Labor and the Law

NEW RIGHTS AND RESPONSIBILITIES

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WHEN we met here twenty years ago, a dark era in labor's legal history had begun. The Supreme Court had recently held that the State of New York had no power to limit hours of labor in bakeries to 10 hours a day or 60 hours a week. For years that philosophy blighted efforts at reasonable hours in industry and retarded labor in getting its fair share of the leisure that mass production makes possible.

Also the Supreme Court, against the protests of Justices Holmes, Brandeis and Clark, had just gone to the very limit to crush the unionization of American labor. It had virtually said that no employer need treat with union men and that unionism could exist only by consent of the employer. It held that neither State nor Federal statute could prevent any employer from discharging workers for joining a union, and upheld employers in demanding, and declared courts must enforce by injunction, the infamous yellow-dog contracts.

Primitive as these decisions now seem, for 19 years and six months after our last meeting here, the courts were steadily guided by them to more and worse blows at labor, until the whole 20 years of reactionary doctrine was precipitately thrown overboard in the last six months.

In 1918 the Supreme Court, against the protest of Justice Holmes and an able minority, held the nation powerless to stop traffic among the States in goods made by the labor of children. By this decision the free labor of every section of the country was forced to compete with little children, too young to make valid contracts themselves, and hence bound into service by others. That decision forced labor, and employers as well, to bargain under threat of being undersold by those who were willing to sell along with their goods the health and the opportunity of their childhood. We in New York found it difficult to market goods in competition with those who offered that degrading bargain.

In 1921 the Supreme Court decided, again against the protest of some of its most respected members, that no State could stop its own judges from granting injunctions in labor disputes. Labor injunctions, always of doubtful legal ancestry, had become the subject of widespread and serious abuse. They were often granted without notice and made imprisonment possible without trial by jury. They made biased courts the active partners of ruthless employers. The State of Arizona attempted to end the abuse. But the Supreme Court held that the Constitution compelled the States under our system of law to continue labor injunctions.

In 1923 the Supreme Court held, again against sharp dissent, that it would be a denial of due process of law and hence unconstitutional to establish a minimum wage for women in industries. The courts declared Nation and State to be constitutionally disabled from stopping the merciless exploitation of women, and made free labor everyhere compete with sweated labor.

As we met here before we did not foresee that these among other decisions were to make the semi-slave labor of sweat-shop and of children the untouchable standard by which all labor rates would be adjusted. When the failure of workers' power to purchase made its disastrous contribution to the collapse of 1929, there was an awakening in nearly every section of our national life. One place alone the lessons failed to register—a majority of the Supreme Court of the United States.

In 1935 the Supreme Court majority set aside the Railway Retirement Act and in substance admonished the country that no retirement plan could ever be adopted. This opinion brought a sharp protest from Chief Justice Hughes who, for a dissenting minority, declared that it placed an unwarranted limitation on the Constitution.

In 1935 the Supreme Court threw out the entire Guffey Coal Act and destroyed the efforts of years to bring order into the soft coal industry, and peace and security into the lives that it depended upon, and which in turn depended upon it. In vain did Mr. Justice Cardozo protest on behalf of himself and Justices Brandeis and Stone. Chief Justice Hughes wrote a separate protest against what he regarded as the excesses of the decision.

In 1936, with the first Roosevelt administration drawing to a close, the Supreme Court reviewed the New York Minimum Wage Act and not only held it unconstitutional but declared "the State is without power by any form of legislation" to enact minimum wage laws. It set forth the underlying judicial philosophy in this language: "In making contracts for employment, generally speaking, the parties have equal right to obtain from each other the best terms they can by private bargaining."

This adopted the law of the jungle. Let each drive the best bargain he can. The justice of the deal is no one's concern, the adequacy of the wage is no affair of the State, even though it reduce workers to public charges, the needy applicant may have no protection against the unequal bargaining power of a self-sufficient employer. Under this doctrine ruthlessness has no restraint except the limits to what nature can bear without physical revolt. That doctrine, announced by the Supreme Court, over vigorous protest of a minority, was so obviously heading this country to disaster, that within 20 days the doctrine was condemned even by the Republican National Convention.

The Court adjourned in June, 1936, firmly committed to its decisions that had tended to make a sweat shop of the whole nation. Its excesses had been protested consistently and vigorously, but helplessly, by Justices Brandeis, Stone and Cardozo, joined on several occasions by Chief Justice Hughes.

As New Yorkers we may take pride that not one among our fellow citizens on the Court failed to protest its reckless trend to reaction and, had their warnings, to their sincere and honest, but mistaken, associates been heeded, no crises would have come. Thus ended 19 of our 20 years.

Then two things rocked the nation. First, 46 out of 48 States reelected President Roosevelt. Second, President

Roosevelt sent to Congress on February 5, 1937, a proposal to reorganize the Federal Judiciary.

