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L. Ward Bannister

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## The Administrative Settlement of Industrial Disputes by Compulsory Investigation<sup>1</sup>

BY L. WARD BANNISTER<sup>2</sup>

The most striking change now going on in our agencies of government is the rapid extension of the executive function as illustrated in the numerous boards and commissions everywhere being created. While much must be done to put the increasing governmental administration on an efficient basis, the extension itself is not a fad but rather a direct response to a social need which has arisen out of the increasing complexity of our social relations.

Some two years ago the State of Colorado, at the end of a long period of industrial strife, extended the scope of the executive function to a degree that, for this country at least, was both novel and startling. The legislature incorporated into the statutory law of the state the principle of the administrative settlement of industrial disputes by compulsory investigation. More specifically, the legislature created a new bureau in the administrative department, bestowed upon it the name of The Industrial Commission of Colorado, and gave to it certain supervisory authority over capital and labor comprising in particular the authority to investigate disputes between employers and employees over questions of hours and wages, including in the process of investigation, the right to compel the attendance of witnesses and the production of books and papers,—all to the end that the nature and merits of the controversy might be ascertained and declared and the disputants voluntarily reconciled. The findings of the Commission when made are legally binding on no one, but as a practical matter carry with them the weight of their own probable soundness as well as the powerful influence of public opinion. In other words the principle enacted was "compulsory investigation", not "compulsory arbitration". The same statute which confers this

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<sup>1</sup>From an address to the Colorado Metal Miners' Association at Denver, January 10, 1917.

<sup>2</sup>Of the Denver bar; lecturer at the Harvard Law School and the Cornell University College of Law.

authority of compulsory investigation, also provides as ancillary thereto:

That the employers and employees shall give each other at least 30 days' notice of any intended change affecting wages or hours;

That employers shall not lock out their employees and that employees shall not strike against their employers, on account of any dispute over wages and hours, prior to or during an investigation by the Commission;

That no person shall incite an employer to declare or continue a lockout, or incite an employee to go or continue on strike, contrary to the statute;

That any and all persons violating the various provisions just referred to are guilty of a misdemeanor punishable by fine or imprisonment.

Within the last six months President Wilson has recommended that the principle of compulsory investigation be applied to the federal railway problem and his recommendation has directed national attention to the general subject.

This new method of dealing with industrial disputes is far-reaching. Broadly speaking it seems to be favored by the general public and by the majority of employers, but is opposed by most of the leaders of union labor. Only last August the Colorado State Federation of Labor held its annual meeting at Colorado Springs. At that meeting the members, with one exception, voted for "the unqualified repeal of the Industrial Commission Law". The official organ of the American Federation of Labor is the *American Federationist*. In the October number of that magazine, the president of that federation, Mr. Samuel Gompers, has an article in which the principle and the Colorado law embodying it are roundly condemned.

Is "compulsory investigation" sound in theory and feasible in practice? To show that it is both, is the object of the present discussion. The arguments in support of the principle are four.

The first is that such a settlement is likely to be the most just. In theory it is impartial; it proceeds upon inquiry; it bases its findings on the merits of the controversy. When, on the other hand, labor and capital are left to themselves and do not come to an agreement voluntarily, one side or the other usually is obliged to give in, through coercion by the other. The employers possess and control the materials and the machinery of production. The workers possess and control the labor. Both, under a system of regulated individualism as opposed to that of socialism, are entitled to a fair return,—the one, upon their capital and labor, and the other, upon their labor. This

being true, let us suppose a dispute. The employer, let us suppose further, wins, and does so against the will of the workers. How has he won? By economic pressure, the "lockout", the pressure that comes from the control of the materials and machinery of production, to which the workers must have access if they would continue to live. Is the victory just? Perhaps; but more likely not, because it is won by coercion.

