OBJECTIONS TO COMPULSORY ARBITRATION.

BY JAMES P. ARCHIBALD.

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The general objections to compulsory arbitration, based upon political, social and economic grounds, apply to the specific phase of the question here under consideration, which would limit the application of compulsory arbitration to differences betweeen employees and employing corporations chartered to perform service, essential or important, to the public convenience, comfort and welfare. Despite that limitation, it will be found that nearly all, if not every one, of the broad reasons that can be adduced against legislation to make industrial arbitration compulsory will hold good as against the proposition to employ compulsory arbitration only in differences between employers and employed engaged in quasi-public service. Furthermore, this is true even if we admit at the outset that the corporation engaged, for instance, in transportation, owes to the state a duty, more or less defined and restricted, in requital for its charter, and that the employees of such a corporation are in a sense public servants who, in accepting employment, have incurred on their side the duty of exerting every effort to secure the safe and prompt conveyance of goods and passengers. Even to place thus in a category by themselves such a corporation and such employees, does not exempt them from the operation of universal principles.

The first of these broad objections to compulsory arbitration, to my mind, is that it must tend, in its practical operation, toward control of industry by the state; that is, toward socialism. The very definition of arbitration, whether compulsory or voluntary, implies a surrender of control of any

industry to which it is applied by either of the two parties whose co-operation is essential to its success and to their share in its prosperity. Arbitration is defined by the industrial commission as the authorized decision of an issue, as to which both parties concerned have failed to agree, by some person or persons other than those parties. That is, the decision thus reached may be unsatisfactory to either or to both of the parties. If each has agreed in advance to abide by the decision, whatever it may be, that agreement involves only a voluntary and temporary self sacrifice by one or the other or by both. But if the state is empowered to compel obedience to the award, to which each party is enforced to submit, the outcome would be, in case the parties should refuse either to carry on the business or to work, that the state would assume the conduct of the industry; that is, if its continuance were essential or conducive to the public welfare. It is not necessary here to enter into a discussion of socialism further than to say that opposition to socialism thus implies opposition to compulsory arbitration, whose ultimate tendency toward socialism is clear enough in theory and not to be measured by any experience

The next broad objection to compulsory arbitration is that it is unnecessary. It is a general principle that legislation should be framed only to meet requirements. Needless laws cumber the statute books and are a burden to society. The maxim that the best government is that which governs least may be carried to an extreme, but it is certainly true that no one would seriously contemplate a large extension of our judicial machinery without a clear demonstration of its necessity. Now, in the regulation of industry there has been no such demonstration of the necessity of the creation of a court of arbitration, to which either party to a dispute could cite the other at will or caprice, and from whose decision reached without reference to a jury, there could be no appeal. The advocates of compulsory arbitration are keenly aware of this vital objection. They usually preface their argument by statements designed to picture the United States as in an incessant ferment of industrial war, and at least one of them has gone so far as to apply the famous definition of

war to the relations of capital and labor as a whole. But a calmer view will show that the normal and usual condition of industry is one of peace, and that war is the exception. So distinguished and experienced an observer as Andrew Carnegie recently remarked that "peace reigns in six sevenths of the industrial world." Mr. Carnegie reached this conclusion by pointing out that out of 22,000,000 engaged in gainful pursuits only seven millions are in mechanical and manufacturing occupations. Outside of these, in agriculture and domestic service, peace reigns. Out of the seven millions engaged in mechanical and manufacturing pursuits, he estimates that not more than three millions, or those having relations with large employers, are often disturbed by industrial war.

The strikes, then, that do occur, nearly all involve directly less than one seventh of the total wage earners of the country, and only a fraction of them at one time.

