign.

There is no escape, therefore, from the conclusion that those employees of the street car company in Augusta and of the Georgia Railroad put themselves in a state of open rebellion to the laws of Georgia. They ignored the cardinal tenet of republican government, viz., "There shall be equal rights to all, special privileges to none," and arrogated to themselves the exercise of special privileges for settling their quarrels with their respective managements at the expense and serious inconvenience of the public, and in a manner which embodied defiance of the law which requires all dwellers in the State having differences which they cannot peaceably adjust to submit them to the State's courts.

Again, their acts in leaving the service of the employing companies, and in virtually encouraging the formation of mobs to intimidate and personally assault those citizens whom these common carriers induced to take the places they had vacated, that the carriers might obey the law which created them, was logically a claim which can be expressed in these words: "This is your property, but it is my job on it. I and my partners, the union, will defend our mutual rights to exclusive ownership of the positions which we hold on your property. We will determine for you whom you shall hire and whom you shall not hire, and what wages you shall pay. While it is true that we have not invested a dollar in this public-service utility and you have invested millions in it, yet we have vested rights in these positions, rights which we have acquired by usurpation, and we will hold them, while defying the laws of the State and subjecting the public to serious inconvenience and loss, even against you. On your property chartered to serve the public we are supreme over you, supreme over the public, supreme over the law. The union label carriers more authority than does your Great Seal of State."

Summing up the status of a strike by employees on a public-service corporation, we cannot fail to know that there are more than two parties to such strikes. There is a third party, the public, which is subjected to unmerited and unnecessary inconvenience and loss. And above all, there is a fourth party, viz., the State, whose Constitution the strikers have ignored and whose laws they have trampled under foot. Concerning this fourth, and greatest, party, I will add:

The crisis which a strike on a public-service corporation brings upon the masses of the people is not only a menace to their power to procure the necessities of life, but is also a challenge to the very sovereignty of the State in that it arrogates to itself the power to prevent the railroads from performing the special functions for which the State granted their charters, viz., those of being common carriers of persons and property.

There is no power in Georgia greater than the power of the State herself, and that power holds mastery over and gives direction to every other power which she permits within her borders. She is supreme in potential activities, whenever she finds it needful to exert them. She exacts allegiance and will not divide it. She ordains one process for all, and holds any rival process as rebellion. She is no respecter of persons in the enforcement of her laws.

It is needless, then, to say that the State would not permit the management to shut down the operation of a street car line or a railroad. It is manifest, therefore, that the acts of the employees in preventing such operation are equally indefensible, equally condemnable, and that they should be just as inflexibly held accountable to the laws of the State. No man, no combination of men, is greater than the State and her laws.

THE WAY TO PEACE

(*The Outlook*, Volume 94, pages 653–654, March 26, 1910.)

John hires Hans as a gardener. Hans is dissatisfied with his room, his hours, or his wage, and gives notice that he will quit if his demand for improvement is not complied with. For a week John and Hans discuss terms; they can come to no agreement, and Hans quits and seeks another job. John's right to decide whether he will comply with Hans' demands, Hans' right to quit if the demands are not complied with, no one questions. The matter concerns only John and Hans. The public are not interested. Hans may be without a job for months; only Hans and his family are affected. John may be without a gardener for months; only John and his family are affected. This is the famous "right of private contract" of which we hear so often.

But when the employer is a great corporation and the employee is a thousand workingmen united in a labor union, and the job which they jointly carry on is not the cultivation of a private garden, but the conduct of a great highway on which the well-being of the entire community depends, this method of leaving the question between the two to be adjusted by "private contract" is absurdly inadequate. While the corporation and the labor union haggle about the terms of a new contract the whole community watches with eager interest for the outcome. When they fail to agree, and the employees, exercising "the right of private contract," quit, the transportation of a great city, perhaps of a great State, or congeries of States, is thrown into confusion. The public highways of the city in the territory affected cease to be available to the public. If John has no gardener, and consequently no strawberries from his own grounds in June, no one suffers but himself and his family. If the city railway corporation has no motormen, thousands of men and children have to walk from their homes to their offices and their schools.

The *New York Tribune* estimated that the threatened Western railway strike would have put out of commission 150,000 miles of railway and out of employment 125,000 employees besides those who were to participate in the strike, and would have affected disastrously the entire country west of a line drawn from Chicago to New Orleans. How many millions of men, women, and children would have been involved in great inconvenience, some of them in tragic suffering, there are no statistics to show. *Bradstreet's* estimated the loss to the public in the Pullman strike of 1894 at eighty million dollars. In the coal strike of 1902 the railways alone lost about forty-seven million dollars in freight rates. To apply to such a condition of affairs the principle of private contract is as absurd as to attempt to drive an old-fashioned coach and four along a railway track and across its culverts and its trestles.

The railway corporation has been created by the public to serve the public interests; and the public have some rights which the corporation and its employees are bound to respect.

How shall they be protected?

There are three rights which are imperiled by labor wars, and which the law should safeguard:

The right of the public to unimpeded transportation.

The right of the corporation to carry on that transportation for the public.

And the right of the employees to fair treatment from their corporate employer.

Protect the last, and the rest will be easily protected. At present the community does absolutely nothing to protect the employees' right to fair treatment. We leave the ten thousand employees of a railway to

protect themselves by leaving their employment if they have a grievance, as we leave Hans to protect himself by leaving his job if he has a grievance. They have no other remedy; wonder not if they use the one we give them.

The law should allow the employees of any public-service corporation to present their grievance to a public-service commission or its equivalent; should direct the commission to give an immediate and public hearing; should require the railway to accept and act on the finding of the commission; and on its refusal or failure so to do, should put the railway into the hands of a receiver, as it does in case of a failure to pay interest on its bonds. This would provide the employees with a remedy for real or fancied wrongs.

It should then make it a penal offense for the employees of any public-service corporation to combine in any attempt to interfere with the regular work of the public-service corporation, whether by leaving in a body or by any other method. And it should make it a misdemeanor for any individual to leave the service without adequate previous notice, say, four weeks, the misdemeanor being punishable by fine or imprisonment or both. This would protect the right of the public-service corporation to render, unhampered by strikes, the service to the public which it was created by the public to render.

These two rights protected, the right of the public to the public service would be sufficiently safeguarded.

Does this make of the employees slaves? Not at all. No more than the soldiers in the army or the sailors in the navy are slaves. No more than Hans is a slave; for Hans, if hired by the month, cannot lawfully quit his employer's service without giving a month's notice. It simply takes the club out of the hands of the interested employees and puts it into the hand of a disinterested tribunal.

Does it deprive the corporation of efficiency in dealing with its corporate problems? Not at all. If the directors prove themselves incapable of so managing the corporation that they cannot pay interest on the bonds, the law now takes it out of their control and puts it into other hands. If they prove incapable of so managing the corporation that they can satisfy the just demands of their employees—demands declared to be just by an impartial tribunal after public investigation—it is not unjust to take the management out of their control and put it into other hands. The rights of employees ought to be as well safeguarded by the law as the rights of bondholders.

Certainly the system which leaves the citizens of Philadelphia for weeks, and threatened to leave the citizens of all the States west of Chicago for weeks, without necessary transportation cannot be defended on the ground that it is efficient. If any reader has a better plan than we here propose, we shall be glad to hear from him.

INDUSTRIAL ARBITRATION IN AUSTRALIA

(By Philip S. Eldershaw and Percy P. Olden, in the *Annals of the American Academy*, Volume 37, pages 216–221, January, 1911.)

During the last decade Australia has enjoyed a far greater measure of industrial peace than the countries of the West. Without doubt the greatest factor in producing this result is her industrial legislation. This is not to say, however, that industrial disputes have ceased—such an end is as yet visionary; but the provision which has been made for the peaceful settlement of industrial differences has had its effect. Ability to have resort to such provision which has been made for the peaceful settlement of industrial differences has had its effect. Ability to have resort to such provision is preventive of strikes and lockouts in a measureless degree. Where such resort is made not only are incipient disputes nipped in the bud, but the ill-feeling consequent upon opposition is averted. These are the lines on which industrial arbitration is leading industry in Australia—strikes are becoming of rare occurrence, and the interests of industrial units, formerly antagonistic, tend to a closer mutuality. It cannot be laid down that, during the period of the adoption of arbitration in Australia, a definite number of open quarrels were prevented. But indirectly the measure of industrial peace that has resulted may be gauged from the resort made to the provisions of the various statutes in that connection.

First, as regards wages boards: The wide use made of these institutions may be gathered from the following table, which, except in the case of Queensland, includes results to the end of 1908:

	Total Registered Trades	*Trades Under Boards*	*Employees Under Boards*	*No. of Determinations*
Victoria	162	59	88 per cent	49
Queensland	56	29	----------	23
South Australia	74	24	62 per cent	20

Secondly, with regard to the Industrial Disputes Act of 1908, in New South Wales, embodying results from the inception of the act to the beginning of June, 1910:

Number of applications for boards	155
Number of boards appointed	139
Number of boards dissolved	26
Number of determinations:	
(*a*) Of boards	90
(*b*) Of boards re-enacting awards of court of arbitration	20
(*c*) Of boards varying or amending awards of boards	42
Number of boards now sitting	17
Number of hearings not yet begun	10

Thirdly, with regard to the arbitration acts of New South Wales and Western Australia to the end of 1908: In New South Wales 86 agreements were registered under the act of 1901, affecting 38,000 employees. Here, too, 252 industrial disputes were filed; 130 awards were made

and the remainder of the disputes were withdrawn or removed. Fifty-five awards have been made common rules.

In Western Australia 54 industrial agreements were made up to the end of 1908, affecting 16,000 employees. Of industrial disputes, 252 were filed, in which 71 awards were made.

