

# THE RIGHT TO STRIKE . . . .

*The great winter coal strike was a national disaster of the first magnitude. Incalculable damage was inflicted on the Australian economy. The grave extent of the economic losses of the strike are becoming clearer as the weeks and months go by. And apart from that, the majority of Australians were forced to suffer a winter of almost unparalleled discomfort, and, in many instances, of real misery and hardship.*

*However, out of evil sometimes comes good. And it can now be said with confidence that, coming on top of the disastrous succession of stoppages in essential industries since the end of the war, the coal strike has just about exhausted the last reserves of patience and forbearance and good humour of the Australian people.*

*In many of the big strikes of the last few years, public opinion was not wholeheartedly united in condemnation of the strikers. There was a feeling that some of their claims were at least partly justified, and that the processes of arbitration had been unnecessarily slow and cumbersome in rectifying legitimate grievances. This feeling was encouraged by the war-time record of labour generally in maintaining continuous work, and by the tendency to regard the industrial upheavals of the immediate post-war period as a natural outburst of industrial high spirits on the return to peace-time conditions. But any feelings of tolerance and sympathy have now vanished. It is being forced upon the people that there can be no worthwhile progress, no big development, no prospect of building a great nation in Australia, unless a reasonable degree of continuity of work can be assured in industries supplying basic materials and providing essential services. If the aim of the Communists is to disrupt and enfeeble the economic life of this country, and to prevent all true pro-*

*gress, then, since the end of the war, they have been markedly successful.*

*The public are no longer in the mood to suffer tamely the hardships imposed by strikes, or to tolerate disastrous interruptions to the smooth flow of the nation's economic life. Indeed, many people of no clear-cut political affiliations are beginning to question whether the traditional labour freedom of the right to strike can any longer be permitted, or, at any rate, permitted in those industries which are basic to the economic welfare and progress of the country.*

## **Historical Background.**

“The right to strike” is a right that has only been recognised and established in British countries in comparatively recent times. In the latter part of the 18th and well into the 19th century, strikes in England were often savagely repressed. Nearly a century has passed since the Dorchester labourers were sentenced to seven years’ transportation because they were responsible for organising a society which had agreed to strike in order to combat wage reductions. There were many legal sanctions which could be brought to bear on strikers. They could be prosecuted under the common law of conspiracy, for breaches of contract, and under Master and Servant Laws and Combination Acts.

It was not until 1875 that British workers were legally assured of the right to strike. But in 1900 an event took place which suggested that this right was of very dubious advantage. In that year, the Taff Vale Railway Company in South Wales sued the Amalgamated Society of Railway Servants, some of whose members had participated in a strike, for the loss which the Company had sustained through the strike, carried the case to the Lords, and eventually secured a verdict of £23,000 in damages.

The total cost to the Society was £50,000. The threat to Trade Union activities implied by the Taff Vale decision was removed by the Trade Disputes Act of 1906; but the Trade Disputes Act of 1927, which followed upon the general strike, again rendered somewhat uncertain the legal position of the workers' right to strike. This Act has since been repealed.

In Australia, although the position of the unions was never so adverse as in England, legislation followed closely on the lines of the English model. Prosecution of strikers for breaches of Master and Servant Acts were not uncommon in the latter part of the 19th century, and it was not until this century that Australian workers could be said to have established, beyond doubt, their right to strike.

#### **The Argument Against.**

But that right is now again in serious question.

The argument of those who oppose the right to strike runs something like this: Industrial conditions have undergone such a transformation in the last forty or fifty years that there is no longer any need for the worker to strike in order to gain just recognition and correction of his grievances. With the enlightened policy now pursued by the majority of employers, the representation of all classes in Parliament, the high degree of interdependence of the modern economy, and the broadening realisation that all sections have a stake in maximum production, it has become increasingly offensive to most thinking people that strikes should any longer be countenanced. Moreover, the provision of industrial courts, to which the worker, through his union, has ready access, removes entirely the need for resort to the sanction of the strike. With the system of compulsory arbitration came the "rule of law" in industry, but the law cannot "rule" if the use of force to over-

throw its provisions is permitted. A recent appointee to the Arbitration Court bench stated: "The right to strike has gone. It died when a system of law was introduced, which gave those people who had the right to strike a complete and absolute remedy."