I do not now argue the merits or faults of that plan or of the argument or strategy by which it was supported. I am only reciting 20 years of legal history, all of which I have observed, and part of which I have shared in the making. Those two events happened and in the next six months the Supreme Court rewrote the whole law of labor in the United States. If you wish to believe this to be a mere coincidence it is all right with me.

The Court Plan came out in February, 1937 and in March the Supreme Court declared that its own prior minimum wage decision "should be, and it is, overruled." It condemned its own earlier decision as "a departure from the true application of the principles governing the regulation by the State of the relation of employer and employed." It saw clearly in March the error in reasoning which it had not detected the preceding June.

In March also it sustained the collective bargaining features of the Railway Labor Act.

In April it sustained the Wagner Labor Relations Act. It gave legal vitality to the right of labor collectively to bargain its contract, and it compelled reinstatement with back pay of men discharged for trying to exercise that right.

In May the Court sustained the Wisconsin Labor Code which gave labor certain picketing rights and prohibited granting of injunctions in labor disputes. Its former doctrine that a State must continue to grant labor injunctions was gone with the wind.

Nor did it end with the reversal of old precedents. The Court pressed on to create new ones.

Fear of unemployment, which comes without warning, without fault and without remedy, has long haunted every fireside that depended upon labor. But wise lawyers said it would be unconstitutional to do anything about it. The Nation and many States heeded not the obstructionist advice and passed legislation. Lower courts as usual set aside the laws. We argued with acute consciousness of a strong current of lawyer opinion and judicial precedent against us. But in May the Supreme Court held that both State and Nation were constitutionally free to establish systems of unemployment compensation, and to drive that scourge from the poor man's home.

Nor was this all. Industrial prosperity left a trail of poverty-stricken and unemployed aged. Wages were never sufficient to enable the great majority of workers to provide for the day when they could no longer be employed. Industry demanded only the most efficient years, and threw out men even in middle life into despair and enforced idleness. Unemployment periods, bank failures, foreclosures and accidents swept away savings. But the wise lawyers said nothing could be done about it. Their counsels of obstruction were again disregarded by the administration, and a Federal contributory old-age benefit system was started. Again lower courts set it aside. Again we argued against a strong current of lawyer opinion and judicial precedent. But in May the Supreme Court held that the poor house was not a part of the Constitution and that the administration's effort to bring social security was valid.

As I sat from Monday to Monday and listened to the decisions I witnessed a legal revolution, as real and meaningful as any ever fought on field of battle.

In labor's long fight for equality before the law it never won such an avalanche of victories as came within six months of the President's reorganization message. These were the greatest days in labor's legal history.

A blot that still remains upon our judicial history is the child labor decision. The administration presented a wage and hour bill that would end free labor competition with child labor and sweated labor in interstate commerce. Advocating that bill before the committee over which Senator Black (now Mr. Justice Black) presided I stated one of its purposes: "We owe it to our times to challenge the perversion of our Constitution injected into our law by the child labor decision. This bill would challenge it."

Powerful and reactionary forces were mustered to delay the bill, in violation of the campaign pledge of both parties. It will yet become law. We owe it to every enlightened employer of labor in our State, as well as to every laborer, to see that they do not have to face in the market place goods made by the semi-slave labor of the child not yet its master, or the sweated needy person. That fight must and will go on.

Of these victories won and to be won it behooves us to take a sober, not a reckless view.

We must not forget that the enactment of a law is the beginning, not the end, of a reform. It is but a blue print to guide the construction of a system of administration, and of habits of thought and patterns of conduct. These laws would quickly be discredited by partisan, incompetent or intellectually dishonest administration.

Expectations will be raised by some of these laws that will be disappointed. Long spans of later life when employment will be difficult to find are not covered by our benefit system, and the greater burden of unemployment still falls on the worker. Minimum wage bills touch relatively few pay rolls and collective bargaining rights are still paper rights until use of the device becomes accepted and habitual. All are experimental, and far from perfect, and moreover subject to the well-known whittling down process of the courts. They are by no means at a point where we can declare a holiday.

Labor's victory places in its hands a new tool—collective bargaining. It will call for the development of a new skill and a new technique. It calls for statesmanship in the labor movement.

Labor has always faced a dilemma in its struggle for betterment. If its needs were politely and considerately presented they were generally ignored. If its needs were backed by a determined demand, and supported by the only force labor has, than its threat was used to alarm. Labor leadership has frequently had to choose between being impotent or being menacing.

When collective bargaining is established in practice, as it is now established in law, this old dilemma will disappear.

Labor's new powers impose new responsibility. Organization discipline must prove equal to the task of keeping its collectively-bargained contracts. Its faith and credit must be guarded from within by self-discipline. I am confident labor will rise to this new responsibility and opportunity.

So in welcoming your Convention, I am happy to welcome also a new era in labor relations and a new hope for security against the misfortunes of unemployment and the hardships of penniless age. They are the product of a democratic form of free government, where majority opinion may be delayed, but can not permanently be defeated when it has the rare and priceless gift of a leadership that is unafraid. They are largely in your keeping.