

ARBITRATION REFORM

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The Australian system of arbitration is frequently hailed by Australians as a model for the world to copy. But in Britain and the United States, authorities on industrial relations (from both sides of industry) are trenchantly critical of compulsory arbitration as practised in this country. The truth lies in neither of these extreme views.

The Australian system has brought considerable advantages and has proved in many respects to be well adapted to the peculiar features of the Australian social and industrial environment. It has, on the other hand, serious defects. Generally, I would say that it is not for export, and that the British system, based primarily on voluntary industrial agreements, has proved superior to our own. Resting on the principle of mutual consent, it inculcates in the parties to industry a sense of moral responsibility and obligation to the community and to one another, which is not sufficiently in evidence in Australia. While there is much to be gained from a study of British methods, the complicated and closely-knit structure of wages and industrial conditions in Australia rests on the arbitration system and to abandon it now would cause chaos. The only practicable course left is to try to improve it. *Any other approach is academic and unreal.*

What are its defects? Apart from those arising from the severe constitutional limitations of the Commonwealth in industrial matters, there are mainly three:—

- (1) Considered as an administrative machine it is irritatingly slow and cumbersome. This is partly due to the way the machine is used by the contending parties; and partly to the inherent nature of the machine itself.
- (2) In practice, it transfers responsibility for avoiding or settling disputes from where that responsibility should primarily rest—namely, the parties directly concerned—to a third party, which it places in the fore-front of

industrial relations. As a system, it therefore tends to discourage voluntary negotiations and agreements and to encourage the deliberate manufacture of disputes. *Moreover, to achieve a settlement of a difference by a legal award is quite another thing from a settlement achieved through voluntary agreement between the parties concerned. The umpire's decision may be observed, but that does not mean that it is willingly accepted.* On the contrary it often leaves a trail of bitterness and unrest.

- (3) The Commonwealth Arbitration Court has become in practice primarily an economic planning body rather than a body to settle disputes. It deals with matters of overriding economic importance, where a wrong decision could undermine the health of the nation's economy. But are the methods of the Court and its constitution well suited to these functions? Generally I would say they are not.

What can be done to remedy these defects?—(which are, of course, no fault of the Judges and the Commissioners who have invariably exhibited a high degree of economic understanding and impartiality).

Experience with the new 1947 Arbitration Act does not suggest that it has made any substantial progress toward evolving a satisfactory remedy. Indeed the new structure created by the Act has, if anything, tended to undermine one of the main advantages which the system has hitherto conferred—namely, the uniformity and comparability of wages and conditions which prevail throughout industry. This defect might be overcome by making the decisions of Conciliation Commissioners subject to appeal to the members of the Court and possibly to their ratification.

Perhaps it might be desirable to go further than this and relieve the Conciliation Commissioners of all arbitral authority except in minor or local matters. This would mean the restoration of virtually all arbitral powers to the Court; but the Court would be entitled to refuse access to its facilities unless clear evidence were provided that the parties in dispute and the Conciliation Commissioners had seriously and strenuously

explored all possible avenues of achieving agreement. This would have the important advantage too of emphasising conciliation, as distinct from arbitration. *While Conciliation Commissioners have power to make awards, the parties in dispute are tempted not to take conciliation very seriously.*

The legal formalities at present observed in the proceedings of the Court not only create an air of unreality but contribute materially to the slowing-up of the system. To overcome this weakness, and to meet the objection that the Court is not fitted to perform the functions of an economic planning body, I would suggest that it might be reconstituted in two sections—an Industrial Commission and the Court itself, which might consist of three judges.

The Commission would exercise authority on those matters of national economic importance which were reserved to the Court in the changes made in the 1947 Act, i.e. basic wage, standard hours, etc. The Commission might be constituted of five members, consisting of a judge as Chairman, of at least one front-rank economist, the remaining members to be selected for their special experience and qualifications. *It should pursue its inquiries on major basic wage and standard hours cases without interruption and be completely free to decide on the methods of inquiry.* It would, on its own initiative, call such witnesses as it deemed desirable in order to help it arrive at its decisions. Since the Commission would be

concerned with questions of major economic policy it should confine its attention mainly to expert economists and statisticians and those concerned with the formation of national economic and financial policy. Employer bodies and unions might be limited to selection of one or two people to present their case to the Commission and it would be for those organisations to decide whether or not they should be legal advocates.

The work of the Court itself would consist of legal interpretations, ratification of industrial agreements voluntarily reached, and of the settlement of disputes on matters, other than those within the purview of the Commission, which prove incapable of solution by voluntary methods. The work of the two sections would, of course, need to be closely co-ordinated. This would not be difficult.

The improvement of the machinery of arbitration in this way would, however, not be enough. *No machinery for settling industrial disputes will work effectively unless employers and unions form the habit of resolving their own differences, and unless there is adequate machinery of voluntary consultation and negotiation through which this can be done.* Here lies the real crux of the matter.

It means that there must be a great deal more constructive consultation than at present between employers and unions on all questions bearing on industrial relations and not merely those in dispute. The task of building permanent machinery of union-management co-operation is the responsibility of unions and employers. No system of arbitration will work effectively unless it is backed by adequate machinery of this nature, and by the right approach to 20th century problems of industrial relations by the parties directly concerned. The fault perhaps lies not so much with the arbitration system (although it has faults—serious ones) as with the unsatisfactory state of our industrial relationships. I believe this matter to be so vital that I would like to see a Royal Commission appointed to examine industrial relations, including the working of compulsory arbitration.