The argument is valid in strict legal theory. But it does not settle the matter. For the question remains how far, in practice, it is possible, and indeed desirable, to apply rigid legal concepts to the complex field of human relationships in industry.

#### **"The Rule of Law" in Industry.**

Nearly 50 years' experience of compulsory arbitration suggests that there are, in fact, very severe limitations on the extent to which it is practicable to apply the theory of the "rule of law" to industry. These limitations were by no means fully visualised by the early founders of the system of arbitration—nor indeed by early arbitration court judges. When the Attorney-General, Wise, introduced his "Conciliation and Arbitration Bill" in N.S.W. in 1900, he optimistically asserted: "There cannot be any strikes under this bill. There may be disputes, but there cannot be any interruption of industry." And one of the greatest justices of the Court, the late Mr. Justice Higgins, in his book, "A New Province Of Law and Order," wrote: "The Arbitration system is devised to provide a substitute for strikes and stoppages, to secure the reign of justice as against violence, of right as against might, to subdue Prussianism in industrial matters."

These pretensions have been shattered by what has actually taken place. The system of compulsory arbitration and the so-called "rule of law" in industry have, in fact, been accompanied by an alarming amount of industrial lawlessness. Indeed, over the last twenty years or so, the burden of strikes has probably been far

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heavier in Australia than in any other democratic country in the world.\*

## A Law Without Teeth.

Those who would deny the right to strike retort to this that the industrial law in Australia has been a law without teeth; that it is impossible to secure, and futile to expect, the observance of law in industry, or in any other field, unless there are provided penalties and sanctions to enforce the law and deter the law-breakers. The Arbitration Act, as it exists today, does not contain adequate penalties by which the provisions and awards of the Court can be sustained. The remedy, therefore, according to this school of thought, is to write into the Act, or, if not in the Act, then into other legislation, penalties of such a nature that the right to strike would in practical effect cease to exist. The disastrous winter coal stoppage has given added weight and appeal to these views. Indeed, numerous people, who have never before questioned the right of the worker to go on strike as a last resort, are now seriously wondering whether this right can any longer be conceded.

The abolition of the right to strike does not, of course, mean there will be no strikes. All it can mean is that those who instigate and participate in strikes must be prepared to suffer the legal consequences of their actions. And these consequences, to have any salutary effect on would-be strikers, would need to be severe. They might take the form of the prosecution of strike ring-leaders either by way of personal fine or imprisonment; the imposition of levies on union funds;

the imposition of fines on all those who participate in strikes; the freezing of union funds to prevent financial aid being extended to strikers; and other measures of a like nature.

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The I.P.A. has given long and thoughtful consideration to this matter and has come to a number of conclusions. Firstly, we are convinced that discussion of the abstract merits of whether or not the right to strike should be preserved is apt to be barren and fruitless. There is little to be gained, in fact only confusion is likely to arise, by pursuing too far the theoretic and legalistic implications of this matter. What is important, from a practical point of view, is not that there should be no legal right to strike, but that there should be an end to the regular interruptions of work in those essential services and industries which are basic to the welfare of the people and the economy—interruptions such as the disastrous coal strike, and other stoppages little less disastrous, of the kind that have occurred continuously since the end of the war. It is at the reduction to negligible proportions of strikes in these industries that action should be concentrated.

## Not Acceptable to the Labour Movement.

It can be said, with reasonable certainty, that an absolute prohibition of "the right to strike," such as would be implied in a permanent law providing for repressive penalties, would not at the present time be acceptable to the great body of the labour movement in this country. Whatever we might think about it—and there are arguments for and against—such a prohibition is not at the present stage within the scope of practical politics. It is axiomatic in legal theory and practice that it is futile to pass laws that are not supported by the great majority of the people to whom they apply. And it is perfectly certain that a

\*Working days lost per 1,000 employees employed in Mining, Industry and Transport.