It can thus be seen, from the number of peaceful adjustments of differences that have been made, how very greatly the systems of arbitration in vogue in the different States make for industrial peace. The position of the operative has been improved beyond all measure throughout the centers of industry. It would be too lengthy a process to quote concrete instances of this betterment; it is sufficient to say that the aim of insuring to the worker a "living wage" has been, and is still being, maintained in Australia, together with the procuring of better conditions of labor.

There is not the slightest cause for doubt on the question of capital having been diverted from Australia on account of the adoption of compulsory arbitration. Industrial peace is a stronger magnet than the results of "*Laissez faire*," as investments in Australian ventures show.

On the whole, compulsory arbitration in Australia has been an undoubted success in so far as results can be judged during the comparatively short time the system has been in operation. In New Zealand, where it has been in vogue longer than anywhere else, the success has been unqualified. True, the strength of the system has never been tested. There has been no decisive struggle between masters and men. But the absence of such a struggle is in itself a sign of efficiency, and of the satisfaction given to both the factors in industrial prosperity.

In New South Wales and the other States of Australia strikes have not been prevented, but certainly their number has been diminished, and, most important of all, the condition of the workers has been improved. This improvement continues, and with it it is certain that arbitration as a part of daily life will grow to be more and more an accepted fact in the minds of the community.

Of course, the reason for this success may lie in the fact that, in Australia, industry is centralized. It is notable that the conditions of agricultural laborers are the only ones that the commonwealth act does not profess to touch; and it is in the ranks of these workers that sweating and similar evils exist to a large extent. It has been found extremely difficult to get anything like a uniform rate of wage and number of hours of employment suitable for this class.

There can be no doubt that compulsory arbitration with its concomitant awards rests on a sound basis. It is the business of law in every department of life to see that reasonable expectation is fulfilled. The employer has the right to expect that the conditions under which

he contracts are likely to have some continuance; just as the employee has the right to expect that the conditions under the expectations of which he makes out his scheme of life will have some degree of permanence. That the legislature in providing means for the satisfaction of each of these reasonable expectations is going beyond its sphere of action will hardly be maintained by the most ardent opponent of state interference.

NECESSITY FOR INDUSTRIAL ARBITRATION

(By Rabbi Joseph Krauskopf, D.D., in the *Annals of the American Academy*, Volume 36, Pages 311, 319, 320, September, 1910.)

We must leave it to demagogues or to preëlection politicians to deliver themselves of fulsome panegyrics on the dignity of labor, and on the blessings conferred upon society by the laboring man. It would be wasting time to dwell upon what is one of the best known and best appreciated truths of human knowledge. More than waste of time it would be to show how capital and labor are but as the two blades of a pair of scissors, each useless without the other—facts so well known and so profoundly appreciated by people of intelligence that to speak of them were to insult the reader's intelligence.

An equal waste of time it would be to enter upon a discussion on the benefits of capital to civilized society, and on the necessity of its protection, for every railroad that traverses our continent, every ship that plows the deep, every factory and mill, every forge and furnace, every university and library, every school and art gallery, every invention that lessens the hardship of labor, and every comfort that heightens the joy of life, speak of the blessings of capital with a wisdom and an eloquence such as even the most learned writer on economics or the most eloquent orator cannot reach. Starting, therefore, with these axiomatic truths of economics as our basis, it is to be hoped that, if anything be said in the development of this article which may seem harsh to either capital or labor, it is not to be charged to prejudice or ignorance.

That something is to be said must be evident even to the superficial observer. There exists a state of war between capital and labor. There is bitter conflict in some quarters; there is menacing hostility in others. Employer and employee stand arrayed against each other with gauntleted hands. Strong leagues are compacted; open and secret alliances are formed. Campaigns are being carried on trade-papers and on platforms; bitter incriminations and recriminations are published in lurid type. Pictorial art is resorted to to inflame the mind. Capital is represented as a Moloch, grown fat on the heart's blood of the poor; and labor is shown as an anarchist whose sole aim is the crushing of the labor-giver. The two, who in the economic household are as closely bound together as are husband and wife in domestic life, and who should live

peacefully side by side, promoting each other's good and furthering the highest ends of society, are engaged in a bitter struggle.

The cry of the people who are not direct participants in the controversy is as loud as is that of employer and employee. Though in no way responsible for the bitter feelings existing between the contending parties, they are made to suffer a large part of the consequences. If the strike ties up or cripples a public utility, the people are put to no end of inconvenience and alarm and loss. Lives of innocents are slaughtered. Properties are dynamited. The peace of the community is demoralized. The usual routine of life is broken up. The public places of instruction and amusement are closed. People in poor health collapse under the nervous tension of constant fear and fright.

Recognizing right in the contentions of employers and employees, the people believe that a way out of the difficulty ought to be found, must be found, for the sake of the general peace and good-will. As government has provided courts for settling other quarrels between man and man, so must it provide courts for arbitrating differences that are arising in increasing numbers, and that are bound to arise in larger numbers, owing to the growing discontent among laboring people, and owing to the constant inflow of immigrants, who, being in need of employment, are bound to compete in the open market for the labor to be had. More and more the people feel that, as they have the right to call in the police when disturbances of the peace are annoying or endangering the neighborhood, or when they wish to have a nuisance abated in their immediate environment, so have they the right, in self-protection, and for the sake of the public peace, to demand that special courts be permanently established for the arbitration of industrial quarrels.

In that call of arbitrating our industrial conditions lies our hope for the future. It is a new cry and a far different one from that which follows reports of bullets and explosions of dynamite. It is this far-spreading demand for arbitration that gives a silver lining to the dark cloud that now lowers over us. That cry has already been answered in Germany, in Canada, in Australia, in New Zealand. Wherever answered, it has tempered much bitterness. The establishment of more than four hundred permanent courts of arbitration for trade disputes in Germany has lessened the number of strikes in that country to an astounding degree. Seventy per cent of the disputes in Germany between employer and employees have been brought before these tribunals, and although there is no obligation to accept the decisions rendered, with scarcely any exception they are cheerfully accepted by the contending parties, and faithfully followed.

May we, too, soon learn this needed lesson! May we, too, soon learn that there are nobler and surer ways of settling trade disputes than by wars against classes by strikes and lockouts, by bullets and by bombs,

by intimidation of employers and by starvation of employees. May we, too, soon see established in our midst the arbitration courts which Germany, across the Atlantic, Australia and New Zealand, in the Pacific, and Canada, our neighbor, have found a blessing to employer and employee and people. Arbitration courts are our only hope for industrial peace. Ours is the solemn duty to turn that hope into reality.

NORWAY ADOPTS COMPULSORY ARBITRATION

(In the *Review of Reviews*, Volume 54, page 394, October, 1916.)

At the present the United States is the leading country in the world in regard to industrial strife. But this place was conceded to America by Norway only last summer, for Norway was as late as June, 1916, suffering chronically from strikes and lockouts. Capital and labor were always at each other's throat in the Scandinavian country, and the situation had reached such an acute stage early last summer that the Government was compelled to take extraordinary action. It introduced a bill providing for compulsory arbitration of industrial disputes.

Australia and New Zealand long ago adopted such a measure. The Norwegian Government made in recent years several unsuccessful attempts to pass such a law. In 1914 the cabinet of Knudsen made an effort to pass a similar bill, but failed and resigned. A labor convention held in 1914 threatened a general strike throughout the country in case such a measure should be adopted. The Conservatives were also hostile to the bill. Only the Liberals advocated compulsory arbitration, but they were not strong enough to legislate upon it. The year 1915 was one of the most critical years in Norwegian industry. The number of strikes and their proportions assumed unprecedented size. The Swedish, German, French, and other foreign capital sunk in Norway were, for obvious reasons, reluctant to satisfy the demands of the workmen for better conditions and higher prices.

A crisis was reached at the beginning of the present year. The existing agreement between the miners and their employers had expired. The miners refused to renew it. A lockout was declared by the operators of the mines against their employees. The Norwegian labor organizations threatened a sympathetic strike in all the branches of labor. To meet this threat the operators of the metallurgical industries declared a lockout, which affected 20,000 workmen. Labor was getting ready to answer the lockouts by a general strike. Many organizations struck independently out of sympathy with their locked-out comrades. Meanwhile the Government started a campaign for a compulsory arbitration law. It entered into successful negotiations with the Conservatives, who agreed to support such a law. Only the Socialists opposed the

measure. A general strike was declared, which was answered the first day by 70,000 workmen; 120,000 more were to join the strike in the following two weeks upon the expiration of their notices which they were bound by contracts to give to their employers. The whole country was slowly being paralyzed. The Norwegian press declared the strike to be nothing less than an industrial revolution.

On June 9 Parliament passed the bill providing for the settlement of industrial disputes by an impartial commission appointed by the Government. Each side is to be represented on the commission by an equal number of delegates. The bill was signed by the King on the same day, and became a law. Violations of the law were punishable by fines of from 5,000 to 25,000 kronen, corporations as well as individuals being responsible. Immediately upon the adoption of the measure the lockouts were called off. But labor would not acquiesce so readily in the newly passed law. It refused to rescind the issued strike orders and to send the old strikers back to work. The reason given was that the Norwegian Labor Congress, scheduled to meet on June 13, would take up the matter and decide the future course of action of the labor class in regard to the compulsory arbitration measure.

The Norwegian Government was forced to wait four days for the Congress to meet and decide on its attitude toward the new law. The country was in a state bordering on panic. The representatives of the labor organizations, finally assembled on June 13, were bitter against the Government. At the beginning it looked as if labor really intended to oppose the law, and an industrial revolution seemed not at all improbable. However, the more moderate elements prevailed to the end. They simply made it an issue of Labor vs. the Government. The international situation was a great factor in convincing the workmen of the necessity of giving in. By a vote of 197 against 45 the Congress decided to sustain the law. The strike was called off. Compulsory arbitration of industrial disputes thus became a permanent institution in Norwegian national life. Industrial strife is no more, and it is predicted that the industrial development of Norway will from this time on gain powerful impetus.