Let us suppose another dispute. This time the workers win, and they do so over the protest of the employer. They, too, have won, not on the merits of the controversy, but likewise through economic pressure, the pressure of the "strike" that comes from the control of their labor which the employer must have, or the pressure of the boycott that may come from a control of the market. Is the victory of the workers just? Does it give to the employer as well as to them that "fair return" to which each is entitled? Again perhaps; but again more likely not.

Better by far, if justice is to be done, that government through its administrative department should intervene, though sometimes imperfectly, rather than that the solution be left to the unrestrained tyranny of labor or of capital.

The second argument for compulsory investigation is its feasibility. Experience demonstrates that compulsory investigation "works". While, up to date, Colorado is the only state in the Union that has adopted the system, the experience under it has been in the main very satisfactory, indeed the present Industrial Commission has made an exceedingly creditable record in the exercise of the new power. Between March, 1915, and December 31, 1916, the Commission intervened, by way of investigation or conference, in about seventy-five industrial disputes. Most of these have been small ones, it is true, but some were important, and had there been no officially constituted arm of government to give them attention, they might easily have led to wide proportions and regrettable results. The most serious disturbance was at the plant of the American Smelting & Refining Company at Leadville. Some seven hundred men went out on a strike. The principal demands were an increase in pay and the abolishment of a system of wage assignment conducted by one of the private citizens of Leadville, to the detriment, it was claimed, of the employees of the smelter. The strike was declared in ignorance of the law requiring a previous investigation by the Commission. Upon receiving information of the strike, the Commission responded at once and in seven or eight days the men were back again at their work, with wages somewhat increased and with the wage assignment system

abolished. Of the seventy-five instances in which the Commission intervened, there were only two where the employees availed themselves of the legal right to strike, after the Commission had made its award. One of the two was in some machine shops. The other was in two cracker factories. Both of these strikes, however, were finally settled with the assistance of the Commission itself, substantially along the lines recommended in the previous awards which the Commission had made.

Most of the Colorado disputes have been decided favorably, in the main, to the employees. In the cracker case the decision was in favor of the employers upon the ground that the wages being paid were all the industry could stand with safety.

The compulsory investigation law of Colorado really applies only to disputes concerning hours and wages. So great has been the Commission's success that the scope of the law should now be extended to include other disputes as well.

Historically the Colorado law was derived from the Canadian Industrial Disputes Act of 1907. The Canadian Act does not affect as many lines of industry as does that of Colorado, for it is limited to public utilities and to mines, whereas the Colorado law extends to industries "affected with the public interest", a phrase admitting the inclusion of private employments where the public dependence is so great that the public interest really is involved. The Canadian Act, however, affects more employees because of the greater labor population. Under the Canadian Act, as under the Colorado Act, boards may be appointed to conduct the investigation and make the award and in Canada the "board" is generally used, whereas in Colorado the Commission itself generally conducts its own investigation. The Canadian experience likewise has been very gratifying. Under date of December 27, 1916, the Canadian Acting Deputy Minister of Labour says: "I may perhaps mention, for information, that the total number of applications received for the establishment of Boards under the Industrial Disputes Investigation Act from its enactment in 1907 to date, is 215, involving in all approximately 350,000 workmen employed in the operation of Canadian railways, street railways, shipping, telegraphs, telephones, power, light, water supply, coal mines, etc. One hundred and ninety-three of these applications were received from employees, nineteen from employers, and three from employers and employees both. The number of cases during this period of nearly ten years in which strikes have not thereby been either averted or ended is twenty-one. It should, however, be

observed that in many of these last named cases the ultimate settlement was on the lines of the Board findings."

The third argument for compulsory investigation is the economic saving. To leave the contestants to themselves has proved too often to have left them to unbridled license and destruction. Strikes and lockouts cost the country many lives and millions of dollars annually. The great coal strike of Colorado that ended in 1914 alone cost something like 100 lives and fifteen millions in money; lives of operators, guardsmen, militiamen, strikers, strike-breakers, women and children; fifteen million of dollars lost in militia expense, in wages to workers, in profits to operators and to railroads, and in lost markets to merchants and farmers. The toll of life and property was not all. In the clash of arms Colorado lost her sovereignty. She cried to Washington for help. It was given. In her streets was heard the tramp of federal troops. Colorado's sovereignty was restored, but the hand that restored it was not her own. Had the State of Colorado possessed at that time what it has now, an Industrial Commission charged with the duty and power of investigating the causes of the dispute, ascertaining the merits, and seeking a reconciliation of the conflicting interests, it is likely, although no one can say for a certainty, that the great strike would have been averted.

