

## IS COMPULSORY ARBITRATION PRACTICABLE?

BY SETH LOW.

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When compulsory arbitration is spoken of in the interest of the community, it is apt to be challenged by both sides. The capitalist says: "Compulsory arbitration is unfair, because labor is not responsible;" and labor says: "Men are not slaves: they cannot be compelled to work against their will."

I venture to submit, however, that at one point capital and labor stand in precisely the same position before the law; and that, at this point, if it is desirable, compulsory arbitration may be insisted upon, and may be made practicable. Without the privileges given by statute, neither capital nor labor, as illustrated in corporations and trade unions, can lawfully combine. In the eye of the common law, such combinations as a corporation and a labor union are both conspiracies. In other words, in order to combine at all, in such forms, both capital and labor have to ask the same privilege at the hands of the state.

The state can certainly say if it will: Yes, you may combine, but only upon the condition that all disputes between you shall be arbitrated. And the state can as certainly secure the acceptance by both parties of the award of an arbitration, by providing that a failure to arbitrate, or to abide by the award of the arbitration, shall work a forfeiture of the privilege of combining. In the case of a corporation, it would, in that event, lose its charter; and in the case of a trade union, which is an association of individuals, each individual would become amenable to the criminal law against conspiracy. Such a provision would probably be equally effective as to both labor and capital; and it would be equally fair to both, because it would apply to both equally for the same cause; that is to say, because of a failure to observe the conditions

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upon which the statutory privilege of combining had been granted.

Of course, in this paper, I am not attempting to deal with the details of legislation. It would be altogether possible, I believe, instead of depriving a company of its charter, to deprive the responsible officers and directors for a term of months or of years, as the statute might provide, of the privilege of being officers or directors in any corporation within the state; and, similarly, if a trade union were at fault, only the officers or the men responsible for the fault need be deprived, as in the other case, for a term of months or of years, as the statutes might provide, of the privilege of belonging to any trade unions within the state.

The community, then, is not helpless. The question rather is, why should it not insist upon such legislation, limited, if you please, in the first instance, to public service corporations, where the evils felt by the community are greatest.

It may throw some light upon the problem to try to show the philosophy of the present situation. For many centuries the best men of the race, the world over, have been struggling to secure for the individual man equality before the law and freedom of opportunity. In this country, and at this time, these results have been achieved more generally than ever before. On the other hand, as we observe what is going on about us in the field of industry and commerce, it seems as if the individual capitalist was disappearing in the corporation, and the corporation itself in the trust; while the individual laborer is disappearing in the trade union, and the trade union itself in the brotherhood of federation. What does all this signify? Does it mean that, in this large field of human activity, the loss of individuality is threatened by the force of combination? I think not. It means, on the contrary, as I conceive, that we have reached, in human society, the era of combination simply because we have first succeeded in individualizing each man as to his legal rights and as to his social privileges. In other words, what has happened in society may be illustrated by the art of printing. Until each type had come to represent a single letter only, the era of limitless combinations of types did not appear, and there could be no art



of printing. When every type had been individualized, then, and then only, the era of limitless combination was attained and the art of printing was born. This, I think, is what has happened in our day in human society. Men combine at will, because they are free to combine, and because they perceive that in combination they can accomplish what before was impossible. Combination does not threaten individuality: it is rather founded upon it. This proposition, I submit, goes to the very root of so-called labor troubles.