COMPULSORY ARBITRATION NEEDED

(Editorial, Greensboro (N. C.) *Daily News*, October 1, 1917.)

There are strikes and rumors of strikes everywhere. Arbitration bureaus, boards, and commissions are kept on the jump, and, apparently, to little purpose. The public has been put to no little inconvenience as a result of these labor disturbances; there has been confusion at home, while there is constant and at times serious interference with war work.

It is now thought the Government will raise the scale of prices for

coal, with a hope of settling the coal strike. This device may be effective for a time, and, at all events, it is a familiar one. One recalls the controversy growing out of the Adamson bill, and the threatened railroad strike, only in that case labor benefited directly from legislative action, while in the case of the coal strike the increased wages will come through the additional amount which the operators will be permitted to charge for coal.

We suppose that governmental intervention in these conflicts between capital and labor, always under way, is necessary. The agents of the Government fixed a scale of prices which they considered fair to all concerned. The men in the mines inaugurated a strike. The people must have coal. There must be no interruption of war preparations.

We do not know anything about the merits of this case, but presumably the Government would have taken account of the fact in the first instance, upon the occasion of the original investigation, if it had found that the operatives were not receiving fair wages. Since, however, prices were based on conditions as found at the time of the investigation, we must assume that the men are going to get a raise, through action by the Government, mainly because they are well organized and have it in their power to stop production, and because the country once more finds itself upon the threshold of winter. The merits of the controversy probably are receiving very little consideration; the thing considered is that the people must have coal.

One wonders just how much consideration the ultimate consumer is receiving in this modern method of adjusting labor disputes. Of course, the consumer must have coal, but equally of course fuel ought to be made available to him at a fair price. In one sense he must have coal regardless of price, but something is wrong with the method of handling the necessaries of life when the consumer is brought face to face with such conditions. Of course, the operators, the mine owners, and the men who control and own other things the people must have, do not care how much is paid to labor so long as the increased cost of production may be passed along to the consumer. There is simply something wrong with the system. Apparently, judging from events both in times of peace and now in time of war, something in the way of compulsory arbitration is needed.

POINTS FAVORING THE COMPULSORY ARBITRATION OF INDUSTRIAL DISPUTES

(By Charles Lee Raper, Professor of Economics, University of North Carolina.)

(1) The industrial disputes which come within the meaning of the query constitute a fundamental disturbance of the peace of the community. They disturb the peace in a more fundamental way than do

most of the disputes over property or personal rights that arise between one citizen and another; and these disputes have long been considered of such public importance as to demand legally established courts for their settlement.

(2) If it is advantageous to the community that the ordinary disturbances of its peace and welfare be settled by compulsion in legally established courts, it is more advantageous that the much more important disputes—those between employer and employee when they are on a large scale—be settled by the power of law and in the courts established for the purpose.

(3) The contention, that such settlement of labor disputes which lead to the stopping of work and to the prevention of its resumption unduly takes away the liberty of the individual laborer, cannot stand the test of good government and citizenship. The community as a whole has, at least, equal rights with the individual citizen; it has the right to demand that its work go on.

(4) The contention, that such settlement of labor disputes unduly takes away the liberty of the employer—to employ in an open and free market at the lowest possible wage—cannot stand the test. This liberty is always relative to that of the community as a whole and to that of other individual citizens.

(5) The contention, that the strike is the laborer's greatest instrument for the improvement of his own condition and that of his children, is not a valid one. The strike is a very important instrument in the hands of the laborer, but compulsory arbitration, if fairly applied, will improve his condition more effectively than the strike—certainly with much greater justice to the laborer, the employer, and the public as a whole.

SETTLING LABOR DISPUTES IN AUSTRALIA

(From an interview with MR. JUSTICE HIGGINS, President of the Commonwealth Court of Conciliation and Arbitration, and his Decisions as given in the Commonwealth Arbitration Reports. By MARY CHAMBERLAIN, in *The Survey*, Volume 32, pages 455-458, August, 1914.)

Altogether Mr. Justice Higgins believes that the great experiment of minimum wage legislation and compulsory arbitration in Australia has been a success. Attacks upon the arbitration court have come, he asserts, from two main sources; from the conservative employer who believes that the conduct of his business is a matter which concerns himself only, and from the syndicalists, corresponding to the Industrial Workers of the World, who adhere to the strike policy which the arbitration laws are framed to discourage. "Extremes meet here," said the justice.

But the great mass of employers and the great mass of workers uphold arbitration and the legal minimum wage. High wages, it is admitted, mean better machinery and greater efficiency in conducting industry. At the same time they mean greater efficiency in the employee. Arbitration means fewer strikes and less attendant human suffering.

"A growing sense of the value of human life," asserts Mr. Justice Higgins, "seems to be at the back of all these methods of regulating labor; a growing conviction that human life is too valuable to be the shuttlecock in the game of money-making and competition; a growing resolve that the injurious strain of the contest—but only so far as it is injurious—shall, so far as possible, be shifted from the human instruments."

WAGE THEORIES

(By Wilson Compton, in the *American Economic Review*, Volume 6, page 324, July, 1916.)

As a method of industrial peace, arbitration is intermediate, not final; corrective, not remedial; opportunist, not ideal; an expedient for which the defense is to be found in present social policy. From the narrowly economic point of view as contrasted—if such contrast be permissible—with that of general social welfare, wage doctrine in industrial arbitration is as lacking in theoretical justification as is the legal minimum wage, the usual product of arbitration in practice. There is a fundamental circle in the reasoning; throughout a begging of the question. It takes its place with the other cost-of-production theories of distribution. In judging, however, the usefulness of compulsory arbitration as a device for the maintenance of industrial peace the reminder may not be inappropriate that the "business of the labor arbitrator is not to please orthodox professors of economy, but rather to find a reasonable *modus vivendi* for two disputants who are unable to find it for themselves."

References—Negative

GOVERNMENT ARBITRATION AND MEDIATION

(By James T. Young, in the *Annals of the American Academy*, Volume 69, pages 268–279, January 1917.)

Is Government arbitration and mediation a success in the United States?

Should it be made compulsory?

Should the law forbid the calling of a railway strike until a public investigation and report can first be made?

What change is required in our present Government system for settling disputes?

The present article is designed to show:

That the Government system has succeeded far beyond the strongest expectation of its friends;

That this success has been won in the settlement of the same kind of labor disputes as those now coming up in national and local fields;

That these results have been attained without the element of compulsion, which is therefore unnecessary and even undesirable;

That the benefits of arbitration would be lost, and perhaps the whole plan defeated, by prohibiting strikes until an official investigation could be made;

That the only compulsory feature of a Government system should be a public investigation and report.

The annual loss from strikes and lockouts in the United States now equals the fire loss, which is about $250,000,000. All are agreed that this waste of the national strength should be stopped, by Government settlement if possible. But beyond this point there is the greatest diversity of opinion and misunderstanding of the facts. The general popular belief is that arbitration is the main feature of our present plan of settlement, and that since arbitration has failed (!), we must work out a new method. Few understand that the chief and most successful part of our system is "mediation," or, as it is sometimes called, "conciliation." In order to reach any conclusions on our future policy, we must first clear up these misunderstandings.

In both the National and State laws a sharp distinction is made between mediation and arbitration. The first effort of public officials, when a dispute arises, is to "mediate." They interview each party to the dispute *separately* and secure the utmost concessions which each is willing to make. Next they try to bring about a settlement on the basis

of these concessions. *This plan now disposes of over four-fifths of the railway cases that come up.* Arbitration, however, is entirely different. If the officials fail to secure enough concessions to settle the dispute, they bend their efforts towards obtaining an agreement of the parties to refer the dispute to a board of arbitration. This is the substance of the Erdman Act, the Newlands Act, and all the State arbitration laws. Bearing this distinction in mind, let us glance at some of the results of the Federal and State systems.

Three National laws have been passed to provide a method of settling disputes on interstate railways.

The law of 1888 was in one respect the best of the three, although it is no longer in force. It provided that the President might appoint two investigators who, together with the United States Commissioner of Labor, should form a temporary commission to examine the causes of any interstate railway controversy, the conditions which accompanied it, "and the best means for adjusting it." The report of this body was to be transmitted to the President and Congress. Such a purely investigating commission might be appointed on the request of either party or by the President himself, or need not be appointed at all. The act also contained a weak provision for a board of arbitration to be chosen by the parties if they wished, which should render a decision on all the matters in dispute. This decision, however, was not binding. That is, the parties might agree to arbitration without consenting to abide by its awards. This statute, which remained a dead letter on the books for ten years, was never utilized. The reasons are very simple and easily discovered:

(*a*) The balance of power lay entirely with the railway managers; many of the strikes were complete failures; the unions were on the defensive.

(*b*) Both sides in the labor controversies of the time were poorly organized. No principles or methods of dealing between labor and capital had yet been worked out. There were no established habits of procedure, but each strike or dispute was an event in itself, separate and distinct from all others. We were in the "rule of thumb" stage of opinion on labor controversies.

For these reasons the decade 1888-1898, and even to 1905, represents an era in which arbitration was not the habitual but the most unusual thing to do.

The second law, known as the Erdman Act, was passed in 1898 and provided that the Federal officers, on learning of a serious interstate dispute, should attempt to mediate in the method already described. Failing in this, they should, if possible, persuade the parties to sign a contract, the terms of which were fixed by the law itself. This contract provided for the submission of the dispute to a board of arbitration

composed of three members chosen by the parties themselves. The award made by this board should be binding for a definite period. An appeal might be taken from the board's decision to the Federal courts. It is a remarkable fact that only one case was brought up under this law in the first eight years of its history. This shows clearly that the parties concerned, and public opinion in general, had not yet developed to the point where arbitration was a natural and instinctive method of settlement. In the one case that was presented during this time the railways declined arbitration and the Government system failed. The employees voted to strike by an almost unanimous ballot, whereupon the managers conceded the substance of the union's demands—a settlement that could have been easily made by arbitration. Meanwhile, in the period from 1901 to 1905 there were 329 strikes affecting the railways, with only this single case of attempted arbitration above described, and it a failure. This would seem to show conclusively that the unwillingness to make use of the previous act was not due to the weakness of the law, but to the lack of experience of the parties and the backward state of public opinion.