The fourth argument is, that compulsory investigation substitutes the law, in lieu of self-help, as the method by which the settlement is to be obtained. Mankind has not always been civilized. The way up from savagery has been a long one. We frequently doubt if we have even yet "arrived"; but among the milestones along the way, there are none more indicative of progress than those which mark the gradual substitution of the law through its courts or other investigating agencies, for the anarchy of self-help. Practically all forms of controversy, whether relating to persons or property, we now submit without question to the law for decision. If we trust the law with our lives and our physical liberty, why not with our capital and our labor? The same considerations which support the general rule require that industrial disputes also shall come within it, far enough, at least, to compel the disputants to suspend hostilities for a short time, and to listen to an award that government regards as just, even though government may not choose to obligate the parties to abide by the terms.

Such are the arguments in favor of administrative intervention. To most minds they are persuasive, yet to some they are not. While the opponents include most of the labor leaders and some of the employers, the former are the more outspoken. The most formal

protest is that of Mr. Samuel Gompers, who, with apparent approval, includes in his indictment, in the article referred to, the points made by the Colorado State Federation of Labor. These objections of Mr. Gompers and of the State Federation are entitled to our respectful consideration. When analyzed, however, their chief merit appears to be the courage of their sponsors. That these objections may be weighed it is well to state and answer them one by one.

First. It is objected that "The strike is not the disease, it is only the symptom of disease" and that accordingly it is futile to try to maintain industrial peace by dealing with the "symptom" rather than with the "disease". "Compulsory investigation", however, by ascertaining what, if any, industrial wrong exists, and which side is committing it, and by declaring for the removal of the wrong, is dealing in most primary fashion with the "disease" as well as with the "symptom." Peace alone is not the aim, but peace with justice. None other could be lasting.

Second. It is contended that by compulsory investigation the workers are "denied the right to exercise their own judgment as to what wages, hours and other conditions of employment they shall present and urge upon their employers". This contention assumes that the judgment of the workers should be exclusive as to what the wages and hours of labor should be, in any given industry or place of employment. Now the whole number of parties to the industrial relation are three, the employee, the employer and the consuming public. The price paid by the consuming public covers the return to the employee and to the employer and that return is to be a fair one and no more than a fair one to each. It is not necessary to compel either the employer or the employee to continue in the industry, if either does not want to do so; but, if the industry is to be carried on, no one of the three parties concerned should be permitted to arrogate to itself the exclusive decision of the share or rights of the other two. It would be the greatest of tyranny to give such a power over into the hands of the employers. The tyranny would be none the less, if the power were given to the workers. When these two great factors in production cannot agree, government can do nothing less than to halt temporarily the hostilities of both, and after investigation commend to both a fair basis of cooperation.

Third. It is urged that compulsory investigation "weakens the power and the activities of trade unions and makes wage earners dependent upon a political agency". The trade unions have been, in the main, one of the great agencies for the uplift of labor and for the betterment of our general industrial life. In what way does com-