One sometimes hears it said, for instance, that labor combines because capital combines, as if combination on the part of labor was simply an act of self defence. I think that a very partial and inadequate explanation of the combination either of capital or labor. Men combine, in our day, because they are free to do so, and because they perceive the advantage of doing so, and they do it in obedience to a social law as irresistible as the force of gravity. If capital and labor seem often to be in conflict, through their different forms of organization, it is, as I conceive, because this universal social law affects the two precisely as the law of gravity affects us and our antipodes. The same force is felt by both, and if, in affecting both in precisely the same way, it seems to draw them into conflict with each other, that is because they start from opposite positions. If, then, this is a true philosophy of our times, the inference from it is important. Nobody thinks of antagonizing the force of gravity. Everybody simply takes it for granted, and adjusts his actions to it. Just as soon as, in a free community, the movement towards combination on the part of both labor and capital is recognized as a movement in response to a law as universal as the law of gravity, the bitterness of antagonism between capital and labor will tend to moderate. Each will take for granted the position of the other, and each will strive, as wise men always strive, so to adjust themselves to universal law as to get from it the greatest possible advantage. Then the effort to destroy the trade union, on the one hand, and the trust on the other, will give place to the wiser effort to regulate both so as to do away with the abuses of which each is capable.

This power of combination in industry and business, while of slow growth, in its recent manifestations is almost like the discovery of a new force. It has taken more than a century since the steam engine was invented for men to learn how to make the use of steam as effective and as safe as it is now; and yet, even now, from time to time, boilers explode and loss of life takes place. No one should be surprised, therefore, and no one need lose heart, if progress in learning the limits of safety in the use of the power of combination, on the part of both capital and labor, is slow, and if, in the process of learning, much injury is done. It is only through experimentation that men learn what can be done and what cannot, when they are put into possession of a new power. Especially must this be the case when the same power is put at once into the hands of men who occupy competing relations as to its use. The first impulse of human nature, when given control of a new power, is to use it to its utmost; and it is only as experience shows what are the limitations of its usefulness, that such limitations are accepted. Capital, in combination, has sometimes imagined that it could do anything that it wished. Labor, in combination, has often yielded to the same idea. Both have found, when they have carried their ideas to the extreme, that forces exist in society with which they are obliged to reckon, and which put a limit upon what they are able to do. In the first stages of the struggle growing out of the efforts of both capital and labor, each to secure for himself, by combination, a larger proportion of the joint products of both, resort was almost uniformly had to main strength. The appeal to justice and the appeal to the community's sense of right seemed to be unnecessary when one side or the other apparently had power enough to have its own way, no matter what people thought. I think it may fairly be said, speaking broadly, that this stage of the matter has been passed in the so-called conflict between capital and labor nowadays. At the beginning of every such controversy, both sides now put forth a statement of their positions, in the endeavor to secure the favor and help of public sentiment. This they do because both have discovered that seldom, if ever, can either side win, in such a dispute, unless it has public opinion with it. From



this I infer that the time is ripe to urge that no breach of relations between employer and employee should ever be allowed to take place without a resort to arbitration.

When arbitration is urged in any controversy, one side or the other is pretty certain to say there is nothing to arbitrate. This phrase always has one of two meanings. First, it often means, on the part of the employer, that he does not admit the right of his employees to any voice in the decision of the points under discussion; or, second, it may mean, either on the part of the employer or on the part of the employee, that he feels himself so strong that he does not want to arbitrate. Men often say, with a great deal of force, that the finding in almost every arbitration is a compromise. The weaker side is always ready to arbitrate, because it feels that, while it may not get everything that it wants, it is pretty sure to get something. The stronger side, for the same reason, is unwilling to arbitrate, because it feels that, while it may not have to give everything that is asked, it will have to grant something, and it does not want to grant anything.

These two attitudes deserve consideration. And first, that of the employer who thinks that his employees have no right to a voice as to any of the questions under dispute. Abundant experience has shown that, in these days, this attitude concerns not only the employer and his employee, but also it often exposes the community to breaches of the peace, and always, to very many serious and direct evils. This claim, when made, is sought to be justified by saying that it is one of the rights of private property. Can such an attitude toward organized labor be, in fact, so justified? In all ages the rights of private property have been modified in the public interest. Witness the abolition of mortmain and the use of real estate as affected by municipal ordinances. It appears that, as to all lines of business that depend upon public franchises, no such claim can be admitted; because, for such purposes, the private corporation is only the agent of the state; and it may properly be said that no agent of the public has a right so to conduct his business as to involve the community in disaster. As to all business carried on by corporations, the soundness of this position may again be questioned; be-