Beginning with 1905, however, a complete reversal in conditions took place. Despite the failure of several abortive attempts, the unions had finally got a firm grip upon all the labor supply of the interstate trains. With this there had come a parallel development in the control of railway capital; mergers had taken place; railway systems had been more firmly cemented together; the "community of interest" between competing lines had become a familiar feature of transport management. In 1902 the public had received that dramatic proof of the possibilities of arbitration which we still refer to as "the" anthracite coal strike. This was probably the last great controversy in which the mining companies felt assured of success in a contest with labor organizations, and when victory was within their reach it was wrested from them by the National Executive, who forced arbitration. It is difficult to exaggerate the spectacular effect of this case. It established once for all the fact that arbitration on a grand scale in a crisis of National proportions is possible. The similarity of the issues with those arising on the railways was also helpful. This striking demonstration removed the chief obstacle to the use of the Erdman Law, and in the next eight years there followed in rapid succession a series of 61 cases, most of which were finally solved by mediation, there being only 12 in which arbitration was necessary.

The third act, known as the Newlands Law, was passed in July, 1913. It differs from the Erdman Act in only two important points: the boards of arbitration under the Erdman Act were considered too small by the railway managers; under the Newlands Act they may, by consent of the parties, be doubled to six members instead of three. The new law

also provides that the work of mediation shall be undertaken by a special, permanent commissioner of mediation acting with one or two other Federal officers, to be designated by the President, and forming a "Board of Mediation and Conciliation." Following the 61 cases presented for settlement under the Erdman Act, 60 more have already been brought up under the Newlands Law—that is, in the last three years as many controversies have been submitted and settled as in the entire preceding twenty-five years. Of these 60 cases, 51 have been settled by mediation and 9 by arbitration.

Taking the entire results of the Erdman and Newlands Laws since 1906, that is, since arbitration has become an accepted method, we observe that a total of 121 cases have been submitted. Of these, over 70 were settled by mediation. Of the remainder, 21 cases were settled by arbitration, or by arbitration with mediation. In the remaining cases the services of the mediators were either refused or a direct settlement made without resort to arbitration. This is an astonishing record. Two features stand out with especial prominence: the rapid increase in effectiveness of mediation and the great importance and breadth of the problems submitted to arbitration. Mediation settled more than half of the controversies brought up to the board under the Erdman Law and over four-fifths of those brought in the last three years under the Newlands Act. Among the matters subjected to arbitration were issues ranging from the most minute point up to the entire terms of employment on over 40 railroads; from the discharge of an electric motorman for disobedience of orders to the settlement of pay and basic hours of work per day for many thousands of men.

Since 1910 a great cycle of demands from all of the brotherhoods has been presented to the railways. In November, 1912, the engineers asked considerable increases. The substantial part of these was granted by an award under the Erdman Act. In April, 1913, the firemen followed. Next came the conductors and trainmen in eastern territory in July, 1913, under the Newlands Act, and finally the engineers and firemen in western territory in 1914-1915 under the same law. In every one of these a marked and substantial advance was scored by the employees. It has been claimed that in a recent case the employees discovered that two members of the arbitral board owned stock in the railway concerned. It has also been complained that in some recent controversies the employees have not received all that they might properly expect. These are the only reasons made public for refusing arbitration in 1916. Against them stand the long series of awards above described covering a period of ten years in which the most meticulous care has been taken to preserve both the sensibilities and the substantial justice of the employees' side of each case. Even in the controversy arising over the discharge of a motorman, already mentioned, the arbitration

board upheld the discharge on the ground of absolute public responsibility of the railway officers to enforce obedience to train dispatchers' orders, but suggested a reinstatement after sixty days suspension. The same course was taken in a similar case arising under the sixteen hours of service act.

These facts must be weighed in judging the results of our National system. For it is not sufficient that arbitration shall "keep the trains running." A plan of settlement to be permanent must offer more than this. It must afford a means of securing substantial justice. Any system which continuously raised wages in times of business disaster or which kept them down when prosperity was at the floodtide would be unjust and hostile to the public interest. If arbitration has erred from this standard, it has been on the safe side, in favor of labor. Arbitration has kept the wheels turning and has been fair to labor. It has awarded a marked increase in pay and a reduction of the basic hours of the work day of every interstate train employee in the country.

In the minds of many persons our present system falls short because it does not provide a legal compulsion for the settlement of disputes in public-service industries like the railways. Economic war, they say, is antiquated and should be prevented by the same method that was long ago adopted to stop private war—a compulsory tribunal. Accordingly they ask that either arbitration should be absolutely required by law in public industries or else that, as in Canada, a strike should be forbidden until due notice of the dispute has been given to the public authorities and a period of thirty days allowed for public investigation and report. There is much force particularly in the latter view. We are undoubtedly approaching a time when it shall be necessary for the parties in interest to stop and at least listen to public opinion before they resort to force. Every consideration of public interest seems to dictate an enforced period of this kind, to be devoted to impartial inquiry and the publication of the facts with an unbiased proposal for the settlement of the dispute. But it is equally clear that we have not yet arrived at this point. Our public opinion has not yet been expressed in definite, unmistakable terms, nor are we willing to enforce any form of compulsion. We must first have some striking and dramatic proof of the need of compulsion before we shall be in earnest about it. There is only one way to force arbitration by law or even to prevent a strike by law pending an investigation and report—that is to punish by fine or imprisonment the violators of the law. Can we in the present state of public opinion prevent men from entering into a combination of this kind? Let any one who thinks that this is possible without a strong change in public opinion first picture to himself the scene in court when a union official were to be sentenced to fine or imprisonment for

promoting a strike. To secure a conviction we must first have borne in upon the public mind the strong belief that a fair and impartial method of settlement was possible, and that a great public calamity had been brought about by the refusal of the accused to resort to this tribunal. When we have established these two points beyond dispute in popular opinion, we shall be ready for a Canadian plan, but not until then. In the celebrated Buck's Stove and Range case the three union leaders involved escaped largely by reason of their prominence, their undoubted high character and ability, and the peculiar nature of the dispute in which they were involved. But it was unquestionable that they had violated the law. When the meat packers were accused of entering into a combination to manipulate prices, contrary to the Sherman Act, the Government secured an immense amount of evidence which it considered unanswerable. Yet it could not secure a conviction. The trial lasted several months and cost nearly one million dollars. The jury rendered a verdict of not guilty. Aside from the technical difficulty of proving a combination, whether to promote a strike or to manipulate prices, there is a lack of strong, definite, clear-cut opinion as to what is permissible under the rules of the game of business.

It is useless to multiply laws, writs, and compulsory processes until the public has definitely and unmistakably set its face towards the enforcement of the law. A compulsory statute might be praiseworthy as the expression of a pious wish, but it would settle no controversies. During our present attitude of indecision can any one imagine a department of justice or a Federal administration which would attempt to enforce such a law without the support of strong public opinion? This applies not only to the railways, but to the State systems of arbitration as well. No prominent association of manufacturers has advocated compulsory settlement. As for the workers, the union heads positively repudiate the idea in unmistakable terms.

In order to maintain the right to strike, the union heads feel that all forms of compulsory arbitration or compulsory postponement of strike must be defeated. Mr. Gompers has said: "Arbitration is only possible when voluntary. It never can be successfully carried out unless the parties to a dispute or controversy are equals or nearly equals in power to protect or defend themselves." During this transition period we must get along without compulsion. We must wait until, through the inconvenience, the loss and the suffering of a great railway strike, we are all convinced—not of the advisability—but of the necessity of a compulsory system.

And now to consider the last of the questions with which we started—What additions, if any, should be made to our present Government plan of settlement? The tentative suggestion offered here is to make nothing compulsory but investigation, and to leave this in the control of the

President in interstate disputes, and in the judgment of the State boards of mediation in local cases. But, it will be asked, how would such a simple provision have prevented a general railway strike? Was not an ultimatum delivered to the President that something must be done before Labor Day or traffic would be paralyzed? And was not the Adamson Act passed as the only avenue of escape from this catastrophe? The answer is to be found in certain facts which, for some reason, have never been pressed home upon the public—perhaps because of the distractions of a presidential election:

(*a*) The unions never demanded the passage of the Adamson Act; they were on the whole rather opposed to any law on the subject.

(*b*) Their demands were not made on the 1st of September, but in the preceding spring, and were definitely formulated for public consumption as early as May.

(*c*) At the time of writing (December) there are large numbers of Brotherhood members who do not know what the real provisions of the Adamson Law are; some even think that it limits work to eight hours per day.

(*d*) Many of those who do understand the act are extremely dissatisfied with its provisions, and some even violently opposed to it.

(*e*) A very considerable proportion of freight trainmen are employed for much longer hours than the public would approve.

If the above is a fair statement of the conditions, it will appear that there was abundant time for an investigation before the passage of the law; that such an investigation would have immediately turned up certain facts and grievances which would have been remedied in the natural course of events, just as all other unreasonable conditions in railway employment have been remedied when made public or arbitrated; that such a substantial change could have been made in these conditions as to remove all possibility of a strike, or of public support for a strike if one had been ordered, and that all real danger of a conflict would have been averted. The proper remedy, then, was not a compulsory arbitration, nor a compulsory suspension of the right to strike, but a compulsory investigation and public report of facts, with a proposed settlement. If the President possessed and would use this authority, the chief cause of railway strikes would be removed.

COMPULSORY ARBITRATION IN THE UNITED STATES

(By CORNELIUS J. DOYLE, in the *Annals of the American Academy*, Volume 36, pages 48–56, September, 1910.)