pulsory investigation weaken the "power" and "activities" of the unions? Only to the extent of forbidding the union to declare or incite a strike prior to or pending governmental investigation of the causes of the dispute, a right which the union should not possess anyway, any more than the employer should be permitted to lockout his men, in advance of or pending the same investigation. All of the other powers of the union remain intact and its good work may be continued. That compulsory investigation "makes wage earners dependent upon a political agency" is to a small extent true, and it is true also that to the same extent the wage earners will be less dependent upon the union, but what of it? Is government to refrain from equipping itself with an agency to better industrial conditions and to do a tardy justice to the workers, simply because a voluntary organization, a labor union, is already in the field? If so, then on the same logic courts of justice never should have been established, for the field of social relations, at least in respect to security of life and property, was already occupied by the "blood feud", according to which the relatives of the mistreated individual constituted a voluntary organization to redress the wrong. Union leaders need have no fear, however, that there will not be left enough work for the unions to do. Where their work does not overlap that of government, they will be as indispensable as ever, and where it does overlap, they will be a great aid, if the law is drawn as liberally as it ought to be, and as the Colorado law is, in representing the workers before the administrative commission or bureau which is charged with the duty of making the investigation of industrial disputes.

Fourth. It is objected that the prohibition against the strike, pending official investigation, is tantamount to a requirement that employees remain at work, and that such a requirement amounts to "involuntary servitude", and is forbidden by the federal constitution, except as a punishment for crime. The prohibition against the strike applies only prior to and pending investigation, and, even during that period, does not prevent a worker from leaving his employment for any reason other than a "strike" reason. It is the concerted action, not the individual action, that is forbidden. If, acting individually, the worker wants to take a day off, he may do so; if he wants to go elsewhere to work he may go. Likewise, the employer must refrain from closing down for "lockout" reasons; but he may shut up shop for any other reason, as for repairs, or because of a *bona fide* intention to quit the business. Clearly a limitation of temporary character, directed only against concerted action and well grounded in reason as promoting the general welfare, is no more to be regarded as "involun-

tary servitude" than are the many other very proper legal restrictions imposed upon the conduct of each of us in the interest of all. In order, however, to prevent any possible abuse on the part of a commission of the law requiring a suspension of hostilities pending investigation, it is only fair to labor, and to capital as well, that any law creating such a commission should impose upon the investigation some definite and reasonable time limit, since otherwise an existing injustice might be too long tolerated, and the right of lawful strike and lawful lockout on the part of the workers and of the employers be unduly suspended.

Fifth. It is next claimed that the law forbidding under penalty, as for a misdemeanor, any person to incite a strike is an invasion of the federal constitutional right of "freedom of speech and of the press". This contention likewise is unsound. Freedom of speech and of the press must not be "abridged", to use the constitutional word, it is true; but it is well understood, and has been so decided, that "abridgement" means suppression before utterance or publication, and not punishment afterwards, where the utterance or publication is, under the law, a crime. We may speak and we may print without interruption what we wish to but we always are responsible afterwards for what we have said and what we have printed.

Sixth. Mr. Gompers states that "When workers are deprived of the right to quit work when they wish for any period of time, however limited, then their labor power, the work of their hands and minds, becomes a commodity, which their employers can and will control and command. \* \* \* \* To make human labor power a commodity is physically impossible \* \* \* \* the labor of a human being is part of life \* \* \* \*." Trade unionists dislike exceedingly any economic or legal definition that classes labor as a "commodity". They believe that, by such a classification, the human element is ignored, and that the workers are more likely to be regarded and treated as chattels, instead of what they are, human beings endowed with all the usual feelings, ambitions, hopes, joys, and rights to justice. Whether labor be defined by economists as a commodity or not, we should not forget the real point made by the unionists, namely that the workers are most emphatically human beings and a part of the great brotherhood of man. It does not follow, however, that "brothers", whether employees or employers, are to be permitted to do everything they want to under the plea that their activity is "part of life". They must remember that their activities are to be considered, not only from the standpoint of the effect upon themselves, but from that of the effect upon the rest of the human brotherhood, and that these activi-

ties are to be abridged, whenever encroaching upon the combined and larger welfare. To require the postponement of a strike merely until the results of an investigation are known, is asking no more of labor than to ask from capital the corresponding postponement of a lockout, and in fact is asking very little from either, as compared with the disastrous consequences of a different course.