cause every corporation receives from the state two very vital privileges—first, that of limited liability, and, second, that of indefinite life. The state may well demand of people who receive such privileges at its hand, that they also shall conduct their business in ways that are consistent with the public interest. Were it worth while, it might be shown that the argument in favor of arbitration, even as between the business firm, or individuals and their employees, is only less strong; but the amount of business likely to lead to labor disturbances, carried on under these forms in these days, is so small as practically to be negligible. It may be said, therefore, that it is very seldom indeed, if ever, in our day that the capitalist is justified in saying that there is nothing to arbitrate, because he is unwilling to admit that his employees are entitled to a voice as to the conditions upon which they will work for him.

Turn now to the second sense in which that phrase is frequently used, there is nothing to arbitrate; that arbitration after all, is merely a form of unwelcome compromise. Is it certain that this is an argument against it? I perceive that the round world is kept in place by an opposition of forces, and it may easily be that the best possible arrangement, as between employer and employee, is the arrangement, if they fail to agree, upon which a fair minded arbitrator would decide. That is to say, the equilibrium between the demands of the opposing forces, so established, may be, upon the whole, the best possible adjustment for the time being. Such a practice would certainly tend to adjust the relations between employer and employee upon the basis of reason and good will, instead of by force and compulsion. Relations established with good will are not only likely to be more permanent, but also more mutually advantageous, for my business experience convinces me that no business relations are enduring that do not involve advantage to both sides.

There are certain lessons vital to this argument to be drawn from the late strike in New York city upon the subway and elevated roads. From the moment that the breach occurred, and the public had read the statement of the two sides on the issues involved, there was never a moment's doubt that public opinion would be against the men,



and that public sympathy would go to the railroad. For these two things were evident to the most casual reader: First, that there was no issue at stake that justified such immense injury to the public as was done by the strike; no issue, indeed, that could not have been easily adjusted by arbitration; and, second, that one section of the men, at any rate—the motormen—had gone out in flat violation of their agreement. Every friend of industrial progress through industrial peace, when he became aware of the facts of the situation, must have felt a sinking of heart, because it is perfectly evident that organized society cannot prosper when men will not keep their faith. Most happily, the day was saved by the good sense and the courage of the national labor officials, by promptly and publicly repudiating the locals who had broken faith. It is, therefore, now more clear than ever, that the more responsible labor leaders and the more responsible labor unions are to be trusted when they have once given their word.

As long ago as when the Book of Psalms was written, the writer said that the just man was he who kept his faith, although he had sworn to his own hurt. It is only because the laws of nature are uniform that men can live in the world subject to those laws; and it is only because the great mass of men, in their individual relations, do keep faith that human society is possible. It is idle to consider the establishment of trade agreements, or arbitration, or anything else, with men who will not abide by their contracts. Therefore, if it was discouraging that so intelligent a body of men as the motormen involved in the recent strike should absolutely disregard their agreement, it was, on the other hand, highly encouraging that this action should be so promptly and vigorously repudiated by the officials of the national orders. I venture the opinion that no one thing is more unfriendly to the success of the cause of arbitration, and also to the cause of trade agreements, than the claim on the part of the employers that the men do not live up to their bargains. The civic federation, therefore, can do no better work than to exert its great influence in bringing home to the business community the highly encouraging significance of this un-

happy episode. Let it be once made clear that the men will abide by agreements entered into in their name by the unions to which they belong, and the movement toward arbitration and the movement toward trade agreements will both have received an immense impulse; and the day may yet come when this force that makes for combination in human society, as it affects both labor and capital, will show itself as consistent with the peaceful and orderly development of industry, as the same principle, applied to the art of printing, has shown itself to be friendly to the unimaginable development of that art, which men fondly call the art preservative.