In this age of organization, with gigantic combinations of capital on one hand and powerful associations of labor on the other, the attainment of industrial peace is an ideal deserving and commanding the best

thought of the time. The study of industrial problems is being forced more and more on statesmen and educators, leaders of public thought and molders of public opinion. At the outset let me say that, in my opinion, there is no royal road to industrial peace, unless we discover a method to change human nature. In spite of any laws which we may enact, or any machinery we may devise to aid in the settlement of industrial disputes, we still shall have some strikes. That perhaps is well, for while we may deplore strikes and bitter conflicts between employer and employees, the absolute prohibition of such conflicts would, in my judgment, create a condition of serfdom and oppression more dangerous to society than our present industrial disturbances.

Efforts to deal with these industrial conflicts by legislation began upwards of a century ago. The original attempts were primitive in character, suited to conditions existing at the time, but they embodied some of the ideas in effect today and aimed to protect the worker from economic injustice. As labor organizations grew in strength and influence, multiplying the number of strikes and lockouts, so did the machinery for dealing with them develop, until today we have arbitration and conciliation laws in almost every country and in almost every State in the United States. These laws differ in scope and vary in degree of effectiveness, but all aim at the same goal, the harmonizing of the interests of employers and employees, so that the third party, known as the public, may be injured or inconvenienced as little as possible. I shall endeavor to point out some of the advantages and disadvantages of compulsory arbitration and, so far as I am able, show whether it would be effective in preventing strikes and lockouts in the United States.

The first compulsory arbitration law was enacted in New Zealand in 1891, following a disastrous series of strikes which paralyzed the industries of that country. It was enacted on the theory that where the public interests are affected neither an employer nor an employee is absolutely a free agent, and that personal liberty ceases to be liberty when it interferes with the general well-being of society. In other words, the Parliament of New Zealand decided that the rights of the masses were paramount to the rights of any particular classes. When the law was passed it was hailed by idealists as the acme of industrial legislation. The "country without strikes" became almost a household word, and the eyes of other countries turned toward the antipodes to watch the results of its experiment in dealing with its industrial problem. Other countries of Australasia took up the consideration of the problem and later compulsory arbitration laws patterned after the New Zealand law were enacted in New South Wales and in West Australia.

The success of the experiment of Australasia with its compulsory arbitration laws is open to conflicting opinions. Advocates of the law

assert that the country has greatly prospered, which undoubtedly is true. The fact should not be overlooked, however, that since the passage of the laws in the countries affected there has been a steady upward tendency in prices and wages, and strikes are uncommon on a rising market in any country, for the reason that employers are more ready to accede to demands. The real test of arbitration laws comes on a falling market when the employer wants to reduce wages, and I have rarely known a case where organized workmen will accept a reduction in wages without a fight, no matter what laws may be on the statute books.

If we look at compulsory arbitration laws as a means of preventing strikes and lockouts by absolutely declaring them illegal, we are bound to admit that the Australasian laws have been failures. They have not prevented strikes or lockouts absolutely, though they may have reduced them in number and extent. Numerous strikes have taken place in these countries since the adoption of the laws, some of which have been quite serious in effect, while the enforcement of the penalties provided in the laws has been found difficult if not impossible.

Recent newspaper dispatches from Sydney, New South Wales, state that business is so demoralized by reason of a strike of coal miners that a bill has been passed rendering labor leaders or employers who instigate or aid a strike or lockout liable to a year's imprisonment. Reduced to its final analysis, that must be the ultimate end of any compulsory arbitration law—*work on the conditions prescribed or go to jail.* It is doubtful if even the drastic threat of a jail sentence will compel a workman to continue at work under conditions which he regards as intolerable, and it is equally doubtful if any threatened punishment will compel an employer to operate his business unless he can see a reasonable profit in so doing. An award which increases the labor cost beyond what the industry can successfully carry is confiscatory, and an employer cannot accept it and remain in business. This was shown in Australasia in the case of the shoe manufacturers, who closed down their establishments and declared they would import shoes from Europe and America rather than attempt to operate their factories and pay the wages set by the arbitration court.

In spite of its experience, however, Australasia does not want to repeal its arbitration laws. The New South Wales law was passed in 1901 for a period of seven years, and in 1908 it was reënacted at the end of the experimental period. New Zealand endeavored to strengthen its original law by providing machinery for the better enforcement of awards, so it would appear that the idea of compulsory arbitration has met with favor in the eyes of a majority of the people in the land of its origin.

I have dealt at some length with the Australasian laws because a study of compulsory arbitration laws in operation is of infinitely more value than mere theorizing on how such laws might operate if tried in some other country. Let us see how such laws would apply in the United States.

In the first place, the successful operation of a law depends on the state of mind of the people in the country or locality where it operates. If there is a popular demand for a law it is easily enforcible and probably will accomplish the ends aimed at. If there is no such popular demand, or if popular sentiment is against a law, it is very apt to become a dead letter and its enforcement an impossibility. Aside from the question of whether compulsory arbitration laws would not be in violation of the Constitution of the United States, in that their enforcement would entail involuntary servitude, there is no demand for such laws in our own country. The conditions in the United States and Australasia are as different as the countries are widely separated. In Australasia the tendency is toward State control in everything. Individual rights are regarded as being entirely subservient to the rights of the people as a whole. In the United States the opposite is true. Here we are extremely jealous of individual rights and liberties and we resent governmental interference with what we regard as our private affairs. It is not the question whether we are right in the position or not; it is the fact that we must reckon with.

The experience of Australasia with its compulsory arbitration laws has tended to strengthen the opposition to such laws, not only in the United States, but in Great Britain and other countries. In Great Britain the question of compulsory arbitration is placed on the agenda of the Trades Union Congress as regularly as the so-called "Socialist Resolutions" in the convention of our own American Federation of Labor, and the majority by which compulsory arbitration is voted down each year shows that the idea is losing rather than gaining ground. In Great Britain it has been advocated by a radical wing of Socialists, but in the United States even the Socialists are opposed to it.

To the average American the idea of compulsory arbitration, which under certain conditions means involuntary servitude, is decidedly repugnant to his concept of liberty. Our form of government, which vests in the separate States the right to legislate in all matters within their respective borders, would make the working of compulsory arbitration laws difficult if not impossible. The Federal Government might pass a law applying to a few public utility corporations, such as railroads and telegraph companies, which are engaged in interstate commerce, but could not legislate for the great mass of employers and employees. Experience shows that comparatively few of our strikes

are directed against public utility corporations; therefore such laws, should they be constitutional and enforcible, would not prevent strikes except in a limited degree.

The experience of Canada with its "Industrial Disputes Investigation Act" of 1907, has been most gratifying. Industrial conditions in Canada do not differ materially from those in the United States. The organized workers in both countries belong to the same international unions. The Canadian act has not prevented strikes in every instance. It was not expected that it would, but in the first year of its operation thirty-two disputes out of thirty-five referred under the law were satisfactorily adjusted. The number of men involved in the controversies referred to was between 25,000 and 30,000. The actual number of boards constituted under the law during the first year of its operation was twenty. That record proves that the Canadian law is well adapted to present-day conditions. The Canadian law was enacted on the recommendation of the Deputy Minister of Labor following a prolonged strike of coal miners which caused a coal famine throughout Saskatchewan. Briefly it prohibits any strike or lockout in any industry affecting a public utility until an investigation has been made, and allows a period of thirty days in which to make such investigation.

After the investigation has been completed by an official board created for that particular case and the result of its findings made public, the employer or the union is free to engage in a strike or lockout if desired. Of course, the board does everything possible to effect an amicable settlement as well as conduct an investigation, and its official report is in the nature of recommendations to one or the other of the parties, or to both. Generally speaking, those recommendations have been accepted without recourse to a strike. Where they have not been, and a strike has been called, the same recommendations have sometimes been accepted later to settle the strike. Though the Canadian law does not in every case prevent strikes, it furnishes an easy and sensible method for adjusting industrial disputes if either one side or the other has an honest desire to settle. If they have not there is no law, compulsory or otherwise, that will prevent strikes.

It has been my experience, however, that in a large majority of cases both sides are anxious to avert strikes, if a middle ground can be found and neither one required to forego any principle. In matters pertaining to hours and wages, usually some compromise is possible; in cases where a principle is at stake it is more difficult. Even then, though it is impossible to arbitrate or compromise on a question regarded by either side as a fundamental principle, it frequently is possible by means of intelligent discussion and argument to present a situation in a very different light from that in which it may have been viewed by

one side or the other. For that reason the Canadian law of compulsory investigation previous to a declaration of war in industries affecting public utilities seems to me an admirable one which possesses advantages not possessed by the compulsory arbitration laws of Australasia. No edict of a court will convince either a workingman or an employer that he is wrong and the court is right. If he is open to reason and conviction an intelligent argument may convince him that his position is untenable, and he will acquiesce cheerfully, where in the other case he might submit rather than go to jail, but would still be dissatisfied.

Another point that I have observed in my experience is that arbitration awards seldom are satisfactory to either side in an industrial dispute. If both sides agree to accept such award, they usually do so, but it leaves a bad taste in the mouth of one or the other. On the other hand, agreements entered into voluntarily by both sides usually prove satisfactory. Each side has had a hand in making the contract and accepts it as the best bargain obtainable under the circumstances.

If it is true that awards of voluntary arbitration boards are not usually satisfactory, it would be even more so with compulsory arbitration. If the aim be to establish the greatest amount of harmony between employer and employee, so that the number of strikes and lockouts may be reduced to a minimum, I am convinced that to make compulsory arbitration successful each disputant must have perfect confidence in the arbitration court and an abiding faith that the award will be rendered in a spirit of justice and perfect fairness. That confidence, in my opinion, cannot be inspired where there is compulsion. As we understand arbitration, it is the antithesis of compulsion.

In conclusion, let me say that, though we realize that in many strikes the innocent party is made to suffer, I am convinced from a study of the facts that it is better to "bear the ills we have than fly to others we know not of" in the shape of compulsory arbitration.