Official figures show that of the 36,757 strikes in the twenty-five years 1881 to 1905, the industries most affected, in the order named, were the building trades with 9,564 strikes; the coal and coke industry, with 3,336; the foundries and machine shops, with 1,668; the clothing industry, with 1,787; the tobacco industry, with 1,809, and, least of the six, boots and shoes, with 1,100. Of the total 36,757 strikes, 58.09 per cent were in these six industries. In the number of establishments involved, transportation also takes lowest rank, few more than 5,000 establishments being involved in the twenty-years, as against 41,910 in the building trades; 19,695 in the clothing industry, and 14,473 in the coal and coke industry.

In this connection, it is to be noted that this lack of necessity for compulsory arbitration is progressively decreasing. The methods of conciliation, conference and voluntary arbitration are largely responsible for this decrease of industrial war. No one can fail to be impressed with the fact, of common knowledge, that there has been no strike of serious consequence upon any of the great railway systems since 1893, or for more than a decade. This, it has been pointed out, is due to the increase of organization among

railway employees. Strikes upon such public service systems as gas or waterworks are so rare that they must be left out of account. There remain, then, only the strikes upon street railways in centers of population to be considered in relation to the necessity for compulsory arbitration, and as to them the necessity is yet to be demonstrated. In their case, it is not the capital or the number of employees involved that becomes important. It is the inconvenience of the public and the dislocation or the business of a community that cause the outcry for a drastic remedy or an effective prevention. The gravity and the reality of these public grievances cannot be minimized or obscured. Yet it is none the less true that their occurrence is local, though intense; their endurance temporary, though acute; their effect limited in time, though accompanied by an appreciable increase in danger of operation. These are not adequate causes for introducing an innovation into our judicial machinery.

The organization of employees, accompanied by the organization of employers, is a constantly increasing cause of industrial peace, and a constantly increasing argument against the necessity of compulsory arbitration. If, then, we accept the organization of labor as socially and economically desirable, as tending to elevate the mass and increase its power of consumption, we must oppose compulsory arbitration as inimical to the development of unionism. A primary object of unionism is the negotiation of trade agreements, otherwise collective bargaining with employers, organized as corporations or associations. Nearly every labor organization in the country is opposed to compulsory arbitration because of the conviction, that is shared by many professional economists, that its adoption must, in the words of Carroll D. Wright, "inevitably result in the destruction of trade unions." A decision in a contest adverse to a union would render that union liable to whatever penalty would be contingent upon disobedience. A violation of the decree of the arbitration court by the union would probably be followed by the imposition of a money fine or the loss of its charter and its dissolution. The only alternative, obedience to the decree, if the decree were against the sense of justice and

therefore against the sense of self respect of the employees, would amount to working for specified wage under compulsion, or, in other words, to involuntary servitude, forbidden by the thirteenth amendment to the constitution of the United States.

The ready answer to this is that the operation of compulsory arbitration in New Zealand has not there destroyed the trade unions, but has strengthened them, just as it has promoted unions of employers. That may be in part because the New Zealand system is accompanied by the preferential employment of union labor under the terms of an award, accompanied by the requirement that the unions admit all competent workers, without ballot and upon the payment of a nominal fee. But, aside from that explanation, which implies a national closed shop in all industries, as well as making dependents of workers incompetent to earn the minimum wage and yet able to earn their living if permitted, the conditions of life and labor in New Zealand are so radically different to those in the United States as to make inapplicable to this country the lessons of the experiment in New Zealand. That experiment, moreover, has not reached conclusive results even in its own territory and under its peculiar conditions. Its strongest adherents have confessed their inability to transfer it to this country. The report of the anthracite strike commission said: "Apart from the apparent lack of constitutional power to enact laws providing for compulsory arbitration, our industries are too vast and too complicated for the practical application of such a system."

It is precisely the belief that the awards, or the bulk of awards, of a court of compulsory arbitration would be adverse to wage earners that impugns in advance the efficiency of this device. It is an essential precedent to voluntary arbitration that each disputant shall feel confident that his interests will receive the same consideration as those of his opponent. Each must have faith that the award will be guided by a spirit of perfect fairness. But when the element of compulsion is introduced, this essential element of confidence disappears. It is impossible, as men are constituted, to guarantee the fairness of a tribunal of arbitration clothed

with power to compel the hearing of disputes and to enforce its conclusions. It is a condition that must be taken into account that the belief largely obtains among wage earners that state created courts or boards are generally, if unconsciously, on the side of capital or invested interests as against the more indefinite influence of labor.