Seventh. The seventh objection may be stated in Mr. Gompers' language as follows: "The whole theory of organization for the labor movement, for society and for government, is based upon the endorsement of voluntary institutions. Any proposal or attempt to supplant voluntary institutions with compulsory institutions (Mr. Gompers is referring to "compulsory investigation") is of vital importance to wage earners and becomes for them the primary issue." Here we encounter again Mr. Gompers' fierce protest against any governmental control of labor organizations. He is undoubtedly willing that organizations of employers, whether in corporate or other form, should be so controlled, but when the shoe pinches labor, then it is on a different foot. Now Mr. Gompers is right in desiring to see capital subjected, for the sake of the general welfare, to a wise supervision by government. He is wrong when he would exempt labor. The workers as well as the employers must be subjected to wholesome regulation. If corporations, or other forms of organization among employers, maintain rules or practices inimical to the public good, these rules and practices must be annulled; and the same thing is true of the similar rules and practices of the organizations of labor. For Mr. Gompers to invoke the rules and institutions of an unregulated individualism, it is rather late. That kind of individualism we are rapidly leaving behind.

Among labor leaders there are both the socialist and the individualist. The former believes in the governmental ownership and management of capital and the governmental division of the resulting product. The latter holds, with the employers, most of the working men and the general public, that the best social system, for our day at any rate, is one of individualism, whereunder the people, while protected by proper regulations imposed on capital, receive the benefit of the increased production which may be counted on, as the result of the personal initiative, which is present in individualism but absent in socialism. He believes too that we all should find that the single industrial control, involved in socialism, would be tyrannical as compared with the multiple competing centers of control, characteristic of regulated individualism. It is easy to see why the socialist labor leader resents every form of supervision over the wage demands

of the working man. He knows that, just as there is a limit below which wages cannot go and let the workman live, so there is a limit beyond which they cannot rise and let capital live. He knows that one way to kill regulated individualism is to make the wages exceed the upper limit, after which, he dreams that in some way or other the new socialistic order will rise upon the ruins and out of the chaos of the old. It is difficult, however, to understand how a great leader like Mr. Gompers, who is known as an enemy of socialism, could oppose governmental assistance in determining, in the case of dispute, the share of production that is to go to capital and the share that is to go to labor, an assistance that probably constitutes the principal agency for perfecting the present economic order and maintaining it against the rise of socialism.

Eighth. Complaint also is made against commissions which are not responsible directly to the people because not elected by them. If all commissions or bureaus of the administrative departments of government were elected by the people, the ballot of the electors put in the box on election day would be longer than a motion picture film. The ballot is already too long. The marked tendency is to shorten it by reducing the number of elective officers and increasing the number of the appointive, in order to free the electors from a practically impossible electoral task, and at the same time attain the increased efficiency that comes from a greater centralization of administrative power and responsibility.

Ninth. Next it is charged that the Colorado "Industrial Commission Law places in the hands of three men (whose experiences deprive them of a full or even a partial knowledge of the great struggle of the wage earners) the destiny of the working people of this state. In fact our entire lives would be directed and controlled by three men." Obviously the members of a Commission charged with the duty of administering a compulsory-investigation law should not be so numerous as are the workers, or as are the employers, and obviously should not be made up exclusively either of the employee class or the employer class. A compulsory-investigation law should require, as does the Colorado law, that not more than one member of the Commission should be representative of the workers or of the employers. When we reflect upon the proper number of members of a commission, a small number, three to seven, depending upon the population of the state, would seem to be sufficient. As far as the personnel of the present Industrial Commission of Colorado is concerned, the charge that the members are too inexperienced to sympathize with the struggle of the wage earners is one that cannot be sustained. The Chair-

man of the Commission, Mr. E. E. McLaughlin, cannot be said to be representative either of the class of employees or employers. At the time of his appointment he was a life insurance agent and may be said to represent the general public on the Commission. Another member, Commissioner Frank Lannon, once worked as a laborer in a foundry. He saved his time and his money, got ahead and later became himself, the owner of a foundry and an employer of labor. The third member, Commissioner Wayne C. Williams, although at the time of his appointment a young lawyer by profession, was once a printer and holder of a union card and has always been conspicuously identified with the cause of labor.