COMPULSORY ARBITRATION IMPOSSIBLE

(Address of Samuel Gompers, President American Federation of Labor.)

There are some who, playing upon the credulity of the uninformed, seek to divert the principle of arbitration into a coercive policy of so-called compulsory arbitration. In other words, the creation by States, or by the Nation, of boards or courts with power to hear and determine each case in dispute between the workers and their employers, to make awards and, if necessary, to invoke the power of the Government to enforce the awards. Observers have for years noted that those inclined to this policy have devised many schemes to deny the workers the right to quit their employments, and the scheme of so-called compulsory arbi-

tration is the latest design of the well-intentioned but uninformed, as well as the faddist and schemer.

Our movement seeks, and has to a certain extent secured, a diminution in the number of strikes, particularly among the best organized. In fact, the number and extent of strikes can be accurately gauged by the power, extent, and financial resources of an organization in any trade or calling. The number of strikes rises with lack of or weakness in organization, and diminishes with the extent and power of the trades union movement. Through more compact and better equipped trades unions have come joint agreements and conciliations between the workmen and associated employers, and only when conciliation has failed has it been necessary to resort to arbitration, and then the only successful arbitration was arbitration voluntarily entered into, resulting in awards voluntarily obeyed.

Organized labor cannot by attempted secrecy evade the provisions of an award reached by compulsory arbitration and determine upon a strike. By reason of our large numbers every act would be an open and public act known to all, while, on the other hand, an employer, or an association of employers, could easily evade the provisions of such a law or award by the modern process of enforcing a lockout; that is, to undertake a "reorganization" of their employees.

It is submitted that the very terms, "arbitration" and "compulsory," stand in direct opposition to each other. Arbitration implies the voluntary action of two parties of diverse interests submitting to disinterested parties the question in dispute or likely to come to dispute.

Compulsion, by any process, and particularly by the powers of government, is repugnant to the principle as well as to the policy of arbitration. If organized labor should fail to appreciate the danger involved in the proposed schemes of so-called compulsory arbitration, and consent to the enactment of a law providing for its enforcement, there would be introduced the denial of the right of the workers to strike in defense of their interests and the enforcement by the Government of specific and personal service and labor. In other words, under a law based upon compulsory arbitration, if an award were made against labor, no matter how unfair or how unjust, and brought about by any means, no matter how questionable, we would be compelled to work or to suffer the stated penalty, which might be either mulcting in damages or going to jail—not one scintilla of distinction, not one jot removed from slavery.

It is strange how much men desire to compel other men to do by law. What we aim to achieve is freedom through organization.

Arbitration is only possible when voluntary. It never can be successfully carried out unless the parties to a dispute or controversy are equals, or nearly equals, in power to protect or defend themselves, or to

inflict injury upon the other party. The more thoroughly the workers are organized in their local and National unions, and federated by common bond, policy, and polity, the better shall we be able to avert strikes and lockouts, to secure conciliation and, if necessary, arbitration; but it must be voluntary arbitration or there shall be no arbitration at all—voluntary in obedience to the award as well as voluntarily entered into.

It is our aim to avoid strikes, but I trust that the day will never come when the workers of our country will have so far lost their manhood and independence as to surrender their right to strike or refuse to strike. We seek to prevent strikes, but we realize that the best means by which they can be averted is to be the better prepared for them. We endeavor to prevent strikes, but there are some conditions far worse than strikes, and among them is a demoralized, degraded, and debased manhood. Lest our attitude be misconstrued, we emphatically, and without ambiguity, declare our position. The right to quit work at any time, and for any reason sufficient to the workman himself, is the concrete expression of individual liberty. Liberty has been defined as the right to freely move from place to place. Hence any curtailment of this right, by and through law, or by and through contract enforced by law, is, in fact, a negation of liberty and a return to serfdom.

The industrial conciliation and arbitration law of New Zealand, the law creating and governing the Indiana Labor Commission and Arbitration Board, copied from the laws of 1897 and issued by the Indiana Commissioners, and the arbitration law of Illinois, as well as an act concerning carriers engaged in interstate commerce and other employees, approved June 1, 1898, along with other information from this and European countries, show that the kernel of all this species of legislation is a desire to prevent strikes by punishing the strikers. Our existing form of society is unquestionably based upon manufacture, commerce, and transportation, and anything that disturbs the industries is resented, and means are sought to prevent a recurrence and to clothe it in such a garb that public opinion will accept it and permit its execution.

Dealing with this matter more specifically, we find that the New Zealand law provides for a board of conciliation, with power to use their best efforts in bringing the contending parties together and in causing them to make some agreement. This failing, it goes, upon the demand of one of the contending parties, before the Industrial Court, which has the power, as any other court, to hear and determine, and the award or sentence is enforced by the State in the usual way, by fine and imprisonment, or both, *the only distinction being that the trial by jury is dispensed with and an appeal denied.* The only relieving feature about this law is that individuals cannot claim its protection. Men must voluntarily enter into a labor union or an association in order to

come under its provisions. The industrial courts of France are, as I understand it, organized much in the same way. The bill to prevent strikes, which was introduced in the German Reichstag at the instance of the Government, had the same underlying motive, and practically the same way of attaining this purpose. In the law adopted by the Hungarian Diet we again meet the same purpose to prevent strikes by punishing the strikers. The question of extending the master and servant laws of Sweden to the industrial workers of that country was under discussion in the Swedish Ricksdag, and was for some time fiercely combated by the lovers of liberty of that country, but it was finally adopted, and the other day a strike on the street cars in Stockholm was suppressed by sending several of the strikers to prison for long terms.

Coming now to our own country, we find that a bill was introduced in Congress which would admit of every train being made a mail train, and which, under the postal laws, would have subjected the strikers in railroad transportation to imprisonment for delaying the mails. Through the efforts of the railroad brotherhoods and the American Federation of Labor the bill failed. Then followed the introduction of the Olney arbitration bill, which provided for arbitration, voluntary in submission, or in its initiatory stages, but with compulsory obedience to the award; that is, the award was to be enforced by a direct penalty for the individual violating the same.

The Manufacturers' Association of the South, meeting during the last year, decided to submit to the legislature of each of the Southern States a law providing for term contracts, the violation of which would be punished as a felony, and that they did this with the specific purpose of preventing strikes and of inviting Northern capital. When their attention was called to the fact that they were as yet not "bothered" by labor organizations, they answered: "That's true, and that's just the reason why we decided to take steps to prevent the formation of any and to stop strikes in the most effective manner."

All these schemes are reactionary in their character. They mean simply that the employers of today find themselves in a somewhat similar position to the employers of England after the "black death." The King issued a proclamation at that time that any one who would refuse to continue work for the wages usually paid in a specified year of the King's reign would by the state be compelled to labor at such wages, regardless of any wishes that he or she might have. The English Parliament later enacted this into a statute known as the "Statute of Laborers," and reënacted it periodically with ever-increasing penalties, until Henry VIII., finding himself in need of funds, confiscated the Guild funds, and by impoverishing the organizations of labor at that time succeeded in enforcing the statute of laborers from that time on.

That law was every bit as fair upon its face as the laws of New Zealand, Indiana, Illinois, or any other of those laws with which I have any acquaintance, because it provided that the judges sitting in quarter sessions should hear both sides and then determine upon a "fair wage" for the year. Readers of "Six Centuries of Work and Wages," by Thorald Rogers, professor at the University of Oxford, will know the results to the English working people. Their daily hours of labor were increased, their wages reduced, until it was necessary to enact the "poor laws," and to quarter the worker upon the occupier, because he was continually being robbed by the employer. It has been stated by others that this law reduced the stature of the British workers by about two inches, and that the poverty—the real, dire poverty—to be found in the back alleys of English cities, even to this day, is largely caused by that species of legislation.

The thirteenth amendment to the Constitution of the United States, forbidding slavery or involuntary servitude, may perhaps be quoted to show that in our country no one can be compelled to work against his or her will, and that, therefore, there is no serious danger to individual liberty in the so-called "voluntary arbitration laws."

I believe that the reason why many well meaning, honest, and conscientious men and women favor some form of compulsory arbitration arises from the fact that their attention has been called to the refusal to arbitrate on the part of some large corporations or other employers of labor. It is felt that the rest of the public are made innocent sufferers and victims, and that there ought to be some way to give to the public the facts, in order that it might be known who is actually to blame. Whenever they are asked, "Do you want to send a man or a woman to jail for quitting work?" they immediately answer, "No! no!" What they seem to desire is that these corporations or employers who refuse to arbitrate shall in some way be compelled to do so. This is manifestly impossible.

THE DEFECTS OF COMPULSORY ARBITRATION

(By Frank T. Carlton, in the *Annals of the American Academy*, Volume 69, pages 152–155, January, 1917.)

The defects of the policy of arbitration are somewhat difficult of presentation. Subtle considerations are involved and the clashing of divergent interests and points of view come clearly into the foreground.

1. The most serious defect in a system of compulsory arbitration grows out of the absence of any definite and generally accepted standard for the determination of a wage rate. No theory of wages, now formulated, has satisfactorily stood the test of criticism and of practical application in the industrial world; and no board of arbitration has been

able to present a scientific standard by means of which disputes as to wage rates may be authoritatively and accurately settled. Consequently, boards of arbitration have as a rule compromised in fixing wage scales. When more than a mere compromise between opposing demands has been attempted, arbitrators have been influenced by a knowledge of what has been paid in the past in the industry under investigation, or what is now being paid in other shops and localities; or they have rested their decision upon the basis of the standard of living by them considered adequate for the workers concerned. The first alternative spells fixity, and will be further discussed under the head of the fourth defect.

The second method cannot be considered scientific so long as no definite concept of the standard of living exists. In fixing railway rates the Interstate Commerce Commission has certain fairly definite items as points of departure, such as the actual investment, the depreciation, market rates of interest, the cost of operation. In the determination of a wage award, the standard of living is such an indefinite concept that difficulties arise which prevent any scientific award. Some of the problems are: What is the standard of living? Should it gradually rise as the years go by? Should an allowance be made for the physical deterioration of the worker? Should an allowance be made for insurance against old age, sickness, and accident?