	1927-1947
Australia . . . . .	1,324
United States of America . . . . .	1,227
Canada . . . . .	477
United Kingdom . . . . .	292
New Zealand . . . . .	197

Source: I.L.O. Year Book of Labour Statistics 1947-48, page 227.

law of a permanent character providing for prohibitive penalties on striking unions, unionists and union leaders, would be bitterly opposed by workers throughout the length and breadth of Australia. Nor, probably, would such provisions be viewed without some disquiet by many people not directly affiliated with labour organisations and not holding pronounced labour sympathies.

From a practical viewpoint, the position we are faced with is this: A Labour government would unquestionably refuse to introduce legislation which would, in effect, abolish the right to strike. On the other hand, any attempt by a non-Labour administration to do so would, in all probability, lead immediately to a general deterioration of industrial relationships, and to an outbreak of acute and widespread industrial unrest and disturbance by way of protest. It would also strengthen the position of militant extremists in the union movement. And quite apart from these eminently practical considerations, there must remain a lingering doubt in the minds of thinking people whether a complete prohibition of strikes, such as would be implied by harsh legal penalties, would be consistent with traditional democratic rights, and particularly the right of any section of the community to organise and take reasonable action for its own protection and advancement.

For these reasons, and especially the practical reasons, we are constrained to reject the view that the right to strike, as a general and abstract principle, should no longer be permitted.

### A Middle Course.

Does this mean that we are prepared to acquiesce in a continuation of the present disastrous state of things? Is the coal stoppage of the winter of 1949 to be repeated in the winter of 1950, and the entire economy of the country to be dis-

rupted because of concern for an abstract democratic principle, or because of insurmountable practical obstacles? By no means! There is a middle course, which, if it will not provide an infallible remedy for strike action, at least holds out prospects of great improvement over the present lamentable condition of affairs—a course which may eliminate the excessive discomforts and hardships that the community has suffered since the end of the war, and which may serve to guarantee the smooth working and progress of the economy as a whole.

The fundamental starting-point for any success in coping with strikes against the community is that there should be no appeasement of any kind of the unions directly involved. No benefits, direct or indirect, no concessions, minor or major, should be conferred because of a strike. So long as strikes continue to be profitable, so long will they be attractive to people who indulge in them; and so long will men, whose prime business it is to foment strikes, be returned to positions of leadership in striking unions.

**Bitter Fruits.**

This principle is easily stated, and often affirmed, but seldom carried out in practice. Strikes are almost invariably brought to a conclusion as a result of some concession, direct or indirect. It is not easy to name one major strike in this country since the end of the war that has not resulted in substantial gains to the workers concerned, and, quite frequently, to the great body of workers not directly concerned. In fact, it cannot be doubted, that we are now, in part, reaping the bitter fruits of the seeds sown in the first year or two after the war by the failure of Labour governments to deal much more sternly with those resorting to direct action to gain their ends.

For instance, the transport upheaval in Victoria toward the end of 1946, was instrumental in producing what in retro-

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spect appear incredible gains for the workers concerned, and indeed for the labour movement throughout Australia. For the workers directly involved, annual leave was greatly extended, overtime rates and Saturday and Sunday rates were increased, more amenable weekly rosters eventuated. So far as all workers were concerned, undertakings were given to expedite the hearing of the 40-hours' case, and a special interim increase in the basic wage was granted. Also, on the day that the strikers returned to work the Arbitration Court announced approval of the 40-hour week in principle.

The rights and wrongs of these concessions are not here in question. The only point we are concerned with is that they came about, or appeared to come about, as a direct or indirect consequence of the strike. Can it be wondered that, in the face of gains like these, strikes have such an appeal to many workers, even those of moderate complexion? And can it be wondered that militant leaders who instigate strikes and produce these results have such popular appeal at union elections? At that time, in 1946, reviewing the implications of the strike, the Institute stated: "If the strike weapon can produce gains such as those obtained in the transport upheaval, where the methods of orderly procedure fail, it seems only logical to expect that the next few years may see an expansion in the use of the strike or of the threat of the strike to achieve labour objectives. This is a sombre reflection."