Another general objection to compulsory arbitration is that it involves a surrender of the right to strike and of the corresponding right to lock out. These are weapons that neither self respecting capital nor self respecting labor can afford to surrender. The abandonment of the power to fight would make for the peace of subjection, for the craven submission of one side or the other. The possession of the weapons of war makes for peace in industry as surely as it does in international affairs. The arguments for an effective military force as an insurance of national security against foreign offence and of foreign respect for the rights of a nation abroad are quite parallel to the arguments for retaining an inalienable right to refuse to work or to refuse to employ, reinforced by thorough organization. The mutual respect of employer and employed is essential to harmony. The abandonment of liberty to fight for conviction of right would impair and ultimately destroy that mutual respect. It would be a confession of inability to reconcile mutual respect with a manly compact of peace.

I have enumerated all these general objections to compulsory arbitration as applicable to the specific class of public service corporations and their employees. It is for the advocates of compulsory arbitration to prove that they are not so applicable. It is for them to show that the injury to the public convenience and safety or to the conduct of business is so frequent, so serious, so important as to warrant an innovation that is repugnant to republican conceptions of liberty.

But, it is said, it may be possible to create a method of compulsory arbitration that will stop short of compelling either employers to continue a business or employees to continue to work. Let us see how any conceivable plan of non-

compelling compulsory arbitration would work in practical application to a system of rapid transit in a great city.

The chief purpose of such a plan would be to prevent under any and all circumstances, the interruption of service. The first essential, then, would be to forbid by law either strike or lockout on the railroad, pending the submission of a dispute to the court of arbitration. Assume that the corporation on the one side and the employees on the other have been deprived by law of this weapon. The decision of the court follows. It is regarded, we will say, as unjust by the employees, who then enter upon their deferred strike. Pending the decision of the court, would the corporation be in contempt if it gathered an army of strike breakers? The strike breaking remedy is not immediately effective in preventing delay and interruption to traffic, and it involves danger to the traffic. The only alternative would be for the state or municipality to operate the road with police or military. If there were to be no interruption nor danger to traffic, the members of these forces would have to be trained to render instant and efficient service as motormen, trainmen, signal men and in all other capacities necessary to the continuous and safe operation of the road. Is the public prepared to include these accomplishments in the list of requirements for service in the police or army.

It has been suggested also that, as the final court of appeal in all industrial disputes is public opinion, a court might be created with power to compel the production of all testimony, persons and papers, and to render its decision. It is argued that under present conditions public opinion cannot learn the truth in industrial controversies; that it is bombarded with contradictory, ex parte statements and confusing and ill informed reports in the press, and that the creation of a court empowered to ascertain and publish the truth would make conclusive and morally compulsory, because necessarily right, the verdict of that highest court of arbitration—public opinion. Strictly speaking, this proposition is not compulsory arbitration, but compulsory investigation, with submission of the finding to the verdict of the community.

This proposition is based upon the assumption that public opinion, if correctly informed as to facts, is infallible. But what basis is there for this assumption? As to the ascertainment of facts, the historic conundrum, "What is truth?" is persistently pertinent. Especially does it apply to an industrial inquiry as to which only experts, not laymen, would be qualified to arrive at a just decision, and even experts might disagree. A task difficult for such a select body would assuredly be confusing to the judgment of that vast indeterminate jury known as the general public. Even in cases of litigation, carried to the highest courts of appeal, in the states and in the federal government, judicial decisions now divide the bench and fail to command by far the unanimous approval of public opinion. Yet those decisions are reached in accordance with procedure elaborated through centuries and with principles evolved through the teaching of all history. But judicial inquiry into industrial questions would explore unknown fields, would meet novel questions, involving both expediency and principle, would evolve new principles and in the absence of any body of industrial jurisprudence, would make of such a court in practice a legislative as well as a judicial agency.