A recent dictum of the Ohio Industrial Commission throws an interesting sidelight upon the fundamental problems of a board of arbitration. "Exact industrial justice would not take into consideration the demands of the employees or the proposals of employers, but would be determined after a full investigation and inquiry into the cost of production, cost of maintaining a satisfactory standard of living, distribution of profits, and all other such matters." A brief study of this plan will disclose numerous practical difficulties. What is a "satisfactory standard of living"? To whom is it satisfactory? Does cost of production include a fair profit? And what is a "fair profit"? From whose point of view is it fair? What would be the proper "distribution of profits"? And what of "all other such matters"? Since almost all industrial disputes directly or indirectly touch the question of wages, obviously the first and foremost defect of arbitration offers almost insurmountable obstacles in the present state of the science of economics. It will certainly be difficult to apply the much-discussed "rule of reason."

2. The substitution of arbitration for the strike, boycott, or the trade agreement in the settlement of industrial disputes will tend to weaken organized labor or at least greatly to modify the form and aims of such organizations. The reason for this consequence is not difficult of discernment. Labor organizations have been formed to obtain, by

means of collective bargaining or militant activities, higher wages, a shorter working day, or some other improvement in working conditions. Unionists are loyal to the union and cheerfully pay dues only when they believe that the organization is a potent instrumentality to assist them in obtaining their demands. If arbitration becomes the accepted method of determining the wage rate, the necessity for the union becomes less clear to the average unionist. The resort to arbitration will not stimulate self-reliance and self-assertion among the workers. Of course, from certain points of view this seems an advantage rather than a defect. In a personal letter, the editor of a well-known labor journal questions whether arbitration "has been of much practical value in giving the workers those opportunities for self-assertion" which are "necessary for their welfare if they are to take an active part in the determination of what their terms of employment and conditions of labor will be."

3. Arbitration involves the intervention of a third party. The members of a board of arbitration, who are supposed to be neutral and to represent the public, as a rule are not familiar with the conditions in the industry. This fact adds to the difficulties in formulating a scientific judgment which will stand the test of rigorous criticism; and it does not inspire either side with confidence in boards of arbitration. Wage workers naturally hesitate to place the determination of matters which vitally touch their chief business in life in the hands of outsiders more or less ignorant of conditions in the industry and also of their point of view.

4. The procedure of a board of arbitration resembles that of a court: it is judicial in its methods. Therefore, precedent plays a large part in the deliberations of a board of arbitration. Since labor is struggling upward toward a higher standard of living and toward higher social standards, labor organizations look with suspicion upon any institution or method of procedure in which precedent plays a considerable rôle. Precedent for wage workers spells slavery, serfdom, or low standards of living and social inferiority. Laboring men and women are struggling to get out of the "servant" class. They want to be recognized as "equals" of their employers and the managers of the business in which they are earning a living. Wage workers are eagerly looking forward to the day when labor as well as capital shall have a voice in determining the conditions in industry, to the time when the representatives of the employees shall be admitted to the meetings of the boards of directors. Compulsory arbitration would seem to offer little opportunity to press forward along this line.

Again, in case no definite legal principles can be invoked, the decisions of the board depend in no small measure upon the training, interests, and idiosyncrasies of the judge or umpire. It has been noted that no fundamental principles which are of general acceptance can be laid

down for the guidance of boards of arbitration. Consequently, there is reason for the assertion made by labor leaders that the decisions of boards of arbitration depend upon the personal bias and the preconceived notions of the arbitrators. In the event of the adoption of compulsory arbitration in this country, the choice of arbitrators or of those officials whose duty it would be to make such selection would inevitably become a political issue. And, further, political considerations would become determining factors in the rigid or the flabby enforcement of the law.

5. The decisions of a board of arbitration, particularly when adverse to the workers, are difficult of enforcement. It might involve the necessity of penalizing large numbers of citizens.

6. Except in a few basic or quasi-public industries, a law providing for compulsory arbitration would probably be held unconstitutional.

An incidental weakness or defect of arbitration is due to the lack of a consistent policy for or against it on the part of both employers and wage workers. Neither employers nor employees at all times and under all circumstances take the same attitude toward arbitration. In some cases unionists demand arbitration; again, they reject such proposals. Likewise, employers sometimes favor arbitration; and, again, they contemptuously reject it. Employers usually stand for arbitration in industries when the unions are strong, as in the railway industry. But in other industries where organized labor is weak or has been eliminated, the employers insist upon their right to run their business without interference.

The United States Steel Corporation has not attracted much attention as an advocate of voluntary or compulsory arbitration in its own plants; and the copper companies of northern Michigan are not well-known friends of these measures. Less than half a decade ago the president of a New York City street railway company sternly informed the employees of the company that they were his servants and that he expected them to do his bidding. "Arbitration between my servants and me is impossible." How different was the attitude of the steam railway presidents in 1916! On the other hand, the anthracite coal miners in 1902 were quite willing to arbitrate their differences with the operators; but, in 1916, the railway brotherhoods rejected arbitration. The progress of compulsory arbitration in Australasia in recent years is partially due to "the demand of employers for protection against the more powerful unions." [1] But the first law passed in New Zealand in 1894 was favored by the union men of the island and opposed by the employers.

[1] Commons and Andrews, *Principles of Labor Legislation*, p. 143.

SECRETARY WILSON'S PLAN TO PREVENT STRIKES

(In *The Survey*, Volume 38, pages 244-245, June 9, 1917.)

I have been opposed to compulsory arbitration because I did not believe that any man or set of men should be compelled to work for the profit or convenience of any other man or set of men. All other objections are economic and incidental, although some of them are nevertheless serious.

All progress heretofore made by the wage workers through their collective activities has been brought about by destroying the equities. To illustrate: The shorter work-day has not been obtained by reducing hours of labor from ten to eight per day in every part of the same industry or occupation at the same time. The object has been attained by grasping the opportunity existing in some locality to compel some particular employer or employers to concede a shorter work-day, and then utilizing the accomplishment as a leverage to force similar concessions from other employers. But in the meantime the competitive equality of the employer granting the shorter work-day has been destroyed.

In any system of arbitration the tendency is toward equalization, with the highest existing standard for the workers as the ultimate basis upon which the equality should rest. With a continuing system of arbitration the lowest would in time be brought to an equal standard with the highest. When that point is reached the progress would be extremely slow, because the economic pressure would have to be sufficient to lift the entire load at once instead of lifting it a piece at a time, as the previous practice has been. In dealing with the railway situation, if the hours of labor are definitely placed upon an eight-hour basis or less, it would be one or two generations before there could possibly be any serious demand for change, and we might well leave the solution of that part of the problem to those who would have to deal with it at that time.

In any system of continuous arbitration the final protection of the wage workers against unfair decisions would be the standard of living, which is flexible and may be raised or lowered and the workmen still live, while the employer would have as his final protection the clean-cut, inflexible line between profit and loss, which he would be able to show definitely from his cost accounts. This would result in giving a greater measure of protection to the employers than to the employees against the possibility of unfair decisions.

The first objection cited involves a serious question of human liberty which no majority should have the right to invade. I realize, however, that when all the people are cut off from their food supply, and starvation confronts them, they are not going to stop to consider whose rights

are invaded or whose liberty is destroyed. They are going to find means of securing food. They will take the most direct road, whether that happens to be the right way or the wrong way. For that reason it would seem the part of wisdom to carefully work out the problem when no crisis exists, with a view to conserving both the freedom of the workers and the food supply of the people. The other two objections are purely economic, and may with perfect propriety be dealt with in such a manner as will best protect the general welfare.

These thoughts have been borne in mind in the preparation of the measure which I submit for your consideration. It is proposed to create a system by which nothing can be gained by striking. Other machinery is provided by which progress can be made. The worker is left free to work or not, individually or collectively, and the employers to dismiss their workmen individually or collectively, but the motive for strikes and lockouts is destroyed. I feel sure that with a measure of this character on the statute books strikes and lockouts would never occur over a sufficiently large area to seriously impair the transportation facilities of the country, and the end would be reached, not by crushing the workers, but by giving them a different method of adjusting grievances.

DOUBTFUL EFFICACY OF THE "AUSTRALIAN REMEDY" FOR STRIKES

(In the *Review of Reviews*, Volume 46, pages 367–368, September, 1912.)

A good deal has been written by various publicists and others, especially in the French and English magazines, upon what is commonly quoted as the "Australian remedy" for strikes—the establishment of wage committees to fix the minimum wage to be paid in any particular industries, and the institution of an arbitration court. According to most of these writers, numbers of trade disputes have been settled by the Arbitration Court, and everything in the labor world in Australia has been "going along swimmingly." There are those, however, who challenge the correctness of these representations. In the May issue of the *Review* we cited the eminent French publicist, M. Paul Leroy-Beaulieu, as saying that "one fact is certain: not only have strikes not disappeared from Australia, but in certain cases they have been quite acute." In the *National Review* (London) Mr. P. Airey makes a similar assertion. In the April number of that review a writer had stated that "Australians have devised a substitute for strikes that is proving effective under Australian conditions." This assertion, Mr. Airey maintains, "is one which sadly lacks evidence to support it."

That a number of trade disputes have been settled by the Arbitration Court is perfectly true. That a large number have failed of settlement

by these tribunals is also true. That the number of strikes which arbitration does *not* prevent is increasing is evidently also true; for Australia last year had the painful experience of ninety-two strikes which raged in defiance of the existence of some half-dozen State and Federal tribunals, which were supposed at one time to be an absolute remedy for the strike evil. Queensland, which has no State arbitration court, compares very well with her neighbors in the matter of infrequency of trade disputes.