### No Appeasement.

It is utterly futile to expect workers to eschew direct action, or the elimination of militant Communist leaders from key unions, while strikes are permitted to produce such far-reaching benefits. If governments, and indeed the community, are not prepared to reject policies of appeasement, then there is little prospect of any im-

provement in the wholly disastrous conditions which have prevailed in Australia over the last few years.

In practice this means that any government must be prepared to fight an unjustifiable strike—and most strikes in essential industries are utterly unjustifiable—to the bitter end, and resolutely refuse to enter into or to arrange any negotiations on matters that are properly the province of established industrial tribunals. But no government can do this unless it has the backing and support of the great majority of the community, including the moderate and sensible elements of labour. If strikes are to be made unattractive, then the community must be prepared to put up with the hardships and sacrifices that an uncompromising attitude to strikers must entail. Without the full moral and physical backing of the community governments can do little. The outstanding feature of the great coal stoppage this year was the uncompromising stand taken by governments, both Labour and Liberal. They were able to take this stand because they knew that the community was prepared to back them to the limit.

### Emergency measures.

But governments have other weapons to bring to bear on strikers besides the indignation and resolution provided by an outraged public opinion. We have seen in the coal stoppage that in certain circumstances the community, and even the responsible elements of labour, are prepared to support—or at least not strenuously oppose—far-reaching penal measures against striking unionists and their ring-leaders. The freezing of union funds, the fine and even imprisonment of strike leaders, are examples. To make provision for penalties such as these in special circumstances by way of temporary or emergency legislation is some-

thing that the public would support where it would not countenance permanent penal legislation which might be applied to all strikes and strikers indiscriminately.

In the coal strike, too, we have seen for the first time a really serious effort to minimise the hardships to the public and to maintain essential supplies, through the provision of volunteer labour or the use of armed services to do what the strikers refuse to do. In a strike involving a state of great national emergency, this type of action, which can be the most potent of all, should be applied rigorously and with the very minimum of delay.

There is, too, the possibility of strengthening the industrial law in ways which might not be objectionable to the great body of decent unionists. It might be feasible, for instance, to introduce a provision debarring a striking union from access to the facilities of the appropriate tribunal for a defined period after the men had returned to work. The Act might lay down the minimum and maximum periods, the exact length in each instance being left to the discretion of the Court. As it is, a strike tends to take precedence over all other business in the work of the courts, which means that striking unionists are awarded a first claim on the attention of the courts. The bad boys of the family are better treated than the good.

### Secret Ballots.

Then there is the secret ballot! It has distinct possibilities for good; on the other hand it presents practical difficulties. Its success would depend on the co-operation of individual unionists as well as of the union organisation itself. There is no certainty that this co-operation would be given. Moreover, it is wrong to assume that a secret ballot would be all-

effective. What is more important, in our view, than a ballot on strike action are secret ballots for the election of union officials. Here the ballot can be properly organised well in advance, and does not therefore give rise to the same difficulties. However, from a practical standpoint, it is not easy to see how this vitally necessary and desirable reform can be introduced into the structure of the union without the concurrence of the unions themselves. There have been encouraging signs during the last month or so that moderate labour leaders are beginning to awaken to the virtues of the secret ballot.

### Summing up.

To sum up: Abstract discussion on the right to strike is likely to get us nowhere. Apart from the doubt whether a universal prohibition of strikes would not infringe a fundamental democratic right of the worker to withhold his labour, it is in the present stage of public opinion outside the ambit of practical politics. What is important is that each strike in an essential industry, which is a strike against the community, should be treated on its merits and fought with the full weight of the moral and physical resources that the community can muster. There must be no vestige of appeasement in totally unjustified political stoppages, the majority of which are instigated by militant Communist extremists. If this were taken as an unswerving principle of policy, and if moderate, sensible union leaders could be brought to accept the principle of secret ballots for union elections, then we would go a long way toward avoiding a continuance of the disastrous stoppages which have cursed Australian industry over the last few years, and toward ridding the key unions of Communist influence.