Be it noted, the element of compulsion is still present. If there is to be a candid inquiry into the existing facts of an industry, the status quo must be preserved. If the industry be that of transportation, the employees must keep the trains running and the corporation must discharge none of its discontented employees, pending the inquiry. Each antagonist must appear in the judicial arena with hands tied. The contest must be reduced to statement and argument. It must be a battle of witnesses and counsel.

The objection to this procedure is that it is against the normal processes of human progress. The race does not emerge from barbarism by argument, but by deeds. Valor, not eloquence, wins battles. In the long run, right, truth, justice must win, and they must be demonstrated. But they cannot stand unsupported against the ever powerful forces of wrong, untruth, injustice. It is only by fighting, or by power to fight, that the weal of society is advanced through

the adjustment of relations between its component parts. Remove this ability to fight by compelling peace while the issue is submitted to a tribunal, and that tribunal will inevitably and unconsciously be swayed by adherence to the old away from digression into the new. It must ever be kept in mind that the struggle of labor for betterment is not merely a question of here and now. It is eternally a question of the future, and not to be a combatant, at least potentially, would be for labor to turn its face backward.

There is a conspicuous illustration of these facts, which are facts of human nature, in the outcome of the anthracite coal strike. That was a struggle that in time came to affect the public convenience, comfort and health as vitally as could the paralysis of any public service corporation. That struggle was brought to an end through adjudication by a tribunal of inquiry. Very well, but be it observed that the battle preceded the inquiry. Had there been in existence a tribunal empowered to pronounce a verdict upon the issues between the mine workers and the operators, it never would have made an award so favorable to the advance of civilization among the mass of inhabitants of the anthracite region as was made by the anthracite strike commission, for the reason that there never would have been made the demonstration by the workers that they were so terribly in earnest in their conviction that their demands were just, that they were willing to go hungry and even to see their wives and children suffer, rather than work upon oppressive terms. There has existed for generations in Russia an office holding class whose function was that of an industrial judiciary. Against industrial adjustment by this bureaucracy, it was a crime for workers to organize for appeal. The result was the evolution of industrial conditions so shocking as to be incredible to Occidental minds and to cause a revolt in demand of rights that our civilization has grown to treat as axiomatic and to take for granted. Establish in the midst of our civilization such an industrial tribunal as proposed and retrogression would ensue, perhaps slowly, but surely, toward the suppression of the toilers whose hands are tied.

MONOPOLY AND THE STRUGGLE OF CLASSES.

BY JOHN BATES CLARK.

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A certain clerical socialist used to preface his public addresses with the statement, "Society is under conviction of sin." It certainly is under an indictment, and is inclined to plead guilty on some of the counts. It is not perfect, and it owns the fact. The socialist's theological term, however, implies that society is conscious of being in a state of total depravity, and confesses by implication that it needs to be destroyed and made over. Its very principle of action is, in this view, so bad that nothing can save the organism but a new creation.

In this sense the accusation does not seem to many people to be true, and the revolutionary change that the socialist calls for does not seem to be impending. What we must admit, however, is that the principle of monopoly is a bad one, and that in the business world it is becoming too nearly dominant. Trusts are seeking to create monopolies of products, and trade unions are trying to establish monopolies of labor. Does this movement really tend towards the absorption of all industry by the state? Appearances favor the side of those who believe in the permanence of private business.

Many are ready to say offhand that we have already given ourselves over to private monopoly, which stands for oppression and all evil, and that the only possible escape from impending disaster is socialism. Business is anything but free, when, in many a department, a single corporation has the field so nearly to itself that its few surviving competitors are at its mercy. The multimillionaire who controls such a corporation is the modern counterpart of the great baron of