Mr. Airey thinks that "the world should see clearly the cause of this apparent failure of a great principle."

One must first recognize that the Australian Labor Party, nominally one and undivided, contains a distinct line of cleavage. The aims of that body are undoubtedly socialistic, but the name "Socialist" is not too popular in labor circles, and some few years ago one State labor party rejected, by a large majority, a motion to christen itself a Socialist body. As a matter of fact, the Labor legislators of Australia mistrust the extreme "Socialist" party, and the militant Socialists often denounce the Laborites as a party of trimmers. The Parliamentary body, by the necessities of its existence, must always consist mostly of fairly moderate men, but the organizations behind them and controlling them are sometimes in the hands of extremists. The extremists are by no means enamored of the arbitration principle. Cordially, indeed, do many of them echo the cry of the Federal representative who cried exultantly in the midst of a Parliamentary discussion: "Give me the good old Strike!" . . . In this division of opinion in Labor ranks lies the real cause of the comparative inefficiency of Australian arbitration. . . . The truth is, Labor has not yet been educated up to the ideal of loyalty to its own ideal of a judicial settlement of trade disputes, particularly when that principle pinches Labor's toes.

Mr. Airey quotes a remark made by Mr. Ramsay MacDonald after a visit to Australia: "Australia is a hothouse. Much of its Labor legislation is a hot-house plant. I do not use these words to belittle it, but to describe its conditions. It is *cultivation under glass.*"

During the past twelve months there have occurred the following trade disputes in Australia:

The Sydney Waterside Workers' affair, followed by a sympathetic strike among the unions; the Brisbane Tramway strike; the Lithgow affair (lasting many months); the strike among the carriers of Adelaide, and the downing of tools in the Wonthaggi coal mine.

All these outbreaks, says Mr. Airey, "shriek aloud that the alleged remedy for industrial trouble is, so far, no remedy at all." He considers, therefore, that he is fully justified in controverting the statement that in arbitration Australians have "devised an effective remedy for strikes."

COMPULSION DOES NOT INSURE PEACE

(Editorial, Cleveland *Plain Dealer*, January 28, 1913.)

Australia and New Zealand have gone farther than any other countries inhabited by English-speaking men in testing socialistic and extremely paternal government. They have ventured upon experiments which have no parallel in the civilized world.

Among the results which these antipodean nations—for they are virtually independent in all things affecting their own affairs—claim to have achieved is the abolition of strikes. They have boasted that their compulsory arbitration laws have put an end to strikes and lockouts and insured industrial peace.

Recent facts do not sustain the claim that such gains have been made. In twelve months Australia has had eighty-eight strikes, notwithstanding the drastic State and Federal compulsory arbitration laws. Australia has less than 5,000,000 inhabitants, or about 5 per cent of the population of the United States. The country is of immense extent and the natural conditions, with manufactures at a minimum and agriculture and sheep raising of outstanding importance, are such that labor troubles ought to be few and of little moment. Yet here is the equivalent, in proportion to the population, of about 1,760 strikes in the United States.

It is not strange, in the face of such facts, that the author of the Federal arbitration act said, not long ago, that never had the labor troubles of the country given thoughtful citizens more concern. The Commonwealth had instituted the boldest and most advanced experiments with the object of preventing strikes and lockouts, but there was an unparalleled condition of turmoil and unrest. Mr. Deakin added that, "We appear to have been practically successful in preventing employers from locking out their men, but we seem to have been unsuccessful, in most instances, in dealing with strikes."

Here is a picture of the results of compulsion in labor disputes which is of a piece with the recent news from New Zealand that an officer and a citizen were killed and other persons seriously wounded, some of them mortally, in a strike riot at Waihi. Revolvers were freely used, and the authorities were unable to stop the fighting between the strikers and the non-union men until much bloodshed had taken place. And all this in a country blessed with fertile soil and a beautiful climate where about 1,000,000 persons occupy for their own use and profit almost as great an area as that of Italy or two and one-half times the space Ohio fills on the map.

These conditions in countries where compulsory arbitration has been tried to the fullest extent and in the most radical form make a sorry contrast with the virtual freedom of Canada, with a much larger popu-

lation than that of Australia and New Zealand combined, from serious labor troubles. In the Dominion there is no forced arbitration, but the Government does compel both sides to make their position and arguments known before a strike or a lockout. Publicity is obligatory and given official weight and sanction. The rest is left to public sentiment, and the weight of the popular verdict is almost always sufficient.

The plain truth is that men do not like to be driven. They rebel at force. The most powerful labor organizations in this country have steadily opposed arbitration made compulsory by law. They demand freedom of action just as naturally as employers do. Publicity and public opinion get results impossible for the Australian method.

TESTIMONY OF CARROLL D. WRIGHT

(Report of the Industrial Commission, Volume 3, pages 11-12.)

The only country that has ever tried it (compulsory arbitration) is New Zealand, under the Reeves Act, and, so far as I have been able to understand, it is perfectly satisfactory to one side and unsatisfactory to the other, and now there is a good deal of literature published to show that compulsory arbitration has reduced the number of persons employed, and that it is damaging the output of manufacturers of New Zealand. Others claim that compulsory arbitration in New Zealand does not apply to great industrial organizations such as are to be found in this country and Great Britain.

I have very decided opinions on compulsory arbitration.

Without discussing the incongruity of the term—you might as well speak of voluntary coercion as compulsory arbitration—the first economic result of compulsory arbitration would be to compel the manufacturer, for instance, to pay a certain wage under penalties of law, which is a very direct attempt to establish wages by law, and hence prices; and any compulsory arbitration law ought to provide that if the prices are not paid, such as would be necessitated by the lawful wage, the purchaser should be held responsible in some way. And, on the other hand, it would compel the employee to work for a wage which he did not wish to, and hold him responsible under some form of penalty for not working for $1.80 or $2—$1.80 when he was getting $2, for instance—and there is no law big enough to put everybody in jail. Some would have to be left outside. Every time any country has attempted to fix wages by law, whether in America or Europe, there has been a very contemptible failure. The second effect of compulsory arbitration would be to compel the employer to shut up his works, and of all employees, if they did not like the decision, to quit work and leave the country. The third would be, if the manufacturer saw fit to carry on

his works under the decision of a court of compulsory arbitration, to compel him to join a trust immediately; and I think if the Government ever wants to drive everybody into the trust form of carrying on business the compulsory arbitration would be perfectly satisfactory. It seems to me it would kill industry. I have no faith in it, either from a moral or economic view. I have always so expressed myself. It is a doctrine which, so far as I know, finds no approval of organized labor anywhere. I have never known of any trade unionist, or member of a labor organization of whatever character, approving compulsory arbitration. There may have been cases. Certainly the employer would not approve it. While I believe in arbitration as a help, never as a solution of labor problems, it seems to me that compulsory arbitration would be a positive injury.

POINTS OPPOSING THE COMPULSORY ARBITRATION OF INDUSTRIAL DISPUTES

(By CHARLES LEE RAPER, Professor of Economics, University of North Carolina.)

(1) Labor disputes are essentially of a private nature, and should be settled by the parties concerned or by the parties themselves with the aid of State mediation—not by compulsory arbitration. These disputes do not belong to the class of the ordinary disturbances of the peace, such as the breaking of a contract, thieving, or robbery, etc. These disturbances rest on the foundation of bad morals as between the citizens or as between the citizens and their State. Failure to agree as to wages, hours of work, etc., and the cessation of work included in a successful strike do not involve fundamentally the morals of a community—only its business convenience and quiet.

(2) The privilege of making a choice for the laborer and for the employer within the limits of sound morals should always be preserved. Such a privilege causes the individual citizen to be free in the best sense of the word, and it makes the government of the citizens a free government.

(3) The right to work under conditions as satisfactory as the laborer can make them, through his own individual actions or through the power of unions, is fundamentally a correct right, and should always be protected.

(4) The right of the employer to hire labor service on an open and free market, as far as the laborers may sanction an open and free market, is fundamentally a sound one, and should always be preserved.

(5) The experiences of several nations with voluntary conciliation of industrial disputes have shown relatively good results. They would have shown more effective results had the machinery of such conciliation and arbitration been shaped with greater public care.

TESTIMONY OF H. R. FULLER, OF THE NATIONAL BROTHERHOOD OF RAILROAD EMPLOYEES

(In the Report of the Industrial Commission, Volume 9, page 71.)

While I am a firm believer in arbitration, I do not think compulsory arbitration is a safe thing for the workingmen. If arbitration was compulsory, it would only be a matter of time until courts would be made arbitrators, and their decisions would be more or less the result of corporation influence, as is now the case so many times. To make arbitration compulsory would in effect destroy the thirteenth amendment to the Constitution of the United States, which is the greatest safeguard the working people have. I think the only arbitration that should be had is that which is mutually agreed upon by both sides to the controversy.

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A list of publications containing valuable material on the query under discussion is given below. The books and magazines can be secured from their publishers. Included in the bibliography are the names of a number of organizations and bureaus which will be glad to furnish material as far as they are able.

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The Bureau of Extension of the University of North Carolina will furnish material in addition to this bulletin, such as it may be able to obtain from time to time. Address the Bureau of Extension, Chapel Hill, N. C.

The North Carolina Library Commission will furnish traveling package libraries on the question upon the request of the principal of the school. Address Mrs. Minnie Leatherman Blanton, Secretary, Raleigh, N. C.

Debaters' Handbook Series—"Compulsory Arbitration of Industrial Disputes." This will contain 250 pages, or more, of arguments and references on both sides of the query, and will be issued early in 1918. Published by the H. W. Wilson Company, 958-964 University Ave., New York, N. Y. Price $1.25.

The Wilson Package Library, consisting of articles clipped from magazines, documents, and pamphlets, will be loaned upon application to the H. W. Wilson Compnay, 958-964 University Ave., New York, N. Y. The minimum charge for the first one to seven articles on each topic in each order is 50 cents; additional articles, 5 cents each.

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