More than seventy-five per cent of the decisions of the Colorado Commission on industrial disputes have happened to favor the cause of the workingman. If seventy-five per cent is not high enough, what do our brethren of the labor world require in the way of percentage, as an indication that the present Colorado Commission sympathizes with and understands the cause of labor, as well as the cause of the employers?

Tenth. Finally, one other objection, although not included by Mr. Gompers or by the Colorado State Federation of Labor, but made by Mr. E. L. Doyle, a prominent Colorado labor leader, in arguing against the principle of compulsory investigation generally, is to this effect: that the lapse of time between the date of service of the demands of the workmen upon the employer and the date of the decision by the investigating commission retards the strike and gives the employer a chance to speed up production, call in strike breakers, and in general put himself in a position of resistance. A surprise attack, however, either in the form of a strike or a lockout, is not as a rule consonant with a just solution of the controversy. Under a compulsory-investigation law the disputants would incline to depend upon a just decision by the commission. Accordingly, it is not likely that production would be speeded up appreciably, or that public opinion would tolerate direct preparations for hostilities, in advance of a decision by the commission. Again, whatever the evils of doing away with the surprise attack by either side, they could not possibly equal those of having no compulsory-investigation law at all.

The objections of labor have now been considered and they may stand as well for the objections of capital. The courage and sincerity of the leaders of labor we concede, but the position which they have taken on the question at issue can be regarded in no way except as reactionary, anti-social and inimical to labor itself.

The struggle between labor and capital has been a bitter one. We

all confess that because of it there are times when we are led to reflect upon our future with solemn concern. In such moments come thoughts of the ideals of our republic and the degree of their realization, thoughts of the dangers from without and, even more, those from within. Committed to international policies difficult to maintain; surrounded by world war; weakened and distressed at home by these industrial disturbances yearly growing more acute; benumbed in our sense of respect for, and obedience to, our own government and its laws; we sometimes wonder how long we shall endure. Ours is a republic dedicated to Liberty and to Law. The concept could not be more lofty. Liberty! What does it really mean? Freedom to come and go? Yes, and more. It is life and opportunity. It is self-expression and achievement. It is efficiency, for the man who is only partly efficient is only partly free. Its staff and protector is the Law, and its general attainment, by each according to his capacity, becomes the only legitimate goal of social effort.

If we would endure as a republic we must rededicate our spiritual selves to these great ideals. We must invoke at the same time a more extensive exercise of governmental power and a more certain enforcement of law. Government is the chief organized agency that we possess, the only one to which we all belong and through which we all can work. Let us not, therefore, fear it; it is our own. Rather let us use it to ascertain and establish economic justice among all classes; to assist in the development of our industries and to extend our foreign trade; to advance education, encourage art and healthful recreation; to promote the national defense and to maintain the supremacy of law; use it, in short, intelligently and constructively, as the principal instrument by which to attain our national ideals. Let us not frown on genius. To the service of government, let us call our greatest and best. Supermen walk among us. Let us honor them and requisition them to the highest service. Let us be loyal to our government, respectful to her officials and obedient to her laws.

And, although we cannot permit the workers to assume to themselves the unsupervised determination of the conditions of employment, any more than we can accord a like privilege to capital, let us nevertheless, and as a part of the extension of governmental activity, maintain for them hours and conditions of work that are healthful, and, in case of dispute, arrange for the wage that is fair. Let us abolish from among them the unnecessary part of their poverty. This we can do by a wise system of compulsory insurance, labor itself having the dignity of contributing a part, against the evils of accident, sickness, old-age and unemployment. The greatest business is the

social business, with government as the general manager, and with the increasing development, from generation to generation, of a more efficient people, as the object of the enterprise. The great war teaches us, and warnings from within confirm it, that the government that does not care for its workers is not efficient in the conduct of the nation's social business and cannot long